

1                   A bill to be entitled  
2           An act relating to medical malpractice insurance; creating  
3           the Enterprise Act for Patient Protection and Provider  
4           Liability; providing legislative findings; amending s.  
5           458.320, F.S.; requiring a licensed physician who is  
6           covered for medical negligence claims by a hospital that  
7           assumes liability under the act to prominently post notice  
8           or provide a written statement to patients; requiring a  
9           licensed physician who meets certain requirements for  
10          payment or settlement of a medical malpractice claim and  
11          who is covered for medical negligence claims by a hospital  
12          that assumes liability under the act to prominently post  
13          notice or provide a written statement to patients;  
14          amending s. 459.0085, F.S.; requiring a licensed  
15          osteopathic physician who is covered for medical  
16          negligence claims by a hospital that assumes liability  
17          under the act to prominently post notice or provide a  
18          written statement to patients; requiring a licensee of  
19          osteopathic medicine who meets certain requirements for  
20          payment or settlement of a medical malpractice claim and  
21          who is covered for medical negligence claims by a hospital  
22          that assumes liability under the act to prominently post  
23          notice or provide a written statement to patients;  
24          creating s. 627.41485, F.S.; authorizing insurers to offer  
25          liability insurance coverage to physicians which has an  
26          exclusion for certain acts of medical negligence under  
27          certain conditions; authorizing the Department of  
28          Financial Services to adopt rules; amending s. 766.316,

29 F.S.; requiring hospitals that assume liability for  
30 affected physicians under the act to provide notice to  
31 obstetrical patients regarding the limited no-fault  
32 alternative to birth-related neurological injuries;  
33 amending s. 766.110, F.S.; requiring hospitals that assume  
34 liability for acts of medical negligence under the act to  
35 carry insurance; requiring the hospital's policy regarding  
36 medical liability insurance to satisfy certain statutory  
37 financial responsibility requirements; authorizing an  
38 insurer who is authorized to write casualty insurance to  
39 write such coverage; authorizing certain hospitals to  
40 indemnify certain medical staff for legal liability of  
41 loss, damages, or expenses arising from medical negligence  
42 within hospital premises; requiring a hospital to acquire  
43 a policy of professional liability insurance or a fund for  
44 malpractice coverage; requiring an annual certified  
45 financial statement to the Agency for Health Care  
46 Administration; authorizing certain hospitals to charge  
47 physicians a fee for malpractice coverage; preserving a  
48 hospital's ability to indemnify certain medical staff  
49 members; amending s. 766.118, F.S.; providing a cap on  
50 noneconomic damages for eligible hospitals meeting certain  
51 patient safety measures; creating s. 766.401, F.S.;  
52 providing definitions; creating s. 766.402, F.S.;  
53 authorizing an eligible hospital to petition the Agency  
54 for Health Care Administration to enter an order  
55 certifying the hospital as a patient safety facility;  
56 providing requirements for certification as a patient

57 safety facility; creating s. 766.403, F.S.; providing  
58 requirements for a hospital to demonstrate that it is  
59 engaged in a common enterprise for the care and treatment  
60 of patients; specifying required patient safety measures;  
61 prohibiting a report or document generated under the act  
62 from being admissible or discoverable as evidence;  
63 creating s. 766.404, F.S.; authorizing the agency to enter  
64 an order certifying a hospital as a patient safety  
65 facility and providing that the hospital bears liability  
66 for acts of medical negligence by certain physicians and  
67 practitioners; specifying a licensed facility as bearing  
68 sole and exclusive liability for medical negligence by  
69 certain physicians and practitioners under certain  
70 circumstances in actions for personal injury or wrongful  
71 death; providing that certain persons or entities are not  
72 liable for medically negligent acts occurring in a  
73 certified patient safety facility; requiring that an  
74 affected practitioner prominently post notice regarding  
75 exemption from personal liability; requiring an affected  
76 physician who is covered by an enterprise plan in a  
77 licensed facility that receives sovereign immunity to  
78 prominently post notice regarding exemption from personal  
79 liability; providing that an agency order certifying  
80 approval of an enterprise plan is evidence of a hospital's  
81 compliance with applicable patient safety requirements;  
82 providing circumstances in which notice is not required;  
83 providing that the order certifying approval of an  
84 enterprise plan applies prospectively to causes of action

85 | for medical negligence; authorizing the agency to conduct  
86 | onsite examinations of a licensed facility; providing  
87 | circumstances under which the agency may revoke its order  
88 | certifying approval of an enterprise plan; providing that  
89 | an employee or agent of a certified patient safety  
90 | facility may not be joined as a defendant in an action for  
91 | medical negligence; requiring an affected practitioner to  
92 | cooperate in good faith in an investigation of a claim for  
93 | medical malpractice; providing a cause of action for  
94 | failure of a physician to act in good faith; providing  
95 | that strict liability or liability without fault is not  
96 | imposed for medical incidents that occur in the affected  
97 | facility; providing requirements that a claimant must  
98 | prove to demonstrate medical negligence by an employee,  
99 | agent, or medical staff of a licensed facility; providing  
100 | that the act does not create an independent cause of  
101 | action or waive sovereign immunity; creating s. 766.405,  
102 | F.S.; requiring an eligible hospital to execute an  
103 | enterprise plan; requiring certain conditions to be  
104 | contained within an enterprise plan; creating s. 766.406,  
105 | F.S.; requiring a certified patient safety facility to  
106 | report medical incidents occurring on its premises and  
107 | adverse findings of medical negligence to the Department  
108 | of Health; requiring certified patient safety facilities  
109 | to perform certain peer review functions; creating s.  
110 | 766.407, F.S.; providing that an enterprise plan may  
111 | provide clinical privileges to certain persons; requiring  
112 | certain organizations to share in the cost of omnibus

113 | medical liability insurance premiums subject to certain  
114 | conditions; authorizing a licensed facility to impose a  
115 | reasonable assessment against an affected practitioner who  
116 | commits medical negligence; providing for the revocation  
117 | of clinical privileges for failure to pay the assessment;  
118 | exempting certain employees and agents from such  
119 | assessments; creating s. 766.408, F.S.; requiring a  
120 | certified patient safety facility to submit an annual  
121 | report to the agency and the Legislature; providing  
122 | requirements for the annual report; providing that the  
123 | annual report may include certain information from the  
124 | Office of Insurance Regulation within the Department of  
125 | Financial Services; providing that the annual report is  
126 | subject to public records requirements, but is not  
127 | admissible as evidence in a legal proceeding; creating s.  
128 | 766.409, F.S.; authorizing certain teaching hospitals and  
129 | eligible hospitals to petition the agency for  
130 | certification; providing criteria for determining  
131 | noneconomic, economic, and future economic damages  
132 | recoverable in actions arising from medical negligence;  
133 | providing for application of limitations on damages for  
134 | eligible hospitals that are certified for compliance with  
135 | certain patient safety measures; authorizing the agency to  
136 | conduct onsite examinations of certified eligible  
137 | hospitals; authorizing the agency to revoke its order  
138 | certifying approval of an enterprise plan; providing that  
139 | an agency order certifying approval of an enterprise plan  
140 | is evidence of a hospital's compliance with applicable

141 patient safety requirements; providing that evidence of  
142 noncompliance is inadmissible in any action for medical  
143 malpractice; providing that entry of the agency's order  
144 does not impose enterprise liability on the licensed  
145 facility for acts or omissions of medical negligence;  
146 providing that a hospital may not be approved for  
147 certification for both enterprise liability and  
148 limitations on damages; creating s. 766.410, F.S.;  
149 providing rulemaking authority; amending s. 768.28, F.S.;  
150 providing limitations on payment of a claim or judgment  
151 for an action for medical negligence within a certified  
152 patient safety facility that is covered by sovereign  
153 immunity; providing definitions; providing that a  
154 certified patient safety facility is an agent of a state  
155 university board of trustees to the extent that the  
156 licensed facility is solely liable for acts of medical  
157 negligence of physicians providing health care services  
158 within the licensed facility; specifying that certain  
159 certified patient safety facilities are agents of a state  
160 university board of trustees under certain circumstances;  
161 authorizing licensed facilities to secure limits of  
162 liability protection from certain self-insurance programs;  
163 providing requirements for commencing an action for  
164 certain medical negligence; providing procedures;  
165 providing limitations; providing for severability;  
166 providing for broad statutory view of the act; providing  
167 for self-execution of the act; providing an effective  
168 date.

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

Section 1. Popular name.--This act may be cited as the "Enterprise Act for Patient Protection and Provider Liability."

Section 2. Legislative findings.--

(1) The Legislature finds that this state is in the midst of a prolonged medical malpractice insurance crisis that has serious adverse effects on patients, practitioners, licensed healthcare facilities, and all residents of this state.

(2) The Legislature finds that hospitals are central components of the modern health care delivery system.

(3) The Legislature finds that many of the most serious incidents of medical negligence occur in hospitals, where the most seriously ill patients are treated, and where surgical procedures are performed.

(4) The Legislature finds that modern hospitals are complex organizations, that medical care and treatment in hospitals is a complex process, and that, increasingly, medical care and treatment in hospitals is a common enterprise involving an array of responsible employees, agents, and other persons, such as physicians, who are authorized to exercise clinical privileges within the premises.

(5) The Legislature finds that an increasing number of medical incidents in hospitals involve a combination of acts and omissions by employees, agents, and other persons, such as physicians, who are authorized to exercise clinical privileges within the premises.

197       (6) The Legislature finds that the medical malpractice  
198 insurance crisis in this state can be alleviated by the adoption  
199 of innovative approaches for patient protection in hospitals  
200 which can lead to a reduction in medical errors.

201       (7) The Legislature finds statutory incentives are  
202 necessary to facilitate innovative approaches for patient  
203 protection in hospitals.

204       (8) The Legislature finds that an enterprise approach to  
205 patient protection and provider liability in hospitals will lead  
206 to a reduction in the frequency and severity of incidents of  
207 medical malpractice in hospitals.

208       (9) The Legislature finds that a reduction in the  
209 frequency and severity of incidents of medical malpractice in  
210 hospitals will reduce attorney's fees and other expenses  
211 inherent in the medical liability system.

212       (10) The Legislature finds that making high-quality health  
213 care available to the residents of this state is an overwhelming  
214 public necessity.

