

HB 0321

2004

A bill to be entitled

An act relating to immunity from civil liability; amending s. 768.13, F.S.; revising the standard for immunity from liability for persons gratuitously and in good faith rendering emergency care or treatment; amending s. 768.1355, F.S.; providing absolute immunity for certain acts by emergency management volunteers; amending s. 401.45, F.S.; providing immunity to certain emergency care providers who withhold or withdraw resuscitation from a patient; deleting the requirement that immunity is dependent upon the person's acting under the direction of a medical director; providing an effective date.

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

Section 1. Section 768.13, Florida Statutes, is amended to read:

768.13 Good Samaritan Act; immunity from civil liability.--

(1) This section ~~act~~ shall be known and cited as the "Good Samaritan Act."

(2)(a) Any natural person, including one ~~these~~ licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315 or ~~7~~ a state of emergency which has been declared pursuant to s. 252.36, or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without

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30 objection of the injured victim or victims thereof, shall not be
 31 held liable for any civil damages as a result of such care or
 32 treatment or as a result of any act or failure to act in
 33 providing or arranging further medical treatment, unless such
 34 person acts in bad faith or with malicious purpose or in a
 35 manner exhibiting wanton and willful misconduct ~~where the person~~
 36 ~~acts as an ordinary reasonably prudent person would have acted~~
 37 ~~under the same or similar circumstances.~~

38 (b)1. Notwithstanding the provisions of paragraph (a), any
 39 health care provider, including a hospital licensed under
 40 chapter 395, providing emergency services pursuant to
 41 obligations imposed by 42 U.S.C. s. 1395dd, s. 395.1041, s.
 42 395.401, or s. 401.45 shall not be held liable for any civil
 43 damages as a result of such medical care or treatment unless
 44 such damages result from providing, or failing to provide,
 45 medical care or treatment under circumstances demonstrating a
 46 reckless disregard for the consequences so as to affect the life
 47 or health of another.

48 2. The immunity provided by this paragraph applies to
 49 damages as a result of any act or omission of providing medical
 50 care or treatment, including diagnosis:

51 a. Which occurs prior to the time the patient is
 52 stabilized and is capable of receiving medical treatment as a
 53 nonemergency patient, unless surgery is required as a result of
 54 the emergency within a reasonable time after the patient is
 55 stabilized, in which case the immunity provided by this
 56 paragraph applies to any act or omission of providing medical
 57 care or treatment which occurs prior to the stabilization of the
 58 patient following the surgery.

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59 b. Which is related to the original medical emergency.

60 3. For purposes of this paragraph, "reckless disregard" as
 61 it applies to a given health care provider rendering emergency
 62 medical services shall be such conduct that a health care
 63 provider knew or should have known, at the time such services
 64 were rendered, created an unreasonable risk of injury so as to
 65 affect the life or health of another, and such risk was
 66 substantially greater than that which is necessary to make the
 67 conduct negligent.

68 4. Every emergency care facility granted immunity under
 69 this paragraph shall accept and treat all emergency care
 70 patients within the operational capacity of such facility
 71 without regard to ability to pay, including patients transferred
 72 from another emergency care facility or other health care
 73 provider pursuant to Pub. L. No. 99-272, s. 9121. The failure of
 74 an emergency care facility to comply with this subparagraph
 75 constitutes grounds for the department to initiate disciplinary
 76 action against the facility pursuant to chapter 395.

77 (c)1. Any health care practitioner as defined in s.
 78 456.001(4) who is in a hospital attending to a patient of his or
 79 her practice or for business or personal reasons unrelated to
 80 direct patient care, and who voluntarily responds to provide
 81 care or treatment to a patient with whom at that time the
 82 practitioner does not have a then-existing health care patient-
 83 practitioner relationship, and when such care or treatment is
 84 necessitated by a sudden or unexpected situation or by an
 85 occurrence that demands immediate medical attention, shall not
 86 be held liable for any civil damages as a result of any act or
 87 omission relative to that care or treatment, unless that care or

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88 treatment is proven to amount to conduct that is willful and
 89 wanton and would likely result in injury so as to affect the
 90 life or health of another.

91 2. The immunity provided by this paragraph does not apply
 92 to damages as a result of any act or omission of providing
 93 medical care or treatment unrelated to the original situation
 94 that demanded immediate medical attention.

95 3. For purposes of this paragraph, the Legislature's
 96 intent is to encourage health care practitioners to provide
 97 necessary emergency care to all persons without fear of
 98 litigation as described in this paragraph.

99 (3) Any natural person, including one ~~those~~ licensed to
 100 practice veterinary medicine, who gratuitously and in good faith
 101 renders emergency care or treatment to an injured animal at the
 102 scene of an emergency on or adjacent to a roadway shall not be
 103 held liable for any civil damages as a result of such care or
 104 treatment or as a result of any act or failure to act in
 105 providing or arranging further medical treatment, unless such
 106 person acts in bad faith or with malicious purpose or in a
 107 manner exhibiting wanton and willful misconduct ~~where the person~~
 108 ~~acts as an ordinary reasonably prudent person would have acted~~
 109 ~~under the same or similar circumstances.~~

110 Section 2. Subsection (4) of section 768.1355, Florida
 111 Statutes, is renumbered as subsection (5), and a new subsection
 112 (4) is added to said section to read:

113 768.1355 Florida Volunteer Protection Act.--

114 (4) An emergency management volunteer who is carrying out
 115 his or her duties is not liable for damages for any death or
 116 injury resulting from the performance of such duties.

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117 Section 3. Subsection (3) of section 401.45, Florida
 118 Statutes, is amended to read:

119 401.45 Denial of emergency treatment; civil liability.--

120 (3)(a) Resuscitation may be withheld or withdrawn from a
 121 patient by an emergency care provider ~~medical technician or~~
 122 ~~paramedic~~ if evidence of an order not to resuscitate by the
 123 patient's physician is presented to the emergency care provider
 124 ~~medical technician or paramedic~~. An order not to resuscitate, to
 125 be valid, must be on the form adopted by rule of the department.
 126 The form must be signed by the patient's physician and by the
 127 patient or, if the patient is incapacitated, the patient's
 128 health care surrogate or proxy as provided in chapter 765,
 129 court-appointed guardian as provided in chapter 744, or attorney
 130 in fact under a durable power of attorney as provided in chapter
 131 709. The court-appointed guardian or attorney in fact must have
 132 been delegated authority to make health care decisions on behalf
 133 of the patient.

134 (b) Any licensee, physician, medical director, or
 135 emergency care provider ~~medical technician or paramedic who acts~~
 136 ~~under the direction of a medical director~~ is not subject to
 137 criminal prosecution or civil liability, and has not engaged in
 138 negligent or unprofessional conduct, as a result of the
 139 withholding or withdrawal of resuscitation from a patient
 140 pursuant to this subsection and rules adopted by the department.

141 (c) The department, in consultation with the Department of
 142 Elderly Affairs and the Agency for Health Care Administration,
 143 shall develop a standardized do-not-resuscitate identification
 144 system with devices that signify, when carried or worn, that the
 145 possessor is a patient for whom a physician has issued an order

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146 | not to administer cardiopulmonary resuscitation. The department
147 | may charge a reasonable fee to cover the cost of producing and
148 | distributing such identification devices. Use of such devices
149 | shall be voluntary.

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