

1 A bill to be entitled

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

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Legislative findings and intent.--

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

24 (2) The Legislature further finds that access to quality
25 health care at public hospitals is enhanced when public
26 hospitals affiliate and coordinate their common endeavors with
27 medical schools. These affiliations have proven to be an
28 integral part of the delivery of more efficient and economical

29 health care services to patients of public hospitals by offering
30 quality graduate medical education programs to resident
31 physicians who provide patient services at public hospitals.
32 These affiliations ensure continued access to quality
33 comprehensive health care services for residents of this state
34 and therefore should be encouraged in order to maintain and
35 expand such services.

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

46 (4) The Legislature finds that the high cost of
47 litigation, unequal liability exposure, and increased medical
48 malpractice insurance premiums have adversely impacted the
49 ability of some medical schools to permit their employees to
50 provide patient services to patients of public hospitals. This
51 finding is consistent with the report issued in April 2002 by
52 the American Medical Association declaring this state to be one
53 of 12 states in the midst of a medical liability insurance
54 crisis. The crisis in the availability and affordability of
55 medical malpractice insurance is a contributing factor in the
56 reduction of access to quality health care in this state. In the

57 | past 15 years, the number of public hospitals in this state has
58 | declined significantly. In 1988, 33 hospitals were owned or
59 | operated by the state and local governments or established as
60 | taxing districts. In 1991, that number dropped to 28. In 2001,
61 | only 18 remained, 7 of these concentrated in 1 county. Thus, 11
62 | public hospitals serve the other 66 counties of this state. If
63 | no corrective action is taken, this health care crisis will lead
64 | to a continued reduction of patient services in public
65 | hospitals.

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

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

85 action while performing patient services except as provided in
 86 s. 768.28(9)(a), Florida Statutes.

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

89 766.1115 Health care providers; creation of agency
 90 relationship with governmental contractors.--

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

101 Section 3. Paragraph (b) of subsection (9) of section
 102 768.28, Florida Statutes, is amended, and paragraph (f) is added
 103 to subsection (10) of said section, to read:

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

108 (9)

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

- 110 1. "Employee" includes any volunteer firefighter.
- 111 2. "Officer, employee, or agent" includes, but is not
- 112 limited to:

113 a.7 Any health care provider when providing services
 114 pursuant to s. 766.1115.

115 b.7 Any member of the Florida Health Services Corps, as
 116 defined in s. 381.0302, who provides uncompensated care to
 117 medically indigent persons referred by the Department of Health.

118 c.7 ~~and~~ Any public defender or her or his employee or
 119 agent, including, among others, an assistant public defender and
 120 an investigator.

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

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

137 (10)

138 (f)1. Any not-for-profit college or university with a
 139 medical school or any other academic programs of medical
 140 education accredited by any association, agency, council,

141 commission, or accrediting body recognized by this state as a
 142 condition for licensure of its graduates, hereinafter
 143 collectively referred to as "medical school," that has entered
 144 into an affiliation agreement or a contract to allow its
 145 faculty, health care professionals, practitioners, and ancillary
 146 caregivers and employees, hereinafter referred to as
 147 "employees," to provide patient services to patients treated at
 148 a public hospital, together with the employees of such medical
 149 school, shall be deemed agents of the governmental entity for
 150 purposes of this section and shall be immune from liability for
 151 torts in the same manner and to the same extent as the state and
 152 its agencies and subdivisions while providing patient services
 153 at such public hospital.

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

155 a. "Patient services" means:

156 (I) Any comprehensive health care services, as defined in
 157 s. 641.19(4), to patients of a public hospital.

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

160 (III) Access to participation in medical research
 161 protocols.

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

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

173 4. All records relating to the contractual relationship
174 between such medical school and a public hospital, held by that
175 medical school, are public records subject to s. 24(a), Art. I
176 of the State Constitution and s. 119.07(1).

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