

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 321 Immunity from Civil Liability

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

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 590 and CS/SB 532

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Birtman	Havlicak
2) Health Care			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Good Samaritan Act generally 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.

This bill:

- Limits immunity provisions for the rendering of emergency care or treatment to natural persons; and
- Changes the degree of negligence to a gross negligence standard.

The Florida Volunteer Protection Act generally provides that any person who volunteers for any nonprofit organization, without compensation, is to be considered an agent of the nonprofit organization when acting within the scope of any official duties and will incur no civil liability for any act or omission that results in personal injury or property damage. This bill provides immunity for emergency management volunteers under the Florida Volunteer Protection Act.

This bill also amends subsection (3) of section 401.45, F.S. to provide immunity to any emergency care provider who withholds or withdraws resuscitation of a patient pursuant to a valid order not to resuscitate.

This bill may raise the issues of constitutional access to courts as well as sovereign immunity concerns.

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

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

STORAGE NAME: h0321.jud.doc

DATE: March 1, 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:

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.¹ 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.²

Among others, those persons protected by this Act include:³

- *any person* who gratuitously and in good faith renders emergency care at the scene of an emergency (other than in a hospital, doctor's office, or other place having proper medical equipment) without objection from the injured victim;⁴ and
- *any person*, including those licensed to practice veterinary medicine, who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway.⁵

¹ See s. 768.13, F.S.

² 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.")

³ See ss. 768.13(2)(b)1. and 768.13(2)(c)1., F.S. (This Act also protects: any health care provider, including a hospital licensed under chapter 395, providing emergency services, as well as any health care practitioner as defined in s. 456.001(4), F.S., who is in a hospital attending a patient of his or her practice or for business or personal reasons unrelated to direct patient care and who voluntarily responds to provide care or treatment to a patient with whom at that time such practitioner does not have a then-existing health care patient-practitioner relationship and such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention.)

⁴ See s. 768.13(2)(a), F.S.

⁵ See s. 768.13(3), F.S.

This Act does not apply to municipal police officers, since they are required under the common law to render emergency care to the ill, injured, or distressed.⁶

This bill would limit the application from *any person* to "natural" persons in the two classes of protected persons described in sections 768.13(2)(a) and 768.13(3), F.S., referenced above. This limitation to natural persons would effectively exclude corporations, partnerships, clinics, associations, groups or other entities from protection.⁷

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.⁸ This bill changes the standard from ordinary negligence to culpable negligence where the test is whether the natural person "acts in bad faith or with malicious purpose or in a manner exhibiting wanton and willful misconduct."

THE FLORIDA VOLUNTEER PROTECTION ACT

The Florida Volunteer Protection Act 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 willful misconduct on the part of the person in the performance of the duties.⁹

This bill provides additional immunity for emergency management volunteers. Emergency management volunteers are not defined in the statutes explicitly; however, section 252.35, F.S., requires the Division of Emergency Management of the Department of Community Affairs to coordinate the efforts of the Federal Government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.¹⁰ Another responsibility includes the maintenance of a training program for agencies and individuals that will be called on to perform key roles in state and local post disaster response and recovery efforts and for local government personnel on federal and state post disaster response and recovery strategies and procedures.¹¹

IMMUNITY FOR EMERGENCY MEDICAL TECHNICIANS OR PARAMEDICS WHO DENY EMERGENCY TREATMENT

Subsection (3) of section 401.45, F.S., provides immunity to emergency medical technicians and paramedics when executing a valid order not to resuscitate. This bill extends that immunity to all

⁶ See 1978 Atty Gen Rep 140; *also see* 28 Fla. Jur 2d Government Tort Liability § 39.

⁷ See s. 1.01(3), F.S. (The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.); *also see* s. 409.913, F.S.A. (For purposes of this statute regarding social welfare, "Person" means any natural person, corporation, partnership, association, clinic, group, or other entity...")

⁸ See ss. 768.13(2)(a) and 768.13(3), F.S.

⁹ See s. 768.1355, F.S.

¹⁰ See s. 252.35(1), F.S.

¹¹ See s. 252.35(2)(m), F.S.

“emergency care providers.” The term “emergency care provider” is not defined in the bill, nor in the statutes.

C. SECTION DIRECTORY:

Section 1 amends s. 768.13, F.S., to limit the application of the Good Samaritan Act to natural persons, and to increase the standard to a gross negligence standard.

Section 2 amends s. 768.1355, F.S., to provide immunity to emergency management volunteers as part of the Florida Volunteer Protection Act.

Section 3 amends s. 401.45, F.S., to extend immunity provisions regarding the withholding or withdrawal of resuscitation to emergency care providers.

