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1 A bill to be entitled
2 An act relating to medical negligence; amending s.
3 395.0191, F.S.; expanding a hospital's authority to
4 discipline members of the medical staff of the hospital;
5 providing a presumption of reasonable action under certain
6 circumstances; specifying absence of monetary liability of
7 a licensed facility for certain disciplinary actions;
8 amending s. 415.1111, F.S.; requiring medical negligence
9 claims against certain health care providers to be brought
10 under medical malpractice provisions; amending s. 458.320,
11 F.S.; specifying that such section does not create any
12 duty or legal obligation for hospitals or ambulatory
13 surgical centers; creating ss. 458.3175, 459.0066, and
14 466.0115, F.S.; authorizing licensed physicians,
15 osteopathic physicians, and dentists to apply for an
16 expert medical testimony certificate for medical
17 negligence actions; providing for denial or revocation of
18 the certificates; providing construction; requiring the
19 board to adopt rules setting expert witness certificate
20 fees; providing for renewal of certificates; amending s.
21 627.4147, F.S.; deleting the requirement that medical
22 malpractice policies authorize the insurer to admit
23 liability or settle without the consent of the insured;
24 expanding application of a policy requirement relating to
25 a clause stating whether an insured has the exclusive
26 right to veto any offer of admission of liability,
27 arbitration, or settlement; amending s. 766.102, F.S.;
28 limiting expert testimony regarding the prevailing
29 professional standard of care by physicians or dentists to

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30 licensed or certified medical experts; prohibiting
31 admissibility of certain testimony under certain
32 circumstances; amending s. 766.202, F.S.; revising the
33 definition of the term "periodic payment"; providing
34 requirements and procedures for periodic payments;
35 including application to future noneconomic damages;
36 revising bond or security requirements; amending s.
37 768.78, F.S.; including future noneconomic damages under
38 alternative methods of payment of damage awards;
39 authorizing defendants to elect to make lump-sum payments
40 rather than periodic payments for future economic or
41 future noneconomic damages; authorizing the payment of
42 certain losses for a shorter period of time under certain
43 circumstances; authorizing a defendant to contractually
44 obligate certain companies to make payments on behalf of
45 the defendant; authorizing claimants to petition the court
46 to include attorney's fees in such periodic payment
47 provisions; providing for modification of periodic
48 payments or for requiring additional security by order of
49 the court under certain circumstances; providing
50 requirements and procedures for making periodic payments;
51 providing legislative findings and intent relating to
52 providers of emergency services and care and public
53 hospitals and affiliations with not-for-profit colleges
54 and universities with medical schools and other health
55 care practitioner educational programs; amending s.
56 766.1115, F.S.; specifying nonapplicability to certain
57 affiliation agreements or contracts to provide certain
58 comprehensive health care services protected by sovereign

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59 immunity; amending s. 768.28, F.S.; expanding a definition
 60 of the term "employee" to include certain health care
 61 providers; providing sovereign immunity protection to
 62 certain colleges, universities, and medical schools
 63 providing comprehensive health care services to patients
 64 at public hospitals under certain circumstances; including
 65 employees of medical schools under such immunity;
 66 providing definitions; providing an exception; providing
 67 that persons or entities providing emergency services and
 68 care shall be agents of the state for purposes of
 69 establishing personal immunity in certain situations;
 70 requiring reimbursement of the state for certain costs and
 71 payments under certain circumstances; providing sanctions;
 72 creating s. 877.025, F.S.; prohibiting the solicitation of
 73 specified legal business for a profit; providing criminal
 74 penalties; prohibiting attorneys from advertising services
 75 for business for a profit unless permitted by law;
 76 providing a definition; prohibiting attorneys from
 77 initiating contact for the purpose of soliciting legal
 78 business for a profit; providing civil penalties;
 79 providing for equitable relief; providing construction;
 80 providing an effective date.

81
 82 Be It Enacted by the Legislature of the State of Florida:

83
 84 Section 1. Subsections (7)-(10) of section 395.0191,
 85 Florida Statutes, are renumbered as subsections (8)-(11),
 86 respectively, a new subsection (7) is added to said section and
 87 present subsection (7) is amended, to read:

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88 395.0191 Staff membership and clinical privileges.--

89 (7) A licensed facility shall establish internal protocols
 90 for the revocation or suspension of staff privileges or other
 91 disciplinary actions against a member of the medical staff,
 92 relating to staff membership or clinical privileges. A licensed
 93 facility acting in accordance with its internal protocols is
 94 presumed to have acted reasonably under the circumstances absent
 95 clear and convincing evidence to the contrary.

96 (8)(7) There shall be no monetary liability on the part
 97 of, and no cause of action for injunctive relief or damages
 98 shall arise against, any licensed facility, its governing board
 99 or governing board members, medical staff, or disciplinary board
 100 or against its agents, investigators, witnesses, or employees,
 101 or against any other person, for any action arising out of or
 102 related to carrying out the provisions of this section including
 103 the revocation or suspension of staff privileges or other
 104 disciplinary action, absent intentional fraud.