215       (11) The Legislature finds that medical education in this  
216 state is an overwhelming public necessity.

217       (12) The Legislature finds that statutory teaching  
218 hospitals and hospitals owned by and operated by universities  
219 that maintain accredited medical schools are essential for high-  
220 quality medical care and medical education in this state.

221       (13) The Legislature finds that the critical mission of  
222 statutory teaching hospitals and hospitals owned and operated by  
223 universities that maintain accredited medical schools is  
224 severely undermined by the ongoing medical malpractice crisis.



225       (14) The Legislature finds that statutory teaching  
226 hospitals and hospitals owned and operated by universities that  
227 maintain accredited medical schools are appropriate health care  
228 facilities for the implementation of innovative approaches to  
229 patient protection and provider liability.

230       (15) The Legislature finds an overwhelming public  
231 necessity to impose reasonable limitations on actions for  
232 medical malpractice against statutory teaching hospitals and  
233 hospitals that are owned and operated by universities that  
234 maintain accredited medical schools, in furtherance of the  
235 critical public interest in promoting access to high-quality  
236 medical care, medical education, and innovative approaches to  
237 patient protection.

238       (16) The Legislature finds an overwhelming public  
239 necessity for statutory teaching hospitals and hospitals owned  
240 and operated by universities that maintain accredited medical  
241 schools to implement innovative measures for patient protection  
242 and provider liability in order to generate empirical data for  
243 state policymakers on the effectiveness of these measures. Such  
244 data may lead to broader application of these measures in a  
245 wider array of hospitals after a reasonable period of evaluation  
246 and review.

247       (17) The Legislature finds an overwhelming public  
248 necessity to promote the academic mission of statutory teaching  
249 hospitals and hospitals owned and operated by universities that  
250 maintain accredited medical schools. Furthermore, the  
251 Legislature finds that the academic mission of these medical  
252 facilities is materially enhanced by statutory authority for the

253 implementation of innovative approaches to patient protection  
 254 and provider liability. Such approaches can be carefully studied  
 255 and learned by medical students, medical school faculty, and  
 256 affiliated physicians in appropriate clinical settings, thereby  
 257 enlarging the body of knowledge concerning patient protection  
 258 and provider liability which is essential for advancement of  
 259 patient safety, reduction of expenses inherent in the medical  
 260 liability system, and curtailment of the medical malpractice  
 261 insurance crisis in this state.

262 Section 3. Paragraphs (f) and (g) of subsection (5) of  
 263 section 458.320, Florida Statutes, are amended to read:

264 458.320 Financial responsibility.--

265 (5) The requirements of subsections (1), (2), and (3) do  
 266 not apply to:

267 (f) Any person holding an active license under this  
 268 chapter who meets all of the following criteria:

269 1. The licensee has held an active license to practice in  
 270 this state or another state or some combination thereof for more  
 271 than 15 years.

272 2. The licensee has either retired from the practice of  
 273 medicine or maintains a part-time practice of no more than 1,000  
 274 patient contact hours per year.

275 3. The licensee has had no more than two claims for  
 276 medical malpractice resulting in an indemnity exceeding \$25,000  
 277 within the previous 5-year period.

278 4. The licensee has not been convicted of, or pled guilty  
 279 or nolo contendere to, any criminal violation specified in this  
 280 chapter or the medical practice act of any other state.

281           5. The licensee has not been subject within the last 10  
 282 years of practice to license revocation or suspension for any  
 283 period of time; probation for a period of 3 years or longer; or  
 284 a fine of \$500 or more for a violation of this chapter or the  
 285 medical practice act of another jurisdiction. The regulatory  
 286 agency's acceptance of a physician's relinquishment of a  
 287 license, stipulation, consent order, or other settlement,  
 288 offered in response to or in anticipation of the filing of  
 289 administrative charges against the physician's license,  
 290 constitutes action against the physician's license for the  
 291 purposes of this paragraph.

292           6. The licensee has submitted a form supplying necessary  
 293 information as required by the department and an affidavit  
 294 affirming compliance with this paragraph.

295           7. The licensee must submit biennially to the department  
 296 certification stating compliance with the provisions of this  
 297 paragraph. The licensee must, upon request, demonstrate to the  
 298 department information verifying compliance with this paragraph.  
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300 A licensee who meets the requirements of this paragraph must  
 301 post notice in the form of a sign prominently displayed in the  
 302 reception area and clearly noticeable by all patients or provide  
 303 a written statement to any person to whom medical services are  
 304 being provided. The sign or statement must read as follows:  
 305 "Under Florida law, physicians are generally required to carry  
 306 medical malpractice insurance or otherwise demonstrate financial  
 307 responsibility to cover potential claims for medical  
 308 malpractice. However, certain part-time physicians who meet

309 state requirements are exempt from the financial responsibility  
 310 law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO  
 311 CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided  
 312 pursuant to Florida law." In addition, a licensee who is covered  
 313 for claims of medical negligence arising from care and treatment  
 314 of patients in a hospital that assumes sole and exclusive  
 315 liability for all such claims pursuant to the Enterprise Act for  
 316 Patient Protection and Provider Liability, inclusive of ss.  
 317 766.401-766.409, shall post notice in the form of a sign  
 318 prominently displayed in the reception area and clearly  
 319 noticeable by all patients or provide a written statement to any  
 320 person for whom the physician may provide medical care and  
 321 treatment in any such hospital in accordance with the  
 322 requirements of s. 766.404.

323 (g) Any person holding an active license under this  
 324 chapter who agrees to meet all of the following criteria:  
 325 1. Upon the entry of an adverse final judgment arising  
 326 from a medical malpractice arbitration award, from a claim of  
 327 medical malpractice either in contract or tort, or from  
 328 noncompliance with the terms of a settlement agreement arising  
 329 from a claim of medical malpractice either in contract or tort,  
 330 the licensee shall pay the judgment creditor the lesser of the  
 331 entire amount of the judgment with all accrued interest or  
 332 either \$100,000, if the physician is licensed pursuant to this  
 333 chapter but does not maintain hospital staff privileges, or  
 334 \$250,000, if the physician is licensed pursuant to this chapter  
 335 and maintains hospital staff privileges, within 60 days after  
 336 the date such judgment became final and subject to execution,

337 unless otherwise mutually agreed to in writing by the parties.  
338 Such adverse final judgment shall include any cross-claim,  
339 counterclaim, or claim for indemnity or contribution arising  
340 from the claim of medical malpractice. Upon notification of the  
341 existence of an unsatisfied judgment or payment pursuant to this  
342 subparagraph, the department shall notify the licensee by  
343 certified mail that he or she shall be subject to disciplinary  
344 action unless, within 30 days from the date of mailing, he or  
345 she either:

346 a. Shows proof that the unsatisfied judgment has been paid  
347 in the amount specified in this subparagraph; or

348 b. Furnishes the department with a copy of a timely filed  
349 notice of appeal and either:

350 (I) A copy of a supersedeas bond properly posted in the  
351 amount required by law; or

352 (II) An order from a court of competent jurisdiction  
353 staying execution on the final judgment pending disposition of  
354 the appeal.

355 2. The Department of Health shall issue an emergency order  
356 suspending the license of any licensee who, after 30 days  
357 following receipt of a notice from the Department of Health, has  
358 failed to: satisfy a medical malpractice claim against him or  
359 her; furnish the Department of Health a copy of a timely filed  
360 notice of appeal; furnish the Department of Health a copy of a  
361 supersedeas bond properly posted in the amount required by law;  
362 or furnish the Department of Health an order from a court of  
363 competent jurisdiction staying execution on the final judgment  
364 pending disposition of the appeal.

365           3. Upon the next meeting of the probable cause panel of  
366 the board following 30 days after the date of mailing the notice  
367 of disciplinary action to the licensee, the panel shall make a  
368 determination of whether probable cause exists to take  
369 disciplinary action against the licensee pursuant to  
370 subparagraph 1.

371           4. If the board determines that the factual requirements  
372 of subparagraph 1. are met, it shall take disciplinary action as  
373 it deems appropriate against the licensee. Such disciplinary  
374 action shall include, at a minimum, probation of the license  
375 with the restriction that the licensee must make payments to the  
376 judgment creditor on a schedule determined by the board to be  
377 reasonable and within the financial capability of the physician.  
378 Notwithstanding any other disciplinary penalty imposed, the  
379 disciplinary penalty may include suspension of the license for a  
380 period not to exceed 5 years. In the event that an agreement to  
381 satisfy a judgment has been met, the board shall remove any  
382 restriction on the license.

383           5. The licensee has completed a form supplying necessary  
384 information as required by the department.

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386 A licensee who meets the requirements of this paragraph shall be  
387 required either to post notice in the form of a sign prominently  
388 displayed in the reception area and clearly noticeable by all  
389 patients or to provide a written statement to any person to whom  
390 medical services are being provided. Such sign or statement  
391 shall state: "Under Florida law, physicians are generally  
392 required to carry medical malpractice insurance or otherwise

393 demonstrate financial responsibility to cover potential claims  
 394 for medical malpractice. YOUR DOCTOR HAS DECIDED NOT TO CARRY  
 395 MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida  
 396 law subject to certain conditions. Florida law imposes penalties  
 397 against noninsured physicians who fail to satisfy adverse  
 398 judgments arising from claims of medical malpractice. This  
 399 notice is provided pursuant to Florida law." In addition, a  
 400 licensee who meets the requirements of this paragraph and who is  
 401 covered for claims of medical negligence arising from care and  
 402 treatment of patients in a hospital that assumes sole and  
 403 exclusive liability for all such claims pursuant to the  
 404 Enterprise Act for Patient Protection and Provider Liability,  
 405 inclusive of ss. 766.401-766.409, shall post notice in the form  
 406 of a sign prominently displayed in the reception area and  
 407 clearly noticeable by all patients or provide a written  
 408 statement to any person for whom the physician may provide  
 409 medical care and treatment in any such hospital. The sign or  
 410 statement must adhere to the requirements of s. 766.404.

