

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 532

SPONSOR: Comprehensive Planning Committee; Health, Aging, and Long-Term Care Committee and Senator Crist

SUBJECT: The Good Samaritan Act

DATE: March 19, 2004 REVISED: 3/23/04 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable/CS</u>
3.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/1 amendment</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The Committee Substitute for Committee Substitute provides immunity from civil liability, under the Good Samaritan Act, to a person who gratuitously provides care, treatment, or service during emergency response activities in connection with local emergency management agencies, the Division of Emergency Management of the Department of Community Affairs, or the Federal Emergency Management Agency. The immunity protects a person from civil liability for damages caused by an act or a failure to act to arrange further care, treatment, or services if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.

This committee substitute for committee substitute substantially amends section 768.13, Florida Statutes.

## II. Present Situation:

### Emergency Management

Part I of ch. 252, F.S., is the "State Emergency Management Act." Under ch. 252, F.S., 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. 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. 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. 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.

### **Community Emergency Response Teams**

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 of Emergency Management assists communities with emergency preparedness, response, recovery and mitigation. This division also coordinates state agency support for local governments in emergencies and supports the Governor by acting as the Chief Emergency Management Official. This division has 116 FTEs and was appropriated \$260,353,807 for FY 2002-03.

The Florida Division of Emergency Management coordinates statewide efforts in the event of an emergency or disaster, including citizen-staffed volunteer efforts. The Division of Emergency Management coordinates funding from various sources for Community Emergency Response Teams (CERT) and provides training to CERT trainers. CERT trainers receive certification for such training from the Federal Emergency Management Agency. The Community Emergency Response Team (CERT) program trains people to be prepared for emergency situations in their community and neighborhood. CERT members give critical support to first responders in emergencies, provide immediate assistance to victims, collect disaster information to support first responder efforts and provide the first neighborhood help in the immediate hours following a major emergency. Following a 21-hour basic training program and on-going training, a community emergency response team can manage utilities, put out small fires, provide lifesaving interventions, perform basic search and rescue operations, and assist in damage assessment, evacuation and rapid sheltering. Administrative support and organizing positions are also available. CERT is active in over 30 counties in Florida with over 5,000 neighborhood-trained personnel. It is a local program established through fire departments, police/sheriff departments, the Office of Emergency Management in the Division of Emergency Management, volunteer centers or other sponsors.

### **Federal Emergency Management Agency**

The Federal Emergency Management Agency, a former independent agency, became part of the new Department of Homeland Security in March 2003. The Federal Emergency Management Agency is tasked with responding to, planning for, recovering from and mitigating against disasters. The Federal Emergency Management Agency coordinates the efforts of various volunteer programs designed to respond to emergencies. Citizen Corps Councils help drive local citizen participation by coordinating Citizen Corps programs, developing community action plans, assessing possible threats and identifying local resources. The Medical Reserve Corps coordinates volunteer health professionals, as well as other citizens with an interest in health issues, to provide ongoing support for community public health needs and resources during large-scale emergencies, such as assisting emergency response teams, providing care to victims with less serious injuries, and removing other burdens that inhibit the effectiveness of physicians and nurses.

## **Sovereign Immunity**

Under Article X, s. 13, of the State Constitution, the Legislature is authorized to waive the state's sovereign immunity. Article X, s. 13, of the State Constitution, states: "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating." The doctrine of sovereign immunity prohibits lawsuits in state court against a state government, and its agencies and subdivisions without the government's consent.

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 \$100,000 limit on the government's liability to a single person and for claims arising out of a single incident, the limit is \$200,000. Section 768.28, F.S., outlines requirements for claimants alleging an injury by the state or its agencies. Section 11.066, F.S., requires a claimant to petition the Legislature in accordance with its rules, to seek an appropriation to enforce a judgment against the state or state agency. The exclusive remedy to enforce damage awards that exceed the recovery cap is by an act of the Legislature through the claims bill process. A claim bill is a bill that compensates an individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.