105 Section 2. Section 415.1111, Florida Statutes, is amended
 106 to read:

107 415.1111 Civil actions.--A vulnerable adult who has been
 108 abused, neglected, or exploited as specified in this chapter has
 109 a cause of action against any perpetrator and may recover actual
 110 and punitive damages for such abuse, neglect, or exploitation.
 111 The action may be brought by the vulnerable adult, or that
 112 person's guardian, by a person or organization acting on behalf
 113 of the vulnerable adult with the consent of that person or that
 114 person's guardian, or by the personal representative of the
 115 estate of a deceased victim without regard to whether the cause
 116 of death resulted from the abuse, neglect, or exploitation. The

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117 action may be brought in any court of competent jurisdiction to
 118 enforce such action and to recover actual and punitive damages
 119 for any deprivation of or infringement on the rights of a
 120 vulnerable adult. A party who prevails in any such action may be
 121 entitled to recover reasonable attorney's fees, costs of the
 122 action, and damages. The remedies provided in this section are
 123 in addition to and cumulative with other legal and
 124 administrative remedies available to a vulnerable adult.
 125 Notwithstanding the foregoing, any civil action for damages
 126 against any licensee or entity who establishes, controls,
 127 conducts, manages, or operates a facility licensed under part II
 128 of chapter 400 relating to its operation of the licensed
 129 facility shall be brought pursuant to s. 400.023, or against any
 130 licensee or entity who establishes, controls, conducts, manages,
 131 or operates a facility licensed under part III of chapter 400
 132 relating to its operation of the licensed facility shall be
 133 brought pursuant to s. 400.429. Such licensee or entity shall
 134 not be vicariously liable for the acts or omissions of its
 135 employees or agents or any other third party in an action
 136 brought under this section. Notwithstanding the provisions of
 137 this section, any claim against a health care provider as
 138 defined in s. 766.202(4) that qualifies as a claim for medical
 139 negligence as defined in s. 766.106(1)(a) shall be brought
 140 pursuant to chapter 766.

141 Section 3. Subsection (9) of section 458.320, Florida
 142 Statutes, is renumbered as subsection (10), and a new subsection
 143 (9) is added to said section, to read:

144 458.320 Financial responsibility.--

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145 (9) Nothing in this section creates any duty or legal
 146 obligation on the part of any entity licensed pursuant to
 147 chapter 395.

148 Section 4. Section 458.3175, Florida Statutes, is created
 149 to read:

150 458.3175 Expert witness certificate.--

151 (1) Any physician who holds a valid, active license to
 152 practice medicine in any other state, who pays an application
 153 fee in an amount set by the board, and who has not had a
 154 previous expert witness certificate revoked by the board may
 155 apply for a certificate to provide expert medical testimony in
 156 connection with any medical negligence litigation pending in
 157 this state.

158 (2) The board shall approve an expert witness certificate
 159 for any physician who holds a valid, active license to practice
 160 medicine in another state, but may deny an expert witness
 161 certificate for an applicant if the board determines the
 162 applicant has been disciplined in another state by the medical
 163 licensing entity for fraud, dishonesty, deception, coercion,
 164 intimidation, undue influence, incompetence, or substance abuse.
 165 Once an expert medical certificate is granted, the board may
 166 revoke the expert witness certificate if the board finds the
 167 certificateholder has been disciplined in another state by the
 168 medical licensing entity for fraud, dishonesty, deception,
 169 coercion, intimidation, undue influence, incompetence, or
 170 substance abuse or if the board finds the certificateholder has
 171 committed these acts while testifying in a medical negligence
 172 proceeding in this state.

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173 (3) Nothing in this section may be construed to authorize
 174 a physician who is not licensed to practice medicine in this
 175 state to qualify for or otherwise engage in the practice of
 176 medicine in this state.

177 (4) The board shall adopt rules to implement this section,
 178 including rules setting the amount of the expert witness
 179 certificate application fee. The application fees for expert
 180 witness certificates may not exceed the cost to administer the
 181 certification program. An expert witness certificate is subject
 182 to renewal, upon payment of applicable fees, every 2 years.

183 Section 5. Section 459.0066, Florida Statutes, is created
 184 to read:

185 459.0066 Expert witness certificate.--

186 (1) Any osteopathic physician who holds a valid, active
 187 license to practice osteopathic medicine in any other state, who
 188 pays an application fee in an amount set by the board, and who
 189 has not had a previous expert witness certificate revoked by the
 190 board may apply for a certificate to provide expert medical
 191 testimony in connection with any medical negligence litigation
 192 pending in this state.

193 (2) The board shall approve an expert witness certificate
 194 for any osteopathic physician who holds a valid, active license
 195 to practice medicine in another state, but may deny an expert
 196 witness certificate for an applicant if the board determines the
 197 applicant has been disciplined in another state by the medical
 198 licensing entity for fraud, dishonesty, deception, coercion,
 199 intimidation, undue influence, incompetence, or substance abuse.
 200 Once an expert medical certificate is granted, the board may
 201 revoke the expert witness certificate if the board finds the

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202 certificateholder has been disciplined in another state by the
 203 medical licensing entity for fraud, dishonesty, deception,
 204 coercion, intimidation, undue influence, incompetence, or
 205 substance abuse or if the board finds the certificateholder has
 206 committed these acts while testifying in a medical negligence
 207 proceeding in this state.

208 (3) Nothing in this section may be construed to authorize
 209 an osteopathic physician who is not licensed to practice
 210 osteopathic medicine in this state to qualify for or otherwise
 211 engage in the practice of osteopathic medicine in this state.