Section 4 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.

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,¹² or an over-riding public necessity.¹³ This bill does not explicitly set forth a public purpose nor an over-riding public necessity.

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.¹⁴ 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.¹⁵ 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.¹⁶

For purposes of sovereign immunity, the following people are statutorily included as either employees or agents entitled to sovereign immunity: volunteer firefighters;¹⁷ health care providers acting pursuant to the Access To Health Care Act and who contract to provide medical care for indigent residents;¹⁸ any member of the Florida Health Services Corps who provides uncompensated care to medically indigent persons referred by the Department of Health;¹⁹ public defenders;²⁰ 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;²¹ regional poison control centers supervised by the Department of Health;²² operators, dispatchers, and providers of security for rail services under contract with the South Florida Regional Transportation Authority or the Department of Transportation;²³ professional firms that provide monitoring and inspection services for transportation facility construction projects who contract with the Department of Transportation;²⁴ 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;²⁵ and health care practitioners who contract with the state university board of trustees to provide medical services to student athletes.²⁶

¹² See *Kluger v. White*, 281 So.2d 1 (Fla. 1973)

¹³ See *Rotwein v. Gersten*, 36 So.2d 419 (Fla. 1948)

¹⁴ 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.

¹⁵ See s. 768.28(9)(a), F.S.

¹⁶ See s. 768.28(9)(a), F.S.

¹⁷ See s. 768.28(9)(b)1., F.S.

¹⁸ See s. 768.28(9)(b)2., F.S., and s. 766.1115, F.S.

¹⁹ See s. 768.28(9)(b)2., F.S., and s. 381.0302, F.S.

²⁰ See s. 768.28(9)(b)2., F.S.

²¹ See s. 768.28(10)(a), F.S.

²² See s. 768.28(10)(c), F.S., and s. 395.1027, F.S.

²³ See s. 768.28(10)(d), F.S.

²⁴ See s. 768.28(10)(e), F.S.

²⁵ See s. 768.28(11)(a), F.S.

²⁶ See s. 768.28(12)(a), F.S.

Further, any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use or attempted use of such device.²⁷ Lastly, there is a statutory legal presumption that an emergency medical dispatcher was not acting negligently if the agency, agents, and employees were properly trained and implemented specified standard practices.²⁸

It would appear that this bill is attempting to extend the same liability protections offered to state officers, employees, and agents to good Samaritans, and total immunity to emergency management volunteers. It is unclear whether the protections offered in the bill are intended to be applied instead of or in addition to current statutory protections.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The culpable negligence standard may expose a person to punitive damages because the protection of immunity excludes wanton and willful misconduct. Most actionable wrongs furnish no basis for the recovery of punitive damages; however, exemplary damages may be recovered in cases where the wrongful act complained of is characterized by, or partakes of, some circumstance of aggravation, such as willfulness, wantonness, maliciousness, certain instances of gross negligence or recklessness, oppression, outrageous conduct, deliberate violence, moral turpitude, insult, or fraud.²⁹

2. There is no explicit definition of an emergency management volunteer; however, s. 252.35, F.S. may be construed to address this class of people when it refers to "individuals that will be called on to perform key roles in state and local post disaster response and recovery efforts."

3. Immunity is only provided for acts or performance of emergency management volunteers and may be construed to exclude immunity for failures to act or perform. The other persons protected under the Florida Volunteer Protection Act are immune from both acts and omissions.³⁰

4. Immunity is granted to an emergency management volunteer who is "carrying out his or her duties" but does not explicitly refer to who determines or establishes these duties. If an emergency management volunteer is referenced under s. 252.35, F.S., the Division of Emergency Management of the Department of Community Affairs may be the authority to define and enforce such duties.

5. This bill treats emergency management volunteers differently than volunteers under the Florida Volunteer Protection Act. The Act currently provides immunity for any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation when acting within the scope of any official duties performed under such volunteer services if such person was acting in good faith within the scope of any official duties as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and the injury or damage was not caused by any wanton or willful misconduct on the part of such person in the performance of such duties.

²⁷ See s. 768.1325, F.S. Immunity does not apply if the harm involved was caused by willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed.

²⁸ See s. 768.1335, F.S.

²⁹ See *Castlewood International Corp. v. LaFleur*, 322 So.2d 520 (Fla. 1975); *Echevarria v. Republic Nat'l Bank*, 546 So.2d 455 (3rd DCA 1989); *Aero International Corp. v. Florida Nat'l Bank*, 437 So.2d 156 (3rd DCA 1983).

³⁰ See s. 768.1355(1), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

It is expected that the sponsor will file 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.