

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 321 w/CS Immunity from Civil Liability

**SPONSOR(S):** Gibson, H.; and others

**TIED BILLS:** None.

**IDEN./SIM. BILLS:** CS/SB 590 (s) and CS/CS/SB 532 (s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	16 Y, 0 N w/CS	Birtman	Havlicak
2) Health Care		Bench	Collins
3)			
4)			
5)			

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### SUMMARY ANALYSIS

The Good Samaritan Act provides immunity from any civil damages for certain persons rendering emergency care as long as such person has acted as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>1</sup> The Act requires a showing of reckless disregard in an action seeking recovery of civil damages from licensed hospitals, employees of such hospitals working in a clinical area within the facility, and physicians in connection with emergency-room treatment rendered in good faith, but does not extend that protection to all emergency care providers.<sup>2</sup>

The Good Samaritan Act currently provides immunity if any person acts as an ordinary, reasonably prudent person while rendering emergency care or treatment to people and animals.<sup>3</sup>

This bill extends immunity from civil liability under the Good Samaritan Act to any person whose acts or omissions are not otherwise covered under the act and who participates in emergency response activities under the direction of or in connection with the Division of Emergency Management of the Department of Community Affairs or the Federal Emergency Management Agency. The person would not be liable for any civil damages which are the result of care, treatment, or services provided gratuitously in such capacity as a result of any act or failure to act in such capacity in providing or arranging further care, treatment, or services, if such person acts as a reasonably prudent would have acted under the same or similar circumstances.

The bill provides protection from civil liability for emergency responders not otherwise covered under the Good Samaritan Act, and who are acting gratuitously. It is unclear whether the protections offered in the bill are intended to be applied instead of or in addition to current statutory protections provided under sovereign immunity.

This bill may raise the issues of constitutional access to courts concerns.

There does not appear to be a fiscal impact associated with this bill.

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<sup>1</sup> See s. 768.13, F.S.

<sup>2</sup> See s. 768.13(2)(b)3., F.S. ("For purposes of this paragraph, 'reckless disregard' as it applies to a given health care provider rendering emergency medical services shall be such conduct that a health care provider knew or should have known, at the time such services were rendered, created an unreasonable risk of injury so as to affect the life or health of another, and such risk was substantially greater than that which is necessary to make the conduct negligent.")

<sup>3</sup> See s. 768.13(2)(a), F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0321b.hc.doc

**DATE:** March 22, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

To the extent it is more difficult for a victim to successfully litigate against a person covered by the Good Samaritan Act, it would appear that individual freedom is decreased. However, to the extent that persons are provided with more protection, their individual freedoms appear to increase.

To the extent that volunteers are provided with more protection from litigation, it would appear that personal responsibility is decreased.

#### B. EFFECT OF PROPOSED CHANGES:

##### EMERGENCY MANAGEMENT

Under chapter 252 of the Florida Statutes, the Governor may declare, by executive order or proclamation, a state of emergency if he or she finds an emergency has occurred or that the occurrence or the threat thereof is imminent.<sup>4</sup> The state of emergency must continue until the threat or danger has been dealt with, but may continue for no longer than 60 days unless renewed by the Governor.<sup>5</sup> The declaration of a state of emergency may suspend regulatory statutes, orders, or rules of any state agency, if strict compliance with the statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency.<sup>6</sup> Upon the declaration of a state of emergency by the Governor, any person acting in an official capacity under the Governor is covered by sovereign immunity.<sup>7</sup>

##### SOVEREIGN IMMUNITY

Article X, section 13 of the State Constitution authorizes the Legislature to waive sovereign immunity by provision of general law. Section 768.28, F.S., provides that sovereign immunity for tort liability is waived for the state, and its agencies and subdivisions. Section 768.28(5), F.S., imposes a cap on the government's liability.<sup>8</sup> Officers, employees, and agents of the state or any of its subdivisions are not personally liable in tort, or named as a party defendant, unless such person acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.<sup>9</sup> The exclusive remedy is against the government entity. Similarly, the state is not liable for the negligence of officers, employees, or agents acting outside the course and scope of employment, or committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.<sup>10</sup>

<sup>4</sup> See ss. 252.36((1)(a),(b) and (2), F.S.