212 (4) The board shall adopt rules to implement this section,
 213 including rules setting the amount of the expert witness
 214 certificate application fee. The application fees for expert
 215 witness certificates may not exceed the cost to administer the
 216 certification program. An expert witness certificate is subject
 217 to renewal, upon payment of applicable fees, every 2 years.

218 Section 6. Section 466.0115, Florida Statutes, is created
 219 to read:

220 466.0115 Expert witness certificate --

221 (1) Any dentist who holds a valid, active license to
 222 practice dentistry in any other state, who pays an application
 223 fee in an amount set by the board, and who has not had a
 224 previous expert witness certificate revoked by the board may
 225 apply for a certificate to provide expert dental testimony in
 226 connection with any medical negligence litigation pending in
 227 this state.

228 (2) The board shall approve an expert witness certificate
 229 for any dentist who holds a valid, active license to practice
 230 dentistry in another state, but may deny an expert witness

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231 certificate for an applicant if the board determines the
 232 applicant has been disciplined in another state by the dentistry
 233 licensing entity for fraud, dishonesty, deception, coercion,
 234 intimidation, undue influence, incompetence, or substance abuse.
 235 Once an expert medical certificate is granted, the board may
 236 revoke the expert witness certificate if the board finds the
 237 certificateholder has been disciplined in another state by the
 238 dentistry licensing entity for fraud, dishonesty, deception,
 239 coercion, intimidation, undue influence, incompetence, or
 240 substance abuse or if the board finds the certificateholder has
 241 committed these acts while testifying in a medical negligence
 242 proceeding in this state.

243 (3) Nothing in this section may be construed to authorize
 244 a dentist who is not licensed to practice dentistry in this
 245 state to qualify for or otherwise engage in the practice of
 246 dentistry in this state.

247 (4) The board shall adopt rules to implement this section,
 248 including rules setting the amount of the expert witness
 249 certificate application fee.

250 Section 7. Subsection (1) of section 627.4147, Florida
 251 Statutes, is amended to read:

252 627.4147 Medical malpractice insurance contracts.--

253 (1) In addition to any other requirements imposed by law,
 254 each self-insurance policy as authorized under s. 627.357 or s.
 255 624.462 or insurance policy providing coverage for claims
 256 arising out of the rendering of, or the failure to render,
 257 medical care or services, including those of the Florida Medical
 258 Malpractice Joint Underwriting Association, shall include:

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259 (a) A clause requiring the insured to cooperate fully in
 260 the review process prescribed under s. 766.106 if a notice of
 261 intent to file a claim for medical malpractice is made against
 262 the insured.

263 (b)1. ~~Except as provided in subparagraph 2., a clause~~
 264 ~~authorizing the insurer or self-insurer to determine, to make,~~
 265 ~~and to conclude, without the permission of the insured, any~~
 266 ~~offer of admission of liability and for arbitration pursuant to~~
 267 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~
 268 ~~is within the policy limits. It is against public policy for any~~
 269 ~~insurance or self-insurance policy to contain a clause giving~~
 270 ~~the insured the exclusive right to veto any offer for admission~~
 271 ~~of liability and for arbitration made pursuant to s. 766.106,~~
 272 ~~settlement offer, or offer of judgment, when such offer is~~
 273 ~~within the policy limits. However, any offer of admission of~~
 274 ~~liability, settlement offer, or offer of judgment made by an~~
 275 ~~insurer or self-insurer shall be made in good faith and in the~~
 276 ~~best interests of the insured.~~

277 ~~2.a. With respect to dentists licensed under chapter 466,~~
 278 A clause clearly stating whether or not the insured has the
 279 exclusive right to veto any offer of admission of liability and
 280 for arbitration pursuant to s. 766.106, settlement offer, or
 281 offer of judgment if the offer is within policy limits. An
 282 insurer or self-insurer shall not make or conclude, without the
 283 permission of the insured, any offer of admission of liability
 284 and for arbitration pursuant to s. 766.106, settlement offer, or
 285 offer of judgment, if such offer is outside the policy limits.
 286 However, any offer for admission of liability and for
 287 arbitration made under s. 766.106, settlement offer, or offer of

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288 judgment made by an insurer or self-insurer shall be made in
 289 good faith and in the best interest of the insured.

290 ~~2.b.~~ If the policy contains a clause stating the insured
 291 does not have the exclusive right to veto any offer or admission
 292 of liability and for arbitration made pursuant to s. 766.106,
 293 settlement offer or offer of judgment, the insurer or self-
 294 insurer shall provide to the insured or the insured's legal
 295 representative by certified mail, return receipt requested, a
 296 copy of the final offer of admission of liability and for
 297 arbitration made pursuant to s. 766.106, settlement offer or
 298 offer of judgment and at the same time such offer is provided to
 299 the claimant. A copy of any final agreement reached between the
 300 insurer and claimant shall also be provided to the insurer or
 301 his or her legal representative by certified mail, return
 302 receipt requested not more than 10 days after affecting such
 303 agreement.