411 Section 4. Paragraphs (f) and (g) of subsection (5) of  
 412 section 459.0085, Florida Statutes, are amended to read:

413 459.0085 Financial responsibility.--

414 (5) The requirements of subsections (1), (2), and (3) do  
 415 not apply to:

416 (f) Any person holding an active license under this  
 417 chapter who meets all of the following criteria:

418 1. The licensee has held an active license to practice in  
 419 this state or another state or some combination thereof for more  
 420 than 15 years.

421           2. The licensee has either retired from the practice of  
422 osteopathic medicine or maintains a part-time practice of  
423 osteopathic medicine of no more than 1,000 patient contact hours  
424 per year.

425           3. The licensee has had no more than two claims for  
426 medical malpractice resulting in an indemnity exceeding \$25,000  
427 within the previous 5-year period.

428           4. The licensee has not been convicted of, or pled guilty  
429 or nolo contendere to, any criminal violation specified in this  
430 chapter or the practice act of any other state.

431           5. The licensee has not been subject within the last 10  
432 years of practice to license revocation or suspension for any  
433 period of time, probation for a period of 3 years or longer, or  
434 a fine of \$500 or more for a violation of this chapter or the  
435 medical practice act of another jurisdiction. The regulatory  
436 agency's acceptance of an osteopathic physician's relinquishment  
437 of a license, stipulation, consent order, or other settlement,  
438 offered in response to or in anticipation of the filing of  
439 administrative charges against the osteopathic physician's  
440 license, constitutes action against the physician's license for  
441 the purposes of this paragraph.

442           6. The licensee has submitted a form supplying necessary  
443 information as required by the department and an affidavit  
444 affirming compliance with this paragraph.

445           7. The licensee must submit biennially to the department a  
446 certification stating compliance with this paragraph. The  
447 licensee must, upon request, demonstrate to the department  
448 information verifying compliance with this paragraph.



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450 A licensee who meets the requirements of this paragraph must  
451 post notice in the form of a sign prominently displayed in the  
452 reception area and clearly noticeable by all patients or provide  
453 a written statement to any person to whom medical services are  
454 being provided. The sign or statement must read as follows:  
455 "Under Florida law, osteopathic physicians are generally  
456 required to carry medical malpractice insurance or otherwise  
457 demonstrate financial responsibility to cover potential claims  
458 for medical malpractice. However, certain part-time osteopathic  
459 physicians who meet state requirements are exempt from the  
460 financial responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS  
461 THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL  
462 MALPRACTICE INSURANCE. This notice is provided pursuant to  
463 Florida law." In addition, a licensee who is covered for claims  
464 of medical negligence arising from care and treatment of  
465 patients in a hospital that assumes sole and exclusive liability  
466 for all such claims pursuant to the Enterprise Act for Patient  
467 Protection and Provider Liability, inclusive of ss. 766.401-  
468 766.409, shall post notice in the form of a sign prominently  
469 displayed in the reception area and clearly noticeable by all  
470 patients or provide a written statement to any person for whom  
471 the osteopathic physician may provide medical care and treatment  
472 in any such hospital in accordance with the requirements of s.  
473 766.404.

474 (g) Any person holding an active license under this  
475 chapter who agrees to meet all of the following criteria.

476           1. Upon the entry of an adverse final judgment arising  
477 from a medical malpractice arbitration award, from a claim of  
478 medical malpractice either in contract or tort, or from  
479 noncompliance with the terms of a settlement agreement arising  
480 from a claim of medical malpractice either in contract or tort,  
481 the licensee shall pay the judgment creditor the lesser of the  
482 entire amount of the judgment with all accrued interest or  
483 either \$100,000, if the osteopathic physician is licensed  
484 pursuant to this chapter but does not maintain hospital staff  
485 privileges, or \$250,000, if the osteopathic physician is  
486 licensed pursuant to this chapter and maintains hospital staff  
487 privileges, within 60 days after the date such judgment became  
488 final and subject to execution, unless otherwise mutually agreed  
489 to in writing by the parties. Such adverse final judgment shall  
490 include any cross-claim, counterclaim, or claim for indemnity or  
491 contribution arising from the claim of medical malpractice. Upon  
492 notification of the existence of an unsatisfied judgment or  
493 payment pursuant to this subparagraph, the department shall  
494 notify the licensee by certified mail that he or she shall be  
495 subject to disciplinary action unless, within 30 days from the  
496 date of mailing, the licensee either:

497           a. Shows proof that the unsatisfied judgment has been paid  
498 in the amount specified in this subparagraph; or

499           b. Furnishes the department with a copy of a timely filed  
500 notice of appeal and either:

501           (I) A copy of a supersedeas bond properly posted in the  
502 amount required by law; or

503 (II) An order from a court of competent jurisdiction  
504 staying execution on the final judgment, pending disposition of  
505 the appeal.

506 2. The Department of Health shall issue an emergency order  
507 suspending the license of any licensee who, after 30 days  
508 following receipt of a notice from the Department of Health, has  
509 failed to: satisfy a medical malpractice claim against him or  
510 her; furnish the Department of Health a copy of a timely filed  
511 notice of appeal; furnish the Department of Health a copy of a  
512 supersedeas bond properly posted in the amount required by law;  
513 or furnish the Department of Health an order from a court of  
514 competent jurisdiction staying execution on the final judgment  
515 pending disposition of the appeal.

516 3. Upon the next meeting of the probable cause panel of  
517 the board following 30 days after the date of mailing the notice  
518 of disciplinary action to the licensee, the panel shall make a  
519 determination of whether probable cause exists to take  
520 disciplinary action against the licensee pursuant to  
521 subparagraph 1.

522 4. If the board determines that the factual requirements  
523 of subparagraph 1. are met, it shall take disciplinary action as  
524 it deems appropriate against the licensee. Such disciplinary  
525 action shall include, at a minimum, probation of the license  
526 with the restriction that the licensee must make payments to the  
527 judgment creditor on a schedule determined by the board to be  
528 reasonable and within the financial capability of the  
529 osteopathic physician. Notwithstanding any other disciplinary  
530 penalty imposed, the disciplinary penalty may include suspension

531 of the license for a period not to exceed 5 years. In the event  
532 that an agreement to satisfy a judgment has been met, the board  
533 shall remove any restriction on the license.

534 5. The licensee has completed a form supplying necessary  
535 information as required by the department.

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537 A licensee who meets the requirements of this paragraph shall be  
538 required either to post notice in the form of a sign prominently  
539 displayed in the reception area and clearly noticeable by all  
540 patients or to provide a written statement to any person to whom  
541 medical services are being provided. Such sign or statement  
542 shall state: "Under Florida law, osteopathic physicians are  
543 generally required to carry medical malpractice insurance or  
544 otherwise demonstrate financial responsibility to cover  
545 potential claims for medical malpractice. YOUR OSTEOPATHIC  
546 PHYSICIAN HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE  
547 INSURANCE. This is permitted under Florida law subject to  
548 certain conditions. Florida law imposes strict penalties against  
549 noninsured osteopathic physicians who fail to satisfy adverse  
550 judgments arising from claims of medical malpractice. This  
551 notice is provided pursuant to Florida law." In addition, a  
552 licensee who meets the requirements of this paragraph and who is  
553 covered for claims of medical negligence arising from care and  
554 treatment of patients in a hospital that assumes sole and  
555 exclusive liability for all such claims pursuant to an  
556 enterprise plan for patient protection and provider liability  
557 under ss. 766.401-766.409, shall post notice in the form of a  
558 sign prominently displayed in the reception area and clearly

559 noticeable by all patients or provide a written statement to any  
560 person for whom the osteopathic physician may provide medical  
561 care and treatment in any such hospital. The sign or statement  
562 must adhere to the requirements of s. 766.404.

563 Section 5. Section 627.41485, Florida Statutes, is created  
564 to read:

565 627.41485 Medical malpractice insurers; optional coverage  
566 exclusion for insureds who are covered by an enterprise plan for  
567 patient protection and provider liability.--

568 (1) An insurer issuing policies of professional liability  
569 coverage for claims arising out of the rendering of, or the  
570 failure to render, medical care or services may make available  
571 to physicians licensed under chapter 458 and to osteopathic  
572 physicians licensed under chapter 459 coverage having an  
573 appropriate exclusion for acts of medical negligence occurring  
574 within:

575 (a) A certified patient safety facility that bears sole  
576 and exclusive liability for acts of medical negligence pursuant  
577 to the Enterprise Act for Patient Protection and Provider  
578 Liability, inclusive of ss. 766.401-766.409, subject to the  
579 usual underwriting standards; or

580 (b) A statutory teaching hospital that has agreed to  
581 indemnify the physician or osteopathic physician for legal  
582 liability pursuant to s. 766.110(2)(c), subject to the usual  
583 underwriting standards.

584 (2) The Department of Financial Services may adopt rules  
585 to administer this section.

586 Section 6. Section 766.316, Florida Statutes, is amended  
587 to read:

588 766.316 Notice to obstetrical patients of participation in  
589 the plan.--Each hospital with a participating physician on its  
590 staff, each hospital that assumes liability for affected  
591 physicians pursuant to the Enterprise Act for Patient Protection  
592 and Provider Liability, inclusive of ss. 766.401-766.409, and  
593 each participating physician, other than residents, assistant  
594 residents, and interns deemed to be participating physicians  
595 under s. 766.314(4)(c), under the Florida Birth-Related  
596 Neurological Injury Compensation Plan shall provide notice to  
597 the obstetrical patients as to the limited no-fault alternative  
598 for birth-related neurological injuries. Such notice shall be  
599 provided on forms furnished by the association and shall include  
600 a clear and concise explanation of a patient's rights and  
601 limitations under the plan. The hospital or the participating  
602 physician may elect to have the patient sign a form  
603 acknowledging receipt of the notice form. Signature of the  
604 patient acknowledging receipt of the notice form raises a  
605 rebuttable presumption that the notice requirements of this  
606 section have been met. Notice need not be given to a patient  
607 when the patient has an emergency medical condition as defined  
608 in s. 395.002(9)(b) or when notice is not practicable.