Section 768.28(9), F.S., defines "officer, employee, or agent" to include, but not be limited to, any health care provider when providing services pursuant to s. 766.1115, F.S. (the Access to Health Care Act), any member of the Florida Health Services Corps, as defined in s. 381.0302, F.S., who provides uncompensated care to medically indigent persons referred by the Department of Health, and any public defender or her or his employee or agent, including among others, an assistant public defender and an investigator.

The second form of sovereign immunity potentially available to private entities under contract with the government is set forth in s. 768.28(9), F.S. It states that agents of the state or its subdivisions are not personally liable in tort; instead, the government entity is held liable for its agent's torts. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.<sup>1</sup> The existence of an agency relationship is generally a question of fact to be resolved by the fact-finder based on the facts and circumstances of a particular case. In the event, however, that the evidence of agency is susceptible of only one interpretation the court may decide the issue as a matter of law.<sup>2</sup>

## **Florida Volunteer Protection Act**

Section 768.1355, F.S., 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 for reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services. Volunteers shall not incur civil liability for any act or omission by such person which results in personal injury or property damage if the volunteer is acting in good faith within the scope of official duties performed as a volunteer and the volunteer was acting as an

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<sup>1</sup> *Goldschmidt v. Holman*, 571 So.2d 422, note 5 (Fla. 1990).

<sup>2</sup> *Campbell v. Osmond*, 917 F. Supp. 1574, 1583 (M.D. Fla. 1996).

ordinary reasonably prudent person would have acted under the same or similar circumstances. The immunity for volunteers under s. 768.1355, F.S., does not extend to any injury or damage that was caused by any wanton or willful misconduct on the part of such person in the performance of such duties.

### **Immunity under the Good Samaritan Act**

Section 768.13, F.S., the “Good Samaritan Act,” provides immunity from civil liability to:

- Any persons, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment. The immunity applies if the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances. The immunity is not available if an injured person objects to treatment or care.
- Any health care provider, including a licensed hospital providing emergency services pursuant to federal or state law. The immunity applies to damages as a result of any act or omission to provide medical care or treatment, including diagnosis: which occurs prior to the time that the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient. The act does not provide immunity from liability for providing or failing to provide medical care or treatment under circumstances demonstrating a reckless disregard for the consequences to the life or health of another.
- Any health practitioner who is attending one of his or her patients in a hospital for reasons unrelated to direct patient care, who voluntarily responds to an emergency condition of a person who is not a patient of the practitioner is immune from liability for damages unless the practitioner engaged in willful and wanton conduct likely to injure the person in an emergency condition.

### **III. Effect of Proposed Changes:**

The committee substitute for committee substitute provides immunity from civil liability, under the Good Samaritan Act, to a person who gratuitously provides care, treatment, or a service during emergency response activities in connection with local emergency management agencies, the Division of Emergency Management of the Department of Community Affairs, or the Federal Emergency Management Agency. The immunity protects a person from civil liability for damages caused by an act or failure to act to arrange further care, treatment, or services if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.

The scope of the immunity for civil liability provided by the committee substitute for committee substitute is broader than the immunity available under existing law. First, existing law provides immunity from liability to a person who provides medical treatment. The committee substitute for committee substitute provides immunity from liability to a person who provides “services” during emergency response activities, in addition to medical treatment. Second, the immunity provided by the committee substitute for committee substitute extends to a person who provides

care, treatment, or a service regardless of an objection to the care, treatment, or service by a recipient.

The committee substitute for committee substitute takes effect upon becoming a law.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The committee substitute for committee substitute will reduce the exposure to civil liability of a person who participates in emergency response activities in connection with, local emergency management agencies, the Division of Emergency Management, or the Federal Emergency Management Agency.

**C. Government Sector Impact:**

The immunity available under the committee substitute for committee substitute may encourage people to volunteer to assist government emergency management agencies during emergencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Judiciary:

Adds persons who participate in emergency response activities under the direction of or in connection with a community emergency response team to the individuals who may receive immunity from civil liability under the committee substitute for committee substitute.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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