304 (c) A clause requiring the insurer or self-insurer to
 305 notify the insured no less than 90 days prior to the effective
 306 date of cancellation of the policy or contract and, in the event
 307 of a determination by the insurer or self-insurer not to renew
 308 the policy or contract, to notify the insured no less than 90
 309 days prior to the end of the policy or contract period. If
 310 cancellation or nonrenewal is due to nonpayment or loss of
 311 license, 10 days' notice is required.

312 (d) A clause requiring the insurer or self-insurer to
 313 notify the insured no less than 60 days prior to the effective
 314 date of a rate increase. The provisions of s. 627.4133 shall
 315 apply to such notice and to the failure of the insurer to

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316 provide such notice to the extent not in conflict with this
 317 section.

318 Section 8. Subsection (12) of section 766.102, Florida
 319 Statutes, is renumbered as subsection (13), and a new subsection
 320 (12) is added to said section to read:

321 766.102 Medical negligence; standards of recovery; expert
 322 witness.--

323 (12) If the party against whom or on whose behalf the
 324 expert testimony concerning the prevailing professional standard
 325 of care is offered is a physician licensed under chapter 458 or
 326 chapter 459 or is a dentist licensed under chapter 466, the
 327 expert witness must be licensed in this state under chapter 458,
 328 chapter 459, or chapter 466 or hold an expert witness
 329 certificate as provided in s. 458.3175, s. 459.0066, or s.
 330 466.0115. Expert testimony shall not be admissible unless the
 331 expert providing such testimony holds a license issued by this
 332 state or an expert witness certificate.

333 Section 9. Subsection (9) of section 766.202, Florida
 334 Statutes, is amended to read:

335 766.202 Definitions; ss. 766.201-766.212.--As used in ss.
 336 766.201-766.212, the term:

337 (9) "Periodic payment" means provision for the structuring
 338 of future economic and future noneconomic damages payments, in
 339 whole or in part, over a period of time, as follows:

340 (a) A specific finding must be made of the dollar amount
 341 of periodic payments which will compensate for these future
 342 damages and future noneconomic damages after offset for
 343 collateral sources and after having been reduced to present
 344 value shall be made. A periodic payment must be structured to

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345 last as long as the claimant lives or the condition of the
346 claimant for which the award was made persists, whichever may be
347 shorter, but without regard for the number of years awarded ~~The~~
348 ~~total dollar amount of the periodic payments shall equal the~~
349 ~~dollar amount of all such future damages before any reduction to~~
350 ~~present value.~~

351 (b) A defendant that elects to make periodic payments of
352 either or both future economic damages or future noneconomic
353 damages may contractually obligate a company authorized to do
354 business in this state and rated "A+" or higher by A.M. Best
355 Company to make those periodic payments on behalf of the
356 defendant. Upon a joint petition by the defendant and the
357 company that is contractually obligated to make the periodic
358 payments, the court shall discharge the defendant from any
359 further obligations to the claimant for those future economic
360 and future noneconomic damages that are to be paid by such
361 company by periodic payments ~~The defendant shall be required to~~
362 ~~post a bond or security or otherwise to assure full payment of~~
363 ~~these damages awarded. A bond is not adequate unless it is~~
364 ~~written by a company authorized to do business in this state and~~
365 ~~is rated A+ by Best's. If the defendant is unable to adequately~~
366 ~~assure full payment of the damages, all damages, reduced to~~
367 ~~present value, shall be paid to the claimant in a lump sum. No~~
368 ~~bond may be canceled or be subject to cancellation unless at~~
369 ~~least 60 days' advance written notice is filed with the court~~
370 ~~and the claimant. Upon termination of periodic payments, the~~
371 ~~security, or so much as remains, shall be returned to the~~
372 ~~defendant.~~

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373 (c) A bond or security may not be required of any
374 defendant or company that is obligated to make periodic payments
375 pursuant to this section. However, if, upon petition by a
376 claimant who is receiving periodic payments pursuant to this
377 section, the court finds there is competent, substantial
378 evidence that the defendant responsible for the periodic
379 payments cannot adequately ensure full and continuous payments
380 thereof or the company that is obligated to make the payments
381 has been rated "B+" or lower by A.M. Best Company and that doing
382 so is in the best interest of the claimant, the court may
383 require the defendant or the company that is obligated to make
384 the periodic payments to provide such additional financial
385 security as the court determines to be reasonable under the
386 circumstances ~~The provision for payment of future damages by~~
387 ~~periodic payments shall specify the recipient or recipients of~~
388 ~~the payments, the dollar amounts of the payments, the interval~~
389 ~~between payments, and the number of payments or the period of~~
390 ~~time over which payments shall be made.~~

391 (d) The provision for the periodic payments must specify
392 the recipient or recipients of the payments, the address to which
393 the payments are to be delivered, and the dollar amount and
394 intervals of the payments. However, in any one year, any payment
395 or payments may not exceed the dollar amount intended by the
396 trier of fact to be awarded each year, after offset for
397 collateral sources. A periodic payment may not be accelerated,
398 deferred, increased, or decreased except by court order based
399 upon the mutual consent and agreement of the claimant, the
400 defendant, whether or not discharged, and the company that is
401 obligated to make the periodic payments, if any, nor may the

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402 claimant sell, mortgage, encumber, or anticipate the periodic
 403 payments or any part thereof, by assignment or otherwise.