<sup>5</sup> See s. 252.36(2), F.S.

<sup>6</sup> See s. 252.36(5)(a), F.S.

<sup>7</sup> See s. 252.51, F.S.

<sup>8</sup> Section 768.28(5), F.S., imposes a limit on the government's liability of \$100,000 to a single person and \$200,000 for all claims arising out of a single incident.

<sup>9</sup> See s. 768.28(9)(a), F.S.

<sup>10</sup> See s. 768.28(9)(a), F.S.

For purposes of sovereign immunity, the following people are statutorily included as either employees or agents entitled to sovereign immunity: volunteer firefighters;<sup>11</sup> health care providers acting pursuant to the Access To Health Care Act and who contract to provide medical care for indigent residents;<sup>12</sup> any member of the Florida Health Services Corps who provides uncompensated care to medically indigent persons referred by the Department of Health;<sup>13</sup> public defenders;<sup>14</sup> health care providers, vendors, or employees or agents that contract with the Department of Corrections to provide health care services to inmates of the state correctional system;<sup>15</sup> regional poison control centers supervised by the Department of Health;<sup>16</sup> operators, dispatchers, and providers of security for rail services under contract with the South Florida Regional Transportation Authority or the Department of Transportation;<sup>17</sup> professional firms that provide monitoring and inspection services for transportation facility construction projects who contract with the Department of Transportation;<sup>18</sup> providers, vendors, employees, or agents that contract with the Department of Juvenile Justice to provide services to children in need of services, families in need of services, or juvenile offenders;<sup>19</sup> and health care practitioners who contract with the state university board of trustees to provide medical services to student athletes.<sup>20</sup>

## THE GOOD SAMARITAN ACT

The Good Samaritan Act provides immunity from any civil damages for certain persons rendering emergency care as long as such person has acted as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>21</sup> The Act requires a showing of reckless disregard in an action seeking recovery of civil damages from licensed hospitals, employees of such hospitals working in a clinical area within the facility, and physicians in connection with emergency-room treatment rendered in good faith, but does not extend that protection to all emergency care providers.<sup>22</sup>

The Good Samaritan Act currently provides immunity if any person acts as an ordinary, reasonably prudent person while rendering emergency care or treatment to people and animals.<sup>23</sup>

Persons who provide emergency response activities might also be protected under the Florida Volunteer Protection Act which provides that any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except reimbursement for actual expenses, is to be considered an agent of the nonprofit organization when acting within the scope of any official duties performed under the volunteer services and will incur no civil liability for any act or omission that results in personal injury or property damage if: (1) the person was acting in good faith within the scope of any official duties performed under the volunteer service and the person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and (2) the injury or damage was not caused by any wanton or

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<sup>11</sup> See s. 768.28(9)(b)1., F.S.

<sup>12</sup> See s. 768.28(9)(b)2., F.S., and s. 766.1115, F.S.

<sup>13</sup> See s. 768.28(9)(b)2., F.S., and s. 381.0302, F.S.

<sup>14</sup> See s. 768.28(9)(b)2., F.S.

<sup>15</sup> See s. 768.28(10)(a), F.S.

<sup>16</sup> See s. 768.28(10)(c), F.S., and s. 395.1027, F.S.

<sup>17</sup> See s. 768.28(10)(d), F.S.

<sup>18</sup> See s. 768.28(10)(e), F.S.

<sup>19</sup> See s. 768.28(11)(a), F.S.

<sup>20</sup> See s. 768.28(12)(a), F.S.

<sup>21</sup> See s. 768.13, F.S.

<sup>22</sup> See s. 768.13(2)(b)3., F.S. ("For purposes of this paragraph, 'reckless disregard' as it applies to a given health care provider rendering emergency medical services shall be such conduct that a health care provider knew or should have known, at the time such services were rendered, created an unreasonable risk of injury so as to affect the life or health of another, and such risk was substantially greater than that which is necessary to make the conduct negligent.")