609 Section 7. Subsection (2) of section 766.110, Florida  
610 Statutes, is amended to read:

611 766.110 Liability of health care facilities.--

612 (2) (a) Every hospital licensed under chapter 395 may carry  
613 liability insurance or adequately insure itself in an amount of

614 not less than \$1.5 million per claim, \$5 million annual  
615 aggregate to cover all medical injuries to patients resulting  
616 from negligent acts or omissions on the part of those members of  
617 its medical staff who are covered thereby in furtherance of the  
618 requirements of ss. 458.320 and 459.0085. Self-insurance  
619 coverage extended hereunder to a member of a hospital's medical  
620 staff meets the financial responsibility requirements of ss.  
621 458.320 and 459.0085 if the physician's coverage limits are not  
622 less than the minimum limits established in ss. 458.320 and  
623 459.0085 and the hospital is a verified trauma center that has  
624 extended self-insurance coverage continuously to members of its  
625 medical staff for activities both inside and outside of the  
626 hospital. Any insurer authorized to write casualty insurance may  
627 make available, but is ~~shall~~ not be required to write, such  
628 coverage. The hospital may assess on an equitable and pro rata  
629 basis the following professional health care providers for a  
630 portion of the total hospital insurance cost for this coverage:  
631 physicians licensed under chapter 458, osteopathic physicians  
632 licensed under chapter 459, podiatric physicians licensed under  
633 chapter 461, dentists licensed under chapter 466, and nurses  
634 licensed under part I of chapter 464. The hospital may provide  
635 for a deductible amount to be applied against any individual  
636 health care provider found liable in a law suit in tort or for  
637 breach of contract. The legislative intent in providing for the  
638 deductible to be applied to individual health care providers  
639 found negligent or in breach of contract is to instill in each  
640 individual health care provider the incentive to avoid the risk

641 of injury to the fullest extent and ensure that the citizens of  
642 this state receive the highest quality health care obtainable.

643 (b) Except with regard to hospitals that receive sovereign  
644 immunity under s. 768.28, each hospital licensed under chapter  
645 395 which assumes sole and exclusive liability for acts of  
646 medical negligence by affected providers pursuant to the  
647 Enterprise Act for Patient Protection and Provider Liability,  
648 inclusive of ss. 766.401-766.409, shall carry liability  
649 insurance or adequately insure itself in an amount not less than  
650 \$2.5 million per claim, \$7.5 million annual aggregate to cover  
651 all medical injuries to patients resulting from negligent acts  
652 or omissions on the part of affected physicians and  
653 practitioners who are covered by an enterprise plan for patient  
654 protection and provider liability. The hospital's policy of  
655 medical liability insurance or self-insurance must satisfy the  
656 financial responsibility requirements of ss. 458.320(2) and  
657 459.0085(2) for affected providers. Any authorized insurer as  
658 defined in s. 626.914(2), risk retention group as defined in s.  
659 627.942, or joint underwriting association established under s.  
660 627.351(4) that has authority to write casualty insurance may  
661 make available, but is not required to write, such coverage.

662 (c) Notwithstanding any provision in the Insurance Code to  
663 the contrary, a statutory teaching hospital, as defined in s.  
664 408.07, other than a hospital that receives sovereign immunity  
665 under s. 768.28, which complies with the patient safety measures  
666 specified in s. 766.403 and all other requirements of s.  
667 766.409, including approval by the Agency for Health Care  
668 Administration, may agree to indemnify some or all members of



669 its medical staff, including, but not limited to, physicians  
670 having clinical privileges who are not employees or agents of  
671 the hospital and any organization, association, or group of  
672 persons liable for the negligent acts of such physicians,  
673 whether incorporated or unincorporated, and some or all medical,  
674 nursing, or allied health students affiliated with the hospital,  
675 collectively known as covered persons, other than persons exempt  
676 from liability due to sovereign immunity under s. 768.28, for  
677 legal liability of such covered persons for loss, damages, or  
678 expense arising out of medical negligence within the hospital  
679 premises, as defined in s. 766.401, thereby providing limited  
680 malpractice coverage for such covered persons. Any hospital that  
681 agrees to provide malpractice coverage for covered persons under  
682 this section shall acquire an appropriate policy of professional  
683 liability insurance or establish and maintain a fund from which  
684 such malpractice coverage is provided, in accordance with usual  
685 underwriting standards. Such insurance or fund may be separate  
686 and apart from any insurance or fund maintained by or on behalf  
687 of the hospital or combined in a single policy of insurance or a  
688 fund maintained by or on behalf of the hospital. Any hospital  
689 that provides malpractice coverage to covered persons as defined  
690 in this paragraph through a fund providing any such malpractice  
691 coverage, shall annually provide a certified financial statement  
692 containing actuarial projections as to the soundness of reserves  
693 to the Agency for Health Care Administration. The indemnity  
694 agreements or malpractice coverage provided by this section  
695 shall be in amounts that, at a minimum, meet the financial  
696 responsibility requirements of ss. 458.320 and 459.0085 for

697 affected providers. Any such indemnity agreement or malpractice  
 698 coverage in such amounts satisfies the financial responsibility  
 699 requirements of ss. 458.320 and 459.0085 for affected providers.  
 700 Any statutory teaching hospital that agrees to indemnify  
 701 physicians or other covered persons for medical negligence on  
 702 the premises pursuant to this section may charge such physicians  
 703 or other covered persons a reasonable fee for malpractice  
 704 coverage, notwithstanding any provision in the Insurance Code to  
 705 the contrary. Such fee shall be based on appropriate actuarial  
 706 criteria. This paragraph does not constitute a waiver of  
 707 sovereign immunity under s. 768.28. Nothing in this subsection  
 708 impairs a hospital's ability to indemnify member of its medical  
 709 staff to the extent such indemnification is allowed by law.

710 Section 8. Subsections (6) and (7) of section 766.118,  
 711 Florida Statutes, are renumbered as subsections (7) and (8),  
 712 respectively, and new subsection (6) is added to said section,  
 713 to read:

714 766.118 Determination of noneconomic damages.--

715 (6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF  
 716 CERTAIN HOSPITALS.--A hospital that has received an order from  
 717 the Agency for Health Care Administration pursuant to s. 766.409  
 718 certifying that the facility complies with patient safety  
 719 measures specified in s. 766.403 shall be liable for no more  
 720 than \$500,000 in noneconomic damages, regardless of the number  
 721 of claimants or theory of liability, including vicarious  
 722 liability, and notwithstanding any other provisions of this  
 723 section.

724 Section 9. Section 766.401, Florida Statutes, is created  
725 to read:

726 766.401 Definitions.--As used in this section and ss.  
727 766.402-766.409, the term:

728 (1) "Affected facility" means a certified patient safety  
729 facility.

730 (2) "Affected patient" means a patient of a certified  
731 patient safety facility.

732 (3) "Affected physician" means a medical staff member who  
733 is covered by an enterprise plan for patient protection and  
734 provider liability in a certified patient safety facility.

735 (4) "Affected practitioner" means any person, including a  
736 physician, who is credentialed by the eligible hospital to  
737 provide health care services who is covered by an enterprise  
738 plan for patient protection and provider liability in a  
739 certified patient safety facility.

740 (5) "Agency" means the Agency for Health Care  
741 Administration.

742 (6) "Certified patient safety facility" means any eligible  
743 hospital that, in accordance with agency order, is solely and  
744 exclusively liable for the medical negligence within the  
745 licensed facility by affected physicians and practitioners who  
746 are employees or agents of an accredited medical school or who  
747 are employees or agents of the hospital.

748 (7) "Clinical privileges" means the privileges granted to  
749 a physician or other licensed health care practitioner to render  
750 patient care services in a hospital.

751 (8) "Eligible hospital" or "licensed facility" means:

752        (a) A statutory teaching hospital as defined by s. 408.07,  
 753 which maintains at least seven different accredited graduate  
 754 medical education programs and has 100 or more full-time  
 755 equivalent resident physicians; or

756        (b) A hospital licensed in accordance with chapter 395  
 757 which is wholly owned by a university based in this state which  
 758 maintains an accredited medical school.

759        (9) "Employee or agent of an accredited medical school"  
 760 means any physician or practitioner who is a full-time employee  
 761 or agent of the accredited medical school or who devotes his or  
 762 her entire paid professional effort to the accredited medical  
 763 school.

764        (10) "Enterprise plan" means a document adopted by the  
 765 governing board of an eligible hospital and the executive  
 766 committee of the medical staff of the eligible hospital, however  
 767 defined, or the board of trustees of a state university,  
 768 manifesting concurrence and setting forth certain rights,  
 769 duties, privileges, obligations, and responsibilities of the  
 770 health care facility and its medical staff, or its affiliated  
 771 medical school, in furtherance of seeking and maintaining status  
 772 as a certified patient safety facility.

773        (11) "Health care provider" or "provider" means:

774        (a) An eligible hospital.

775        (b) A physician or physician assistant licensed under  
 776 chapter 458.

777        (c) An osteopathic physician or osteopathic physician  
 778 assistant licensed under chapter 459.

779        (d) A registered nurse, nurse midwife, licensed practical  
780 nurse, or advanced registered nurse practitioner licensed or  
781 registered under part I of chapter 464 or any facility that  
782 employs nurses licensed or registered under part I of chapter  
783 464 to supply all or part of the care delivered by that  
784 facility.

785        (e) A health care professional association and its  
786 employees or a corporate medical group and its employees.

787        (f) Any other medical facility the primary purpose of  
788 which is to deliver human medical diagnostic services or which  
789 delivers nonsurgical human medical treatment, including an  
790 office maintained by a provider.

791        (g) A free clinic that delivers only medical diagnostic  
792 services or nonsurgical medical treatment free of charge to all  
793 low-income recipients.

794        (h) Any other health care professional, practitioner, or  
795 provider, including a student enrolled in an accredited program  
796 that prepares the student for licensure as any one of the  
797 professionals listed in this subsection.

798  
799        The term includes any person, organization, or entity that is  
800 vicariously liable under the theory of respondent superior or  
801 any other theory of legal liability for medical negligence  
802 committed by any licensed professional listed in this  
803 subsection. The term also includes any nonprofit corporation  
804 qualified as exempt from federal income taxation under s. 501(a)  
805 of the Internal Revenue Code, and described in s. 501(c) of the  
806 Internal Revenue Code, including any university or medical

807 school that employs licensed professionals listed in this  
 808 subsection or that delivers health care services provided by  
 809 licensed professionals listed in this subsection, any federally  
 810 funded community health center, and any volunteer corporation or  
 811 volunteer health care provider that delivers health care  
 812 services.