404 Section 10. Subsection (2) of section 768.78, Florida
 405 Statutes, is amended to read:

406 768.78 Alternative methods of payment of damage awards.--

407 (2)(a) In any action for damages based on personal injury
 408 or wrongful death arising out of medical malpractice, whether in
 409 tort or contract, in which the trier of fact makes an award to
 410 compensate the claimant for future economic or future
 411 noneconomic losses, payment of amounts intended to compensate
 412 the claimant for these future losses shall be made by one of the
 413 following means:

414 1. The defendant may elect to make a lump-sum payment for
 415 either or both of the all damages so assessed, with future
 416 economic or future noneconomic losses after offset for
 417 collateral sources and after having been and expenses reduced to
 418 present value by the court based upon competent, substantial
 419 evidence presented to the court by both parties; or

420 2. The defendant, if determined by the court to be
 421 financially capable or adequately insured, may elect to use
 422 periodic payments to satisfy in whole or in part the assessed
 423 future economic and future noneconomic losses awarded by the
 424 trier of fact after offset for collateral sources for as long as
 425 the claimant lives or the condition for which the award was made
 426 persists, whichever period may be shorter, but without regard
 427 for the number of years awarded by the trier of fact. The court
 428 shall review and, unless clearly unresponsive to the future
 429 needs of the claimant, approve the amounts and schedule of the
 430 periodic payments proposed by the defendant. Upon motion of the

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431 defendant, whether or not discharged from any obligation to make
 432 the payments pursuant to paragraph (b), and the establishment by
 433 competent, substantial evidence that the claimant has died or
 434 that the condition for which the award was made no longer
 435 persists, the court shall enter an order terminating the
 436 periodic payments effective the date of the death of the
 437 claimant or the date the condition for which the award was made
 438 no longer persisted ~~The court shall, at the request of either~~
 439 ~~party, enter a judgment ordering future economic damages, as~~
 440 ~~itemized pursuant to s. 768.77, to be paid by periodic payments~~
 441 ~~rather than lump sum.~~

442 (b) A defendant electing to make periodic payments of
 443 either or both future economic or future noneconomic damages may
 444 contractually obligate a company authorized to do business in
 445 this state and rated "A+" or higher by A.M. Best Company to make
 446 those periodic payments on behalf of the defendant. Upon a joint
 447 petition by the defendant and the company contractually
 448 obligated to make the periodic payments, the court shall
 449 discharge the defendant from any further obligations to the
 450 claimant for those future economic and future noneconomic
 451 damages that are to be paid by such company by periodic
 452 payments.

453 (c) Upon notice of a defendant's election to make periodic
 454 payments pursuant this subsection, the claimant may request the
 455 court modify the periodic payments to reasonably provide for
 456 attorney's fees. However, no such modification may be made by
 457 the court that would increase the amount the defendant would
 458 have been obligated to pay had no such adjustment been made.

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459 (d) A bond or security may not be required of any
 460 defendant or company obligated to make periodic payments
 461 pursuant to this subsection. However, if, upon petition by a
 462 claimant receiving periodic payments pursuant to this
 463 subsection, the court finds there is competent, substantial
 464 evidence that the defendant responsible for the periodic
 465 payments cannot adequately ensure full and continuous payments
 466 thereof or the company obligated to make the payments has been
 467 rated "B+" or lower by A.M. Best Company and that doing so is in
 468 the best interest of the claimant, the court may require the
 469 defendant or the company obligated to make the periodic payments
 470 to provide such additional financial security as the court may
 471 determine reasonable under the circumstances.

472 (e) The provision for the periodic payments shall specify
 473 the recipient or recipients of the payments, the address to
 474 which the payments are to be delivered, and the dollar amount
 475 and intervals of the payments. However, in no year shall any
 476 payment or payments exceed the dollar amount intended by the
 477 trier of fact to be awarded each year, after offset for
 478 collateral sources. No periodic payment may be accelerated,
 479 deferred, increased, or decreased except by court order based
 480 upon the mutual consent and agreement of the claimant, the
 481 defendant, whether or not discharged, and the company obligated
 482 to make the periodic payments, if any, nor shall the claimant
 483 have the power to sell, mortgage, encumber, or anticipate the
 484 periodic payments or any part thereof, by assignment or
 485 otherwise.

486 (f)~~(b)~~ For purposes of this subsection, "periodic payment"
 487 means the payment of money or delivery of other property to the

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488 ~~claimant at regular intervals provision for the spreading of~~
489 ~~future economic damage payments, in whole or in part, over a~~
490 ~~period of time, as follows:~~

491 ~~1. A specific finding of the dollar amount of periodic~~
492 ~~payments which will compensate for these future damages after~~
493 ~~offset for collateral sources shall be made. The total dollar~~
494 ~~amount of the periodic payments shall equal the dollar amount of~~
495 ~~all such future damages before any reduction to present value.~~

496 ~~2. The defendant shall be required to post a bond or~~
497 ~~security or otherwise to assure full payment of these damages~~
498 ~~awarded. A bond is not adequate unless it is written by a~~
499 ~~company authorized to do business in this state and is rated A+~~
500 ~~by Best's. If the defendant is unable to adequately assure full~~
501 ~~payment of the damages, all damages, reduced to present value,~~
502 ~~shall be paid to the claimant in a lump sum. No bond may be~~
503 ~~canceled or be subject to cancellation unless at least 60 days'~~
504 ~~advance written notice is filed with the court and the claimant.~~
505 ~~Upon termination of periodic payments, the security, or so much~~
506 ~~as remains, shall be returned to the defendant.~~