<sup>23</sup> See s. 768.13(2)(a), F.S.

willful misconduct on the part of the person in the performance of the duties.<sup>24</sup>

This bill extends immunity from civil liability under the Good Samaritan Act to any person whose acts or omissions are not otherwise covered under the act and who participates in emergency response activities under the direction of or in connection with the Division of Emergency Management of the Department of Community Affairs<sup>25</sup> or the Federal Emergency Management Agency (FEMA)<sup>26</sup>. The person would not be liable for any civil damages which are the result of care, treatment, or services provided gratuitously in such capacity as a result of any act or failure to act in such capacity in providing or arranging further care, treatment, or services, if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.

The bill provides protection from civil liability for emergency responders not otherwise covered under the Good Samaritan Act, and who are acting gratuitously. It is unclear whether the protections offered in the bill are intended to be applied instead of or in addition to current statutory protections provided under sovereign immunity.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 768.13, F.S., to include specified emergency responders within the Good Samaritan Act for the purposes of immunity from civil liability under certain circumstances.

**Section 2.** Provides an effective date upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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<sup>24</sup> See s. 768.1355, F.S.

<sup>25</sup> The Division of Emergency Management, under ch. 252, F.S., and 40 C.F.R. parts 300, 355, 370, and 372, covers all aspects of emergency management for natural and man-made disasters in Florida. The Division assists communities with emergency preparedness, response, recovery, and mitigation, and coordinates state agency support for local governments in emergencies. The Division supports the Governor by acting as the Chief Emergency Management Official.

<sup>26</sup> FEMA, a former independent agency, became part of the new Department of Homeland Security in March, 2003. FEMA is tasked with responding to, planning for, recovering from, and mitigating against disasters. FEMA coordinates the efforts of various volunteer programs designed to respond to emergencies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may prohibit potential plaintiffs from seeking damages because they would have a more difficult burden to prove. However, the benefits of such immunity may outweigh this burden because this bill may encourage more persons to volunteer for emergency care and treatment services by reducing the possibility of liability.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend fund or take an action requiring the expenditure of funds; reduce the authority to raise revenues; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

**Access to Courts:** Article I, section 21 of the State Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." No similar provision exists in the federal constitution. Where citizens have enjoyed a historical right of access, the Legislature can only eliminate a judicial remedy under two circumstances: a valid public purpose coupled with a reasonable alternative,<sup>27</sup> or an over-riding public necessity.<sup>28</sup> This bill does not explicitly set forth a public purpose nor an over-riding public necessity.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Both the Division of Emergency Management under the Department of Community Affairs and FEMA coordinate emergency response efforts, rather than *direct* local volunteers. The bill extends immunity from civil liability under the Good Samaritan Act to persons who participate in emergency response activities *under the direction of or in connection with* the Division of Emergency Management or FEMA. It is unclear whether the bill is creating an agency relationship between the Division of Emergency Management and persons who participate in local emergency response activities so that sovereign immunity would apply.

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<sup>27</sup> See Kluger v. White, 281 So.2d 1 (Fla. 1973)

<sup>28</sup> See Rotwein v. Gersten, 36 So.2d 419 (Fla. 1948)

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

At the March 3, 2004 meeting of the Judiciary Committee, the sponsor filed an amendment conforming HB 321 to the substance of CS/SB 532. CS/SB 532 extends immunity from civil liability under the Good Samaritan Act to any person whose acts or omissions are not otherwise covered under the act and who participate in emergency response activities under the direction of or in connection with the Division of Emergency Management of the Department of Community Affairs or the Federal Emergency Management Agency. The person would not be liable for any civil damages which are the result of care, treatment, or services provided gratuitously in such capacity as a result of any act or failure to act in such capacity in providing or arranging further care, treatment, or services, if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.

This analysis is to the bill as amended.