813 (12) "Health care practitioner" or "practitioner" means  
 814 any person, entity, or organization identified in subsection  
 815 (9), except for a hospital.

816 (13) "Medical incident" or "adverse incident" has the same  
 817 meaning as provided in ss. 381.0271, 395.0197, 458.351, and  
 818 459.026.

819 (14) "Medical negligence" means medical malpractice,  
 820 whether grounded in tort or in contract, arising out of the  
 821 rendering of or failure to render medical care or services.

822 (15) "Medical staff" means a physician licensed under  
 823 chapter 458 or chapter 459 having clinical privileges and active  
 824 status in a licensed facility. The term includes any affected  
 825 physician.

826 (16) "Person" means any individual, partnership,  
 827 corporation, association, or governmental unit.

828 (17) "Premises" means those buildings, beds, and equipment  
 829 located at the address of the licensed facility and all other  
 830 buildings, beds, and equipment for the provision of hospital,  
 831 ambulatory surgical, mobile surgical care, primary care, or  
 832 comprehensive health care under the dominion and control of the  
 833 licensee, including offices and locations where the licensed

834 facility provides medical care and treatment to affected  
835 patients.

836 (18) "Statutory teaching hospital" or "teaching hospital"  
837 has the same meaning as provided in s. 408.07.

838 (19) "Within the licensed facility" or "within the  
839 premise" means anywhere on the premises of the licensed facility  
840 or the premises of any office, clinic, or ancillary facility  
841 that is owned or leased or controlled by the licensed facility.

842 Section 10. Section 766.402, Florida Statutes, is created  
843 to read:

844 766.402 Agency approval of enterprise plans for patient  
845 protection and provider liability.--

846 (1) An eligible hospital in conjunction with the executive  
847 committee of its medical staff or the board of trustees of a  
848 state university, if applicable, that has adopted an enterprise  
849 plan may petition the agency to enter an order certifying  
850 approval of the hospital as a certified patient safety facility.

851 (2) In accordance with chapter 120, the agency shall enter  
852 an order certifying approval of the certified patient safety  
853 facility upon a showing that, in furtherance of an enterprise  
854 approach to patient protection and provider liability:

855 (a) The petitioners have established enterprise-wide  
856 safety measures for the care and treatment of patients.

857 (b) The petitioners satisfy requirements for patient  
858 protection measures, as specified in s. 766.403.

859 (c) The petitioners acknowledge and agree to enterprise  
860 liability for medical negligence within the premises, as  
861 specified in s. 766.404.

862        (d) The petitioners have adopted an enterprise plan, as  
863 specified in s. 766.405.

864        (e) The petitioners satisfy requirements for professional  
865 accountability of affected practitioners, as specified in s.  
866 766.406.

867        (f) The petitioners satisfy requirements for financial  
868 accountability of affected practitioners, as specified in s.  
869 766.407.

870        (g) The petitioners satisfy all other requirements of ss.  
871 766.401-766.409.

872        Section 11. Section 766.403, Florida Statutes, is created  
873 to read:

874        766.403 Enterprise-wide patient safety measures.--

875        (1) In order to satisfy the requirements of s.  
876 766.402(2)(a) or s. 766.409, the licensed facility shall:

877        (a) Have in place a process, either through the facility's  
878 patient safety committee or a similar body, for coordinating the  
879 quality control, risk management, and patient relations  
880 functions of the facility and for reporting to the facility's  
881 governing board at least quarterly regarding such efforts.

882        (b) Establish within the facility a system for reporting  
883 near misses and agree to submit any information collected to the  
884 Florida Patient Safety Corporation. Such information must be  
885 submitted by the facility and made available by the Patient  
886 Safety Corporation in accordance with s. 381.0271(7).

887        (c) Design and make available to facility staff, including  
888 medical staff, a patient safety curriculum that provides lecture  
889 and web-based training on recognized patient safety principles,



890 which may include communication skills training, team  
891 performance assessment and training, risk prevention strategies,  
892 and best practices and evidence based medicine. The licensed  
893 facility shall report annually to the agency the programs  
894 presented.

895 (d) Implement a program to identify health care providers  
896 on the facility's staff who may be eligible for an early-  
897 intervention program providing additional skills assessment and  
898 training and offer such training to the staff on a voluntary and  
899 confidential basis with established mechanisms to assess program  
900 performance and results.

901 (e) Implement a simulation-based program for skills  
902 assessment, training, and retraining of a facility's staff in  
903 those tasks and activities that the agency identifies by rule.

904 (f) Designate a patient advocate who coordinates with  
905 members of the medical staff and the facility's chief medical  
906 officer regarding disclosure of medical incidents to patients.  
907 In addition, the patient advocate shall establish an advisory  
908 panel, consisting of providers, patients or their families, and  
909 other health care consumer or consumer groups to review general  
910 patient safety concerns and other issues related to relations  
911 among and between patients and providers and to identify areas  
912 where additional education and program development may be  
913 appropriate.

914 (g) Establish a procedure to biennially review the  
915 facility's patient safety program and its compliance with the  
916 requirements of this section. Such review shall be conducted by  
917 an independent patient safety organization as defined in s.

918 766.1016(1) or other professional organization approved by the  
919 agency. The organization performing the review shall prepare a  
920 written report with detailed findings and recommendations. The  
921 report shall be forwarded to the facility's risk manager or  
922 patient safety officer, who may make written comments in  
923 response thereto. The report and any written comments shall be  
924 presented to the governing board of the licensed facility. A  
925 copy of the report and any of the facilities' responses to the  
926 findings and recommendations shall be provided to the agency  
927 within 60 days after the date that the governing board reviewed  
928 the report. The report is confidential and exempt from  
929 production or discovery in any civil action. Likewise, the  
930 report, and the information contained therein, is not admissible  
931 as evidence for any purpose in any action for medical  
932 negligence.

933 (h) Establish a system for the trending and tracking of  
934 quality and patient safety indicators that the agency may  
935 identify by rule, and a method for review of the data at least  
936 semiannually by the facility's patient safety committee.

937 (i) Provide assistance to affected physicians, upon  
938 request, regarding implementation and evaluation of individual  
939 risk-management, patient-safety, and incident-reporting systems  
940 in clinical settings outside the premises of the licensed  
941 facility. Provision of such assistance may not be the basis for  
942 finding or imposing any liability on the licensed facility for  
943 acts or omissions of the affected physicians in clinical  
944 settings outside the premises of the licensed facility.

945       (2) This section does not constitute an applicable  
 946 standard of care in any action for medical negligence or  
 947 otherwise create a private right of action, and evidence of  
 948 noncompliance with this section is not admissible for any  
 949 purpose in any action for medical negligence against an affected  
 950 facility or any other health care provider.

951       (3) This section does not prohibit the licensed facility  
 952 from implementing other measures for promoting patient safety  
 953 within the premises. This section does not relieve the licensed  
 954 facility from the duty to implement any other patient safety  
 955 measure that is required by state law. The Legislature intends  
 956 that the patient safety measures specified in this section are  
 957 in addition to all other patient safety measures required by  
 958 state law, federal law, and applicable accreditation standards  
 959 for licensed facilities.

960       (4) A review, report, or other document created, produced,  
 961 delivered, or discussed pursuant to this section is not  
 962 discoverable or admissible as evidence in any legal action.

963       Section 12. Section 766.404, Florida Statutes, is created  
 964 to read:

965       766.404 Enterprise liability in certain health care  
 966 facilities.--

967       (1) Subject to the requirements of ss. 766.401-766.409,  
 968 the agency may enter an order certifying the petitioner-hospital  
 969 as a certified patient safety facility and providing that the  
 970 hospital bears sole and exclusive liability for any and all acts  
 971 of medical negligence within the licensed facility by affected  
 972 physicians and affected practitioners who are employees or

973 agents of the accredited medical school or employees or agents  
974 of the hospital when such medical negligence causes damage to  
975 affected patients.

976 (2) In any action for personal injury or wrongful death,  
977 whether in contract or tort or predicated upon a statutory cause  
978 of action, arising out of medical negligence within the premises  
979 resulting in damages to a patient of a certified patient safety  
980 facility, the licensed facility bears sole and exclusive  
981 liability for medical negligence by affected physicians and  
982 affected practitioners who, when the act of medical negligence  
983 occurred, were employees or agents of the accredited medical  
984 school or employees or agents of the hospital. Any such affected  
985 physician or affected practitioner may not be named as defendant  
986 in any such action. This subsection does not impose liability or  
987 confer immunity on any other provider, person, organization, or  
988 entity for acts of medical malpractice committed on any person  
989 in clinical settings other than the premises of the affected  
990 facility.

991 (3) An affected practitioner shall post an applicable  
992 notice or provide an appropriate written statement as follows:

993 (a) An affected practitioner shall post notice in the form  
994 of a sign prominently displayed in the reception area and  
995 clearly noticeable by all patients or provide a written  
996 statement to any person to whom medical services are being  
997 provided. The sign or statement must read as follows: "In  
998 general, physicians in the State of Florida are personally  
999 liable for acts of medical negligence, subject to certain  
1000 limitations. However, physicians who perform medical services

1001 within a certified patient safety facility are exempt from  
 1002 personal liability because the licensed hospital bears sole and  
 1003 exclusive liability for acts of medical negligence within the  
 1004 health care facility pursuant to an administrative order of the  
 1005 Agency for Health Care Administration entered in accordance with  
 1006 the Enterprise Act for Patient Protection and Provider  
 1007 Liability. YOUR DOCTOR HOLDS CLINICAL STAFF PRIVILEGES IN A  
 1008 CERTIFIED PATIENT SAFETY FACILITY. UNDER FLORIDA LAW, ANY CLAIM  
 1009 FOR MEDICAL NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE  
 1010 INITIATED AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR,  
 1011 BECAUSE THE HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF  
 1012 PROFESSIONAL NEGLIGENCE WITHIN THE PREMISES. THIS PROVISION DOES  
 1013 NOT AFFECT YOUR PHYSICIAN'S LIABILITY FOR ACTS OF MEDICAL  
 1014 NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF YOU DO NOT UNDERSTAND,  
 1015 PLEASE DISCUSS WITH YOUR DOCTOR BEFORE YOUR CONSULTATION. This  
 1016 notice is provided pursuant to Florida law."