507 ~~3. The provision for payment of future damages by periodic~~
508 ~~payments shall specify the recipient or recipients of the~~
509 ~~payments, the dollar amounts of the payments, the interval~~
510 ~~between payments, and the number of payments or the period of~~
511 ~~time over which payments shall be made.~~

512 (g) It is the intent of the Legislature to authorize and
513 encourage the payment of awards for future economic and
514 noneconomic losses by periodic payments to meet the continuing
515 needs of the patient while eliminating the misdirection of such
516 funds for purposes not intended by the trier of fact.

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517 Section 11. Legislative findings and intent.--

518 (1) EMERGENCY SERVICES AND CARE.--

519 (a) The Legislature finds and declares it to be of vital
520 importance that emergency services and care be provided by
521 hospitals, physicians, and emergency medical services providers
522 to every person in need of such care.

523 (b) The Legislature finds that emergency services and care
524 providers are critical elements in responding to disaster and
525 emergency situations that might affect our local communities,
526 state, and country.

527 (c) The Legislature recognizes the importance of
528 maintaining a viable system of providing for the emergency
529 medical needs of the state's residents and visitors.

530 (d) The Legislature and the Federal Government have
531 required such providers of emergency medical services and care
532 to provide emergency services and care to all persons who
533 present themselves to hospitals seeking such care.

534 (e) The Legislature finds that the Legislature has further
535 mandated that prehospital emergency medical treatment or
536 transport may not be denied by emergency medical services
537 providers to persons who have or are likely to have an emergency
538 medical condition.

539 (f) Such governmental requirements have imposed a
540 unilateral obligation for emergency services and care providers
541 to provide services to all persons seeking emergency care
542 without ensuring payment or other consideration for provision of
543 such care.

544 (g) The Legislature also recognizes that emergency
545 services and care providers provide a significant amount of

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546 uncompensated emergency medical care in furtherance of such
 547 governmental interest.

548 (h) The Legislature finds that a significant proportion of
 549 the residents of this state who are uninsured or are Medicaid or
 550 Medicare recipients are unable to access needed health care
 551 because health care providers fear the increased risk of medical
 552 malpractice liability.

553 (i) The Legislature finds that such patients, in order to
 554 obtain medical care, are frequently forced to seek care through
 555 providers of emergency medical services and care.

556 (j) The Legislature finds that providers of emergency
 557 medical services and care in this state have reported
 558 significant problems with both the availability and
 559 affordability of professional liability coverage.

560 (k) The Legislature finds that medical malpractice
 561 liability insurance premiums have increased dramatically and a
 562 number of insurers have ceased providing medical malpractice
 563 insurance coverage for emergency medical services and care in
 564 this state. This has resulted in a functional unavailability of
 565 medical malpractice insurance coverage for some providers of
 566 emergency medical services and care.

567 (l) The Legislature further finds that certain specialist
 568 physicians have resigned from serving on hospital staffs or have
 569 otherwise declined to provide on-call coverage to hospital
 570 emergency departments due to increased medical malpractice
 571 liability exposure created by treating such emergency department
 572 patients.

573 (m) It is the intent of the Legislature that hospitals,
 574 emergency medical services providers, and physicians be able to

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575 ensure that patients who might need emergency medical services
 576 treatment or transportation or who present themselves to
 577 hospitals for emergency medical services and care have access to
 578 such needed services.

579 (2) PUBLIC HOSPITALS AND AFFILIATIONS WITH NOT-FOR-PROFIT
 580 COLLEGES AND UNIVERSITIES WITH MEDICAL SCHOOLS AND OTHER HEALTH
 581 CARE PRACTITIONER EDUCATIONAL PROGRAMS.--

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

587 (b) The Legislature further finds that access to quality
 588 health care at public hospitals is enhanced when public hospitals
 589 affiliate and coordinate their common endeavors with medical
 590 schools. These affiliations have proven to be an integral part of
 591 the delivery of more efficient and economical health care
 592 services to patients of public hospitals by offering quality
 593 graduate medical education programs to resident physicians who
 594 provide patient services at public hospitals. These affiliations
 595 ensure continued access to quality comprehensive health care
 596 services for residents of this state and therefore should be
 597 encouraged in order to maintain and expand such services.

598 (c) The Legislature finds that when medical schools
 599 affiliate or enter into contracts with public hospitals to
 600 provide comprehensive health care services to patients of public
 601 hospitals, they greatly increase their exposure to claims arising
 602 out of alleged medical malpractice and other allegedly negligent
 603 acts because some colleges and universities and their medical

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604 schools and employees do not have the same level of protection
 605 against liability claims as governmental entities and their
 606 public employees providing the same patient services to the same
 607 public hospital patients.

608 (d) The Legislature finds that the high cost of litigation,
 609 unequal liability exposure, and increased medical malpractice
 610 insurance premiums have adversely impacted the ability of some
 611 medical schools to permit their employees to provide patient
 612 services to patients of public hospitals. This finding is
 613 consistent with the report issued in April 2002 by the American
 614 Medical Association declaring this state to be one of 12 states
 615 in the midst of a medical liability insurance crisis. The crisis
 616 in the availability and affordability of medical malpractice
 617 insurance is a contributing factor in the reduction of access to
 618 quality health care in this state. In the past 15 years, the
 619 number of public hospitals in this state has declined
 620 significantly. In 1988, 33 hospitals were owned or operated by
 621 the state and local governments or established as taxing
 622 districts. In 1991, that number dropped to 28. In 2001, only 18
 623 remained, 7 of these concentrated in 1 county. Thus, 11 public
 624 hospitals serve the other 66 counties of this state. If no
 625 corrective action is taken, this health care crisis will lead to
 626 a continued reduction of patient services in public hospitals.

627 (e) The Legislature finds that the public is better served
 628 and will benefit from corrective action to address the foregoing
 629 concerns. It is imperative that the Legislature further the
 630 public benefit by conferring sovereign immunity upon colleges and
 631 universities, their medical schools, and their employees when,
 632 pursuant to an affiliation agreement or a contract to provide

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633 comprehensive health care services, they provide patient services
 634 to patients of public hospitals.

635 (f) It is the intent of the Legislature that colleges and
 636 universities that affiliate with public hospitals be granted
 637 sovereign immunity protection under s. 768.28, Florida Statutes,
 638 in the same manner and to the same extent as the state and its
 639 agencies and political subdivisions. It is also the intent of the
 640 Legislature that employees of colleges and universities who
 641 provide patient services to patients of a public hospital be
 642 immune from lawsuits in the same manner and to the same extent as
 643 employees and agents of the state and its agencies and political
 644 subdivisions and, further, that they not be held personally
 645 liable in tort or named as a party defendant in an action while
 646 performing patient services except as provided in s.
 647 768.28(9)(a), Florida Statutes.

648 Section 12. Subsection (11) of section 766.1115, Florida
 649 Statutes, is amended to read:

650 766.1115 Health care providers; creation of agency
 651 relationship with governmental contractors.--

652 (11) APPLICABILITY.--This section applies to incidents
 653 occurring on or after April 17, 1992. This section does not
 654 apply to any health care contract entered into by the Department
 655 of Corrections which is subject to s. 768.28(10)(a). This
 656 section does not apply to any affiliation agreement or contract
 657 entered into by a medical school to provide comprehensive health
 658 care services to patients at public hospitals which affiliation
 659 agreement or contract is subject to s. 768.28(10)(f). Nothing in
 660 this section in any way reduces or limits the rights of the

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661 state or any of its agencies or subdivisions to any benefit
 662 currently provided under s. 768.28.

663 Section 13. Paragraph (b) of subsection (9) of section
 664 768.28, Florida Statutes, is amended, and paragraphs (f) and (g)
 665 are added to subsection (10) of said section, to read:

666 768.28 Waiver of sovereign immunity in tort actions;
 667 recovery limits; limitation on attorney fees; statute of
 668 limitations; exclusions; indemnification; risk management
 669 programs.--

670 (9)

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

672 1. "Employee" includes any volunteer firefighter.

673 2. "Officer, employee, or agent" includes, but is not
 674 limited to:
~~7~~

675 a. Any health care provider when providing services
 676 pursuant to s. 766.1115.
~~7~~

677 b. Any member of the Florida Health Services Corps, as
 678 defined in s. 381.0302, who provides uncompensated care to
 679 medically indigent persons referred by the Department of
 680 Health.
~~7~~ ~~and~~

681 c. Any public defender or her or his employee or agent,
 682 including, among others, an assistant public defender and an
 683 investigator.

684 d.(I) Any college or university or its medical school that
 685 enters into an affiliation agreement or a contract to allow its
 686 employees to provide comprehensive health care services to
 687 patients treated at public statutory teaching hospitals, any
 688 other health care facilities owned or used by a governmental
 689 entity, or any other locations under contract with the

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690 governmental entity to provide comprehensive health care services
 691 to public hospital patients pursuant to paragraph (10)(f).

692 (II) Any faculty member or other health care professional,
 693 practitioner, or ancillary caregiver or employee of a college or
 694 university or its medical school that enters into an affiliation
 695 agreement or a contract to provide comprehensive health care
 696 services with a public hospital or its governmental owner and who
 697 provides such services to patients of public hospitals pursuant
 698 to paragraph (10)(f).

699 (10)

700 (f)1. Any medical school that has entered into an
 701 affiliation agreement or contract to allow employees of the
 702 medical school to provide patient services to patients treated at
 703 a public hospital, together with such employees, shall be deemed
 704 agents of the governmental entity for purposes of this section
 705 and shall be immune from liability for torts in the same manner
 706 and to the same extent as the state and its agencies and
 707 subdivisions while providing patient services.

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

709 a. "Employees" means faculty, health care professionals,
 710 practitioners, and ancillary caregivers and employees of a
 711 medical school.

712 b. "Medical school" means any not-for-profit college or
 713 university with a medical, dental, or nursing school, or any
 714 other academic programs of medical education accredited by any
 715 association, agency, council, commission, or accrediting body
 716 recognized by this state as a condition for licensure of its
 717 graduates.