1017 (b) If an affected practitioner is covered by an  
 1018 enterprise plan for patient protection and provider liability in  
 1019 one or more licensed facilities that receive sovereign immunity,  
 1020 and one or more other licensed facilities, the affected  
 1021 practitioner shall post notice in the form of a sign prominently  
 1022 displayed in the reception area and clearly noticeable by all  
 1023 patients or provide a written statement to any person to whom  
 1024 medical services are being provided. The sign or statement must  
 1025 read as follows: "In general, physicians in the state of Florida  
 1026 are personally liable for acts of medical negligence, subject to  
 1027 certain limitations such as sovereign immunity. However,  
 1028 physicians who perform medical services within a certified

1029 patient safety facility are exempt from personal liability  
 1030 because the licensed hospital bears sole and exclusive liability  
 1031 for acts of medical negligence within the affected facility  
 1032 pursuant to an administrative order of the Agency for Health  
 1033 Care Administration entered in accordance with the Enterprise  
 1034 Act for Patient Protection and Provider Liability. YOUR DOCTOR  
 1035 HOLDS CLINICAL STAFF PRIVILEGES IN ONE OR MORE CERTIFIED PATIENT  
 1036 SAFETY FACILITIES. AT LEAST ONE OF THESE HOSPITALS IS SUBJECT TO  
 1037 SOVEREIGN IMMUNITY. UNDER FLORIDA LAW, ANY CLAIM FOR MEDICAL  
 1038 NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE INITIATED  
 1039 AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR, BECAUSE THE  
 1040 HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF PROFESSIONAL  
 1041 NEGLIGENCE WITHIN THE PREMISES. MOREOVER, RECOVERY AGAINST THE  
 1042 HOSPITAL MAY BE LIMITED, DUE TO FLORIDA'S SOVEREIGN IMMUNITY  
 1043 LAW. THESE PROVISIONS DO NOT AFFECT YOUR PHYSICIAN'S LIABILITY  
 1044 FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF  
 1045 YOU DO NOT UNDERSTAND, PLEASE DISCUSS WITH YOUR DOCTOR BEFORE  
 1046 YOUR CONSULTATION. This notice is provided pursuant to Florida  
 1047 law."

1048 (c) Notice need not be given to a patient when:

1049 1. The patient has an emergency medical condition as  
 1050 defined in s. 395.002;

1051 2. The practitioner is an employee or agent of a  
 1052 governmental entity and is immune from liability and suit under  
 1053 s. 768.28; or

1054 3. Notice is not practicable.

1055 (d) This subsection is directory in nature. An agency  
 1056 order certifying approval of an enterprise plan for patient

1057 protection and provider liability shall, as a matter of law,  
 1058 constitute conclusive evidence that the hospital complies with  
 1059 all applicable patient safety requirements of s. 766.403 and all  
 1060 other requirements of ss. 766.401-766.409. Evidence of  
 1061 noncompliance with s. 766.403 or any other provision of ss.  
 1062 766.401-766.409 may not be admissible for any purpose in any  
 1063 action for medical malpractice. Failure to comply with the  
 1064 requirements of this subsection does not affect the liabilities  
 1065 or immunities conferred by ss. 766.401-766.409. This subsection  
 1066 does not give rise to an independent cause of action for  
 1067 damages.

1068 (4) The agency order certifying approval of an enterprise  
 1069 plan for patient protection and provider liability applies  
 1070 prospectively to causes of action for medical negligence that  
 1071 arise on or after the effective date of the order.

1072 (5) Upon entry of an order approving the petition, the  
 1073 agency may conduct onsite examinations of the licensed facility  
 1074 to assure continued compliance with the terms and conditions of  
 1075 the order.

1076 (6) The agency order certifying approval of an enterprise  
 1077 plan for patient protection remains in effect until revoked. The  
 1078 agency shall revoke the order upon the unilateral request of the  
 1079 licensed facility, the executive committee of the medical staff,  
 1080 or the affiliated medical school, whichever is applicable. The  
 1081 agency may revoke the order upon reasonable notice to the  
 1082 affected facility that it fails to comply with material  
 1083 requirements of ss. 766.401-766.409 or material conditions of  
 1084 the order certifying approval of the enterprise plan and further

1085 upon a determination that the licensed facility has failed to  
1086 cure stated deficiencies upon reasonable notice. An  
1087 administrative order revoking approval of an enterprise plan for  
1088 patient protection and provider liability terminates the plan on  
1089 January 1 of the year following entry of the order or 6 months  
1090 after entry of the order, whichever is longer. Revocation of an  
1091 agency order certifying approval of an enterprise plan for  
1092 patient protection and provider liability applies prospectively  
1093 to causes of action for medical negligence which arise on or  
1094 after the effective date of the termination.

1095 (7) This section does not exempt a licensed facility from  
1096 liability for acts of medical negligence committed by employees  
1097 and agents thereof; although employees and agents of a certified  
1098 patient safety facility may not be joined as defendants in any  
1099 action for medical negligence because the licensed facility  
1100 bears sole and exclusive liability for acts of medical  
1101 negligence within the premises of the licensed facility,  
1102 including acts of medical negligence by such employees and  
1103 agents.

1104 (8) Affected practitioners shall cooperate in good faith  
1105 with an affected facility in the investigation and defense of  
1106 any claim for medical negligence. An affected facility shall  
1107 have a cause of action for damages against an affected  
1108 practitioner for bad faith refusal to cooperate in the  
1109 investigation and defense of any claim of medical malpractice  
1110 against the licensed facility.

1111 (9) Sections 766.401-766.409 do not impose strict  
1112 liability or liability without fault for medical incidents that



1113 occur within an affected facility. To maintain a cause of action  
 1114 against an affected facility pursuant to ss. 766.401-766.409,  
 1115 the claimant must allege and prove that an employee or agent of  
 1116 the licensed facility, or an affected practitioner who is  
 1117 covered by an approved enterprise plan for patient protection  
 1118 and provider liability, committed medical negligence within the  
 1119 premises of the licensed facility which constitutes medical  
 1120 negligence under state law, even though an active tortfeasor is  
 1121 not named or joined as a party defendant in the lawsuit.

1122 (10) Sections 766.401-766.409 do not create an independent  
 1123 cause of action against any health care provider and do not  
 1124 impose enterprise liability on any health care provider, except  
 1125 as expressly provided, and may not be construed to support any  
 1126 cause of action other than an action for medical negligence as  
 1127 expressly provided against any person, organization, or entity.

1128 (11) Sections 766.401-766.409 do not waive sovereign  
 1129 immunity, except as expressly provided in s. 768.28.

1130 Section 13. Section 766.405, Florida Statutes, is created  
 1131 to read:

1132 766.405 Enterprise plans.--

1133 (1) It is the intent of the Legislature that enterprise  
 1134 plans for patient protection are elective and not mandatory for  
 1135 eligible hospitals. It is further the intent of the Legislature  
 1136 that the medical staff or affiliated medical school of an  
 1137 eligible hospital must concur with the development and  
 1138 implementation of an enterprise plan for patient protection and  
 1139 provider liability. It is further the intent of the Legislature  
 1140 that the licensed facility and medical staff or affiliated

1141 medical school be accorded wide latitude in formulating  
1142 enterprise plans consistent with the underlying purpose of ss.  
1143 766.401-766.409 to encourage innovative, systemic measures for  
1144 patient protection and quality assurance in licensed facilities,  
1145 especially in clinical settings where surgery is performed.  
1146 Adoption of an enterprise plan is a necessary condition for  
1147 agency approval of an enterprise plan for a certified patient  
1148 safety facility.

1149 (2) An eligible hospital and the executive committee of  
1150 its medical staff of the board of trustees of a state  
1151 university, if applicable, shall adopt an enterprise plan as a  
1152 necessary condition to agency approval of a certified patient  
1153 safety facility. An affirmative vote of approval by the  
1154 regularly constituted executive committee of the medical staff,  
1155 however named or constituted, is sufficient to manifest approval  
1156 by the medical staff of the enterprise plan. Once approved,  
1157 affected practitioners are subject to the enterprise plan. The  
1158 plan may be conditioned on agency approval of an enterprise plan  
1159 for patient protection and provider liability for the affected  
1160 facility. The enterprise plan shall be limited to affected  
1161 physicians and affected practitioners who are employees or  
1162 agents of an accredited medical school or who are employees or  
1163 agents of the hospital. At a minimum, the enterprise plan must  
1164 contain provisions covering:

1165 (a) Compliance with a patient protection plan.  
1166 (b) Internal review of medical incidents.  
1167 (c) Timely reporting of medical incidents to state  
1168 agencies.

1169 | (d) Professional accountability of affected practitioners.

1170 | (e) Financial accountability of affected practitioners.

1171 | (3) This section does not prohibit a patient safety  
 1172 | facility from including other provisions in the enterprise plan,  
 1173 | in a separate agreement, as a condition of staff privileges, or  
 1174 | by way of contract with an organization providing medical staff  
 1175 | for the licensed facility.

1176 | (4) This section does not limit the power of any licensed  
 1177 | facility to enter into other agreements with members of its  
 1178 | medical staff or otherwise to impose restrictions, requirements,  
 1179 | or conditions on clinical privileges, as authorized by law.

1180 | (5) If multiple campuses of a licensed facility share a  
 1181 | license, the enterprise plan may be limited to the primary  
 1182 | campus or the campus with the largest number of beds and, if  
 1183 | applicable, associated outpatient ancillary facilities. If the  
 1184 | enterprise plan is so limited, the plan must specify the campus  
 1185 | and, if applicable, the ancillary facilities that will  
 1186 | constitute the enterprise.

1187 | Section 14. Section 766.406, Florida Statutes, is created  
 1188 | to read:

1189 | 766.406 Professional accountability of affected  
 1190 | practitioners.--

1191 | (1) A certified patient safety facility shall report  
 1192 | medical incidents occurring in the affected facility to the  
 1193 | Department of Health, in accordance with s. 395.0197.

1194 | (2) A certified patient safety facility shall report  
 1195 | adverse findings of medical negligence or failure to adhere to

1196 applicable standards of professional responsibility by affected  
 1197 practitioners to the Department of Health.