718 c. "Patient services" means:

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

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

724 (III) Access to participation in medical research
 725 protocols.

726 d. "Public hospital" means a statutory teaching hospital
 727 and any other health care facility owned or used by the state, a
 728 county, a municipality, a public authority, a special taxing
 729 district with health care responsibilities, or any other local
 730 governmental entity, or at any location under contract with the
 731 governmental entity.

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

737 (g) Except for persons or entities that are otherwise
 738 covered under this section, any emergency medical technician,
 739 paramedic, or licensee as defined in 401.23, or any health care
 740 provider as defined in s. 766.202(4) providing emergency
 741 services and care pursuant to s. 395.1041, s. 395.401, or s.
 742 401.45 shall be considered agents of the state and the
 743 Department of Health, and shall reimburse the state for the
 744 actual costs of defending any claim and for any amounts paid by
 745 the state in payment of a settlement or judgment arising out of
 746 the claim up to the liability limits set forth in this section.
 747 Any person or entity who fails to reimburse the state as

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748 required shall be subject to license revocation and shall be
 749 responsible for all subsequent payments by the state in
 750 resolving the underlying cause of action, including any amounts
 751 paid pursuant to a claims bill, and for all costs and attorney
 752 fees incurred by the state in recovering the original
 753 reimbursement amount due and the subsequent payments owed.

754 Section 14. Section 877.025, Florida Statutes, is created
 755 to read:

756 877.025 Solicitation of for-profit legal services relating
 757 to medical negligence or retainers therefor; penalty.--

758 (1) The Legislature has determined that legal advertising
 759 that solicits business by inciting a person to file a suit
 760 alleging medical negligence destroys the personal responsibility
 761 of individuals, fosters frivolous litigation, and demeans the
 762 practice of law. This form of solicitation has created a crisis
 763 in the state's judicial system, thus creating a compelling state
 764 interest in the limited regulation of advertising as set forth
 765 in this section.

766 (2) It is unlawful for any person or her or his agent,
 767 employee, or any person acting on her or his behalf to solicit
 768 or procure through solicitation, directly or indirectly, legal
 769 business for a profit, relating to the filing of a claim of
 770 medical negligence, or to solicit or procure through
 771 solicitation a retainer, written or oral, or any agreement
 772 authorizing an attorney to perform or render legal service for a
 773 profit, or to make it a business to solicit or procure such
 774 business, retainers, or agreements.

775 (3) It is unlawful for any person in the employ of or in
 776 any capacity attached to any hospital, sanitarium, police

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777 department, wrecker service or garage, prison, or court, or for
 778 persons authorized to furnish bail bonds, investigators,
 779 photographers, or insurance or public adjusters, to communicate
 780 directly or indirectly with any attorney or person acting on
 781 such attorney's behalf for the purpose of aiding, assisting, or
 782 abetting such attorney in the solicitation of legal business for
 783 a profit or the procurement through solicitation of a retainer,
 784 written or oral, or any agreement authorizing the attorney to
 785 perform or render legal services for a profit relating to
 786 allegations of medical negligence.

787 (4) It is unlawful to advertise, using any form of
 788 electronic or other media, in a manner that solicits legal
 789 business for a profit by urging a person to consider bringing
 790 legal action relating to medical negligence.

791 (5) The term "solicit" means to entreat, request, or
 792 incite another to use the services of an attorney or a law firm.
 793 In any advertisement subject to this section, the term "solicit"
 794 does not mean, include, or prohibit a statement by the attorney,
 795 or an appearance, picture, or voice of the attorney who states
 796 in such advertisement only the following information:

797 (a) The name of an attorney or a law firm;

798 (b) The field of practice of such attorney or law firm,
 799 including the prices charged, so long as expressly permitted by
 800 rule 4-7.2 of the rules regulating The Florida Bar;

801 (c) The right of an injured or aggrieved person to seek
 802 redress if such person's rights have been violated;

803 (d) A public service type announcement, so long as it does
 804 not entreat, request, or urge another to use the services of an

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805 attorney or law firm for the purpose of bringing legal action
 806 against another; or

807 (e) Those matters expressly permitted by rule 4-7.2(c)(11)
 808 of the rules regulating the Florida Bar.

809 (6)(a) Except for violations of subsection (2), any person
 810 violating any provision of this section commits a misdemeanor of
 811 the first degree, punishable as provided in s. 775.082 or s.
 812 775.083.

813 (b) A person violating subsection (2) shall be liable for
 814 a civil penalty of \$1,000 for the first offense and \$10,000 for
 815 each subsequent offense and shall be subject to imposition of
 816 injunctive relief based on a presumption that there is no
 817 adequate remedy at law available to the public. For purposes of
 818 this paragraph, an offense is a single advertisement published
 819 in a single print publication or through a single electronic
 820 media outlet, regardless of the number of times or in how many
 821 issues the advertisement is republished in the same publication
 822 or through the same media outlet. The Florida Bar and the
 823 Attorney General shall have standing to enforce such penalties
 824 and, upon prevailing in such action, shall recover costs and
 825 reasonable attorney's fees.

826 (7) This section shall be taken to be cumulative and shall
 827 not be construed to amend or repeal any other valid law, code,
 828 ordinance, rule, or penalty now in effect.

829 Section 15. This act shall take effect upon becoming a
 830 law.