1198 (3) A certified patient safety facility shall continue to  
 1199 perform all peer review functions pursuant to s. 395.0193.

1200 Section 15. Section 766.407, Florida Statutes, is created  
 1201 to read:

1202 766.407 Financial accountability of affected  
 1203 practitioners.--

1204 (1) An enterprise plan may provide that any affected  
 1205 member of the medical staff or any affected practitioner having  
 1206 clinical privileges, other than an employee of the licensed  
 1207 facility, and any organization that contracts with the licensed  
 1208 facility to provide practitioners to treat patients within the  
 1209 licensed facility, shall share equitably in the cost of omnibus  
 1210 medical liability insurance premiums covering the certified  
 1211 patient safety facility, similar self-insurance expense, or  
 1212 other expenses reasonably related to risk management and  
 1213 adjustment of claims of medical negligence. This subsection does  
 1214 not permit a licensed facility and any affected practitioner to  
 1215 agree on charges for an equitable share of medical liability  
 1216 expense based on the number of patients admitted to the hospital  
 1217 by individual practitioners, patient revenue for the licensed  
 1218 facility generated by individual practitioners, or overall  
 1219 profit or loss sustained by the certified patient safety  
 1220 facility in a given fiscal period.

1221 (2) Pursuant to an enterprise plan for patient protection  
 1222 and provider liability, a licensed facility may impose a  
 1223 reasonable assessment against an affected practitioner that

1224 commits medical negligence resulting in injury and damages to an  
1225 affected patient of the health care facility, upon a  
1226 determination of failure to adhere to acceptable standards of  
1227 professional responsibility by an internal peer review  
1228 committee. A schedule of assessments, criteria for the levying  
1229 of assessments, procedures for levying assessments, and due  
1230 process rights of an affected practitioner must be agreed to by  
1231 the executive committee of the medical staff or affiliated  
1232 medical school, as applicable, and the licensed facility. The  
1233 legislative intent in providing for assessments against an  
1234 affected physician is to instill in each individual health care  
1235 practitioner the incentive to avoid the risk of injury to the  
1236 fullest extent and ensure that the residents of this state  
1237 receive the highest quality health care obtainable. Failure to  
1238 pay an assessment constitutes grounds for suspension of clinical  
1239 privileges by the licensed facility. Assessments may be enforced  
1240 as bona fide debts in a court of law. The licensed facility may  
1241 exempt its employees and agents from all such assessments.  
1242 Employees and agents of the state, its agencies, and  
1243 subdivisions, as defined by s. 768.28, are exempt from all such  
1244 assessments.

1245 (3) An assessment levied pursuant to this section is not  
1246 discoverable or admissible as evidence in any legal action.

1247 Section 16. Section 766.408, Florida Statutes, is created  
1248 to read:

1249 766.408 Data collection and reports.--

1250 (1) Each certified patient safety facility shall submit an  
1251 annual report to the agency containing information and data

1252 reasonably required by the agency to evaluate performance and  
 1253 effectiveness of the facility's enterprise plan for patient  
 1254 protection and provider liability. However, information may not  
 1255 be submitted or disclosed in violation of any patient's right to  
 1256 privacy under state or federal law.

1257 (2) The agency shall aggregate information and data  
 1258 submitted by all affected facilities and each year, on or before  
 1259 March 1, the agency shall submit a report to the Legislature  
 1260 that evaluates the performance and effectiveness of the  
 1261 enterprise approach to patient safety and provider liability in  
 1262 certified patient safety facilities, which reports must include,  
 1263 but are not limited to, pertinent data on:

- 1264 (a) The number and names of affected facilities;
- 1265 (b) The number and types of patient protection measures  
 1266 currently in effect in these facilities;
- 1267 (c) The number of affected practitioners;
- 1268 (d) The number of affected patients;
- 1269 (e) The number of surgical procedures by affected  
 1270 practitioners on affected patients;
- 1271 (f) The number of medical incidents, claims of medical  
 1272 malpractice, and claims resulting in indemnity;
- 1273 (g) The average time for resolution of contested and  
 1274 uncontested claims of medical malpractice;
- 1275 (h) The percentage of claims that result in civil trials;
- 1276 (i) The percentage of civil trials resulting in adverse  
 1277 judgments against affected facilities;
- 1278 (j) The number and average size of an indemnity paid to  
 1279 claimants;

1280        (k) The number and average size of assessments imposed on  
 1281 affected practitioners;

1282        (l) The estimated liability expense, inclusive of medical  
 1283 liability insurance premiums; and

1284        (m) The percentage of medical liability expense, inclusive  
 1285 of medical liability insurance premiums, which is borne by  
 1286 affected practitioners in affected health care facilities.

1287  
 1288 Such reports to the Legislature may also include other  
 1289 information and data that the agency deems appropriate to gauge  
 1290 the cost and benefit of enterprise plans for patient protection  
 1291 and provider liability.

1292        (3) The agency's annual report to the Legislature may  
 1293 include relevant information and data obtained from the Office  
 1294 of Insurance Regulation within the Department of Financial  
 1295 Services on the availability and affordability of enterprise-  
 1296 wide medical liability insurance coverage for affected  
 1297 facilities and the availability and affordability of insurance  
 1298 policies for individual practitioners which contain coverage  
 1299 exclusions for acts of medical negligence in certified patient  
 1300 safety facilities. The Office of Insurance Regulation within the  
 1301 Department of Financial Services shall cooperate with the agency  
 1302 in the reporting of information and data specified in this  
 1303 subsection.

1304        (4) Reports submitted to the agency by affected facilities  
 1305 pursuant to this section are public records under chapter 199.  
 1306 However, these reports, and the information contained therein,  
 1307 are not admissible as evidence in a court of law in any action.

1308 Section 17. Section 766.409, Florida Statutes, is created  
1309 to read:

1310 766.409 Damages in malpractice actions against certain  
1311 hospitals that meet patient safety requirements; agency approval  
1312 of patient safety measures.--

1313 (1) In recognition of their essential role in training  
1314 future health care providers and in providing innovative medical  
1315 care for this state's residents, in recognition of their  
1316 commitment to treating indigent patients, and further in  
1317 recognition that all teaching hospitals, as defined in s.  
1318 408.07, both public and private, and hospitals licensed under  
1319 chapter 395 which are owned and operated by a university that  
1320 maintains an accredited medical school, collectively defined as  
1321 eligible hospitals in s. 766.401(8), provide benefits to the  
1322 residents of this state through their roles in improving the  
1323 quality of medical care, training health care providers, and  
1324 caring for indigent patients, the limits of liability for  
1325 medical malpractice arising out of the rendering of, or the  
1326 failure to render, medical care by all such hospitals, shall be  
1327 determined in accordance with the requirements of this section.

1328 (2) Except as otherwise provided in subsections (9) and  
1329 (10), any eligible hospital may petition the agency to enter an  
1330 order certifying that the licensed facility complies with  
1331 patient safety measures specified in s. 766.403.

1332 (3) In accordance with chapter 120, the agency shall enter  
1333 an order approving the petition upon a showing that the eligible  
1334 hospital complies with the patient safety measures specified in  
1335 s. 766.403. Upon entry of an order, and for the entire period of



1336 time that the order remains in effect, the damages recoverable  
 1337 from the eligible hospital covered by the order and its  
 1338 employees and agents in actions arising from medical negligence  
 1339 shall be determined in accordance with the following provisions:

1340 (a) Noneconomic damages shall be limited to a maximum of  
 1341 \$500,000, regardless of the number of claimants or the theory of  
 1342 liability, in accordance with s. 766.118(6).

1343 (b) Awards of economic damages shall be offset by payments  
 1344 from collateral sources, as defined by s. 766.202(2), and any  
 1345 set-offs available under ss. 46.015 and 768.041. Awards for  
 1346 future economic losses shall be offset by future collateral  
 1347 source payments.

1348 (c) Awards of future economic damages, after being offset  
 1349 by collateral sources, shall, at the option of the eligible  
 1350 hospital, be reduced by the court to present value or paid by  
 1351 means of periodic payments in the form of annuities or  
 1352 reversionary trusts. A company that underwrites an annuity to  
 1353 pay future economic damages shall have rating of "A" or higher  
 1354 by A.M. Best Company. The terms of the reversionary instrument  
 1355 used to periodically pay future economic damages must be  
 1356 approved by the court; such approval may not be unreasonably  
 1357 withheld.

1358 (4) The limitations on damages in subsection (3) apply  
 1359 prospectively to causes of action for medical negligence that  
 1360 arise on or after the effective date of the order.

1361 (5) Upon entry of an order approving the petition, the  
 1362 agency may conduct onsite examinations of the licensed facility

1363 to assure continued compliance with terms and conditions of the  
1364 order.

1365 (6) The agency order certifying approval of a petition  
1366 under this section remains in effect until revoked. The agency  
1367 may revoke the order upon reasonable notice to the affected  
1368 hospital that it fails to comply with material requirements of  
1369 ss. 766.401-766.409 or material conditions of the order  
1370 certifying compliance with required patient safety measures and  
1371 that the hospital has failed to cure stated deficiencies upon  
1372 reasonable notice. Revocation of an agency order certifying  
1373 approval of an enterprise plan for patient protection and  
1374 provider liability applies prospectively to causes of action for  
1375 medical negligence that arise on or after the effective date of  
1376 the order of revocation.

1377 (7) An agency order certifying approval of a petition  
1378 under this section shall, as a matter of law, constitute  
1379 conclusive evidence that the hospital complies with all  
1380 applicable patient safety requirements of s. 766.403. A  
1381 hospital's noncompliance with the requirements of s. 766.403 may  
1382 not affect the limitations on damages conferred by this section.  
1383 Evidence of noncompliance with s. 766.403 may not be admissible  
1384 for any purpose in any action for medical malpractice. This  
1385 section, or any portion thereof, may not give rise to an  
1386 independent cause of action for damages against any hospital.

1387 (8) The entry of an agency order pursuant to this section  
1388 does not impose enterprise liability, or sole and exclusive  
1389 liability, on the licensed facility for acts or omissions of  
1390 medical negligence within the premises.

1391 |       (9) An eligible hospital may petition the agency for an  
 1392 | order pursuant to this section or an order pursuant to s.  
 1393 | 766.404. However, a hospital may not be approved for both  
 1394 | enterprise liability under s. 766.404 and the limitations on  
 1395 | damages under this section.

1396 |       (10) This section may not apply to hospitals that are  
 1397 | subject to sovereign immunity under s. 768.28.

1398 |       Section 18. Section 766.410, Florida Statutes, is created  
 1399 | to read:

1400 |       766.410 Rulemaking authority.--The agency may adopt rules  
 1401 | to administer ss. 766.401-766.409.

1402 |       Section 19. Subsections (5) and (12) of section 768.28,  
 1403 | Florida Statutes, are amended to read:

1404 |       768.28 Waiver of sovereign immunity in tort actions;  
 1405 | recovery limits; limitation on attorney fees; statute of  
 1406 | limitations; exclusions; indemnification; risk management  
 1407 | programs.--

1408 |       (5) (a) The state and its agencies and subdivisions shall  
 1409 | be liable for tort claims in the same manner and to the same  
 1410 | extent as a private individual under like circumstances, but  
 1411 | liability does ~~shall~~ not include punitive damages or interest  
 1412 | for the period before judgment.

1413 |       (b) Except as provided in paragraph (c), neither the state  
 1414 | or ~~nor~~ its agencies or subdivisions are ~~shall be~~ liable to pay a  
 1415 | claim or a judgment by any one person which exceeds the sum of  
 1416 | \$100,000 or any claim or judgment, or portions thereof, which,  
 1417 | when totaled with all other claims or judgments paid by the  
 1418 | state or its agencies or subdivisions arising out of the same

1419 incident or occurrence, exceeds the sum of \$200,000. However, a  
1420 judgment or judgments may be claimed and rendered in excess of  
1421 these amounts and may be settled and paid pursuant to this act  
1422 up to \$100,000 or \$200,000, as the case may be; and that portion  
1423 of the judgment that exceeds these amounts may be reported to  
1424 the Legislature, but may be paid in part or in whole only by  
1425 further act of the Legislature. Notwithstanding the limited  
1426 waiver of sovereign immunity provided herein, the state or an  
1427 agency or subdivision thereof may agree, within the limits of  
1428 insurance coverage provided, to settle a claim made or a  
1429 judgment rendered against it without further action by the  
1430 Legislature, but the state or agency or subdivision thereof  
1431 shall not be deemed to have waived any defense of sovereign  
1432 immunity or to have increased the limits of its liability as a  
1433 result of its obtaining insurance coverage for tortious acts in  
1434 excess of the \$100,000 or \$200,000 waiver provided above. The  
1435 limitations of liability set forth in this subsection shall  
1436 apply to the state and its agencies and subdivisions whether or  
1437 not the state or its agencies or subdivisions possessed  
1438 sovereign immunity before July 1, 1974.

1439 (c) In any action for medical negligence within a  
1440 certified patient safety facility that is covered by sovereign  
1441 immunity, given that the licensed health care facility bears  
1442 sole and exclusive liability for acts of medical negligence  
1443 pursuant to the Enterprise Act for Patient Protection and  
1444 Provider Liability, inclusive of ss. 766.401-766.409, neither  
1445 the state or its agencies or subdivisions are liable to pay a  
1446 claim or a judgment by any one person which exceeds the sum of

1447 \$150,000 or any claim or judgment, or portions thereof, which,  
1448 when totaled with all other claims or judgments paid by the  
1449 state or its agencies or subdivisions arising out of the same  
1450 incident or occurrence, exceeds the sum of \$300,000. However, a  
1451 judgment may be claimed and rendered in excess of these amounts  
1452 and may be settled and paid up to \$150,000 or \$300,000, as the  
1453 case may be. That portion of the judgment which exceeds these  
1454 amounts may be reported to the Legislature, but may be paid in  
1455 part or in whole only by further act of the Legislature.  
1456 Notwithstanding the limited waiver of sovereign immunity  
1457 provided in this paragraph, the state or an agency or  
1458 subdivision thereof may agree, within the limits of insurance or  
1459 self-insurance coverage provided, to settle a claim made or a  
1460 judgment rendered against it without further action by the  
1461 Legislature, but the state or agency or subdivision thereof does  
1462 not waive any defense of sovereign immunity or increase limits  
1463 of its liability as a result of its obtaining insurance coverage  
1464 or providing for self-insurance to cover claims for medical  
1465 negligence in excess of the \$150,000 waiver or the \$300,000  
1466 waiver provided in this paragraph. The limitations of liability  
1467 set forth in this paragraph apply to the state and its agencies  
1468 and subdivisions whether or not the state or its agencies or  
1469 subdivisions possessed sovereign immunity before July 1, 1974.

1470 (12) (a) A health care practitioner, as defined in s.  
1471 456.001(4), who has contractually agreed to act as an agent of a  
1472 state university board of trustees to provide medical services  
1473 to a student athlete for participation in or as a result of  
1474 intercollegiate athletics, to include team practices, training,

1475 and competitions, ~~is shall be considered~~ an agent of the  
1476 respective state university board of trustees, for the purposes  
1477 of this section, while acting within the scope of and pursuant  
1478 to guidelines established in that contract. The contracts shall  
1479 provide for the indemnification of the state by the agent for  
1480 any liabilities incurred up to the limits set out in this  
1481 chapter.

1482 (b) This subsection shall not be construed as designating  
1483 persons providing contracted health care services to athletes as  
1484 employees or agents of a state university board of trustees for  
1485 the purposes of chapter 440.

1486 (c)1. For purposes of this subsection, the terms  
1487 "certified patient safety facility," "medical staff," and  
1488 "medical negligence" have the same meanings as provided in s.  
1489 766.401.

1490 2. A certified patient safety facility, wherein a minimum  
1491 of 90 percent of the members of the medical staff consist of  
1492 physicians are employees or agents of a state university, is an  
1493 agent of the respective state university board of trustees for  
1494 purposes of this section to the extent that the licensed  
1495 facility, in accordance with an enterprise plan for patient  
1496 protection and provider liability, inclusive of ss. 766.401-  
1497 766.409, approved by the Agency for Health Care Administration,  
1498 is solely and exclusively liable for acts of medical negligence  
1499 of physicians providing health care services within the licensed  
1500 facility.

1501 3. A certified patient safety facility that has been found  
1502 to be an agent of the state for other purposes and has adopted

1503 an enterprise plan for patient protection and provider liability  
1504 for the sole and exclusive liability for acts of medical  
1505 negligence of affected practitioners who are employees and  
1506 agents of the affiliated state university board of trustees and  
1507 its own hospital employees and agents, inclusive of ss. 766.401-  
1508 766.409, approved by the Agency for Health Care Administration,  
1509 is an agent of the respective state university board of trustees  
1510 for purposes of this subsection only.

1511 4. Subject to the acceptance of the Board of Governors and  
1512 a state university board of trustees, a licensed facility as  
1513 described by this subsection may secure the limits of liability  
1514 protection described in paragraph (c) from a self insurance  
1515 program created pursuant to s. 1004.24.

1516 5. A notice of intent to commence an action for medical  
1517 negligence arising from the care or treatment of a patient in a  
1518 certified patient safety facility subject to the provisions of  
1519 this subsection shall be sent to the licensed facility as the  
1520 statutory agent created pursuant to an enterprise plan of the  
1521 related board of trustees of a state university for the limited  
1522 purposes of administering an enterprise plan for patient  
1523 protection and provider liability. A complaint alleging medical  
1524 negligence resulting in damages to a patient in a certified  
1525 patient safety facility subject to the provisions of this  
1526 paragraph shall be commenced against the applicable board of  
1527 trustees of a state university on the relation of the licensed  
1528 facility, and the doctrines of res judicata and collateral  
1529 estoppel shall apply. The complaint shall be served on the  
1530 licensed facility. Any notice of intent mailed to the licensed

1531 facility, any legal process served on the licensed facility, and  
1532 any other notice, paper, or pleading that is served, sent, or  
1533 delivered to the licensed facility pertaining to a claim of  
1534 medical negligence shall have the same legal force and effect as  
1535 mailing, service, or delivery to a duly authorized agent of the  
1536 board of trustees of the respective state university,  
1537 notwithstanding any provision of the laws of this state to the  
1538 contrary. Upon receipt of any such notice of intent, complaint  
1539 for damages, or other notice, paper, or pleading pertaining to a  
1540 claim of medical negligence, a licensed facility subject to the  
1541 provisions of this paragraph shall give timely notice to the  
1542 related board of trustees of the state university, although  
1543 failure to give timely notice does not affect the legal  
1544 sufficiency of the notice of intent, service of process, or  
1545 other notice, paper, or pleading. A final judgment or binding  
1546 arbitration award against the board of trustees of a state  
1547 university on the relation of a licensed facility, arising from  
1548 a claim of medical negligence resulting in damages to a patient  
1549 in a certified patient safety facility subject to the provisions  
1550 of this paragraph, may be enforced in the same manner, and is  
1551 subject to the same limitations on enforcement or recovery, as  
1552 any final judgment for damages or binding arbitration award  
1553 against the board of trustees of a state university,  
1554 notwithstanding any provision of the laws of this state to the  
1555 contrary. Any settlement agreement executed by the board of  
1556 trustees of a state university on the relation of a licensed  
1557 facility, arising from a claim of medical negligence resulting  
1558 in damages to a patient in a certified patient safety facility



1559 subject to the provisions of this paragraph, may be enforced in  
1560 the same manner and is subject to the same limitations as a  
1561 settlement agreement executed by an authorized agent of the  
1562 board of trustees. The board of trustees of a state university  
1563 may make payment to a claimant in whole or in part of any  
1564 portion of a final judgment or binding arbitration award against  
1565 the board of trustees of a state university on the relation of a  
1566 licensed facility, and any portion of a settlement of a claim  
1567 for medical negligence arising from a certified patient safety  
1568 facility subject to the provisions of this paragraph, which  
1569 exceeds the amounts of the limited waiver of sovereign immunity  
1570 specified in paragraph (5)(c), only as provided in that  
1571 paragraph.

1572 Section 20. If any provision of this act or its  
1573 application to any person or circumstance is held invalid, the  
1574 invalidity does not affect other provisions or applications of  
1575 the act which can be given effect without the invalid provision  
1576 or application, and to this end, the provisions of this act are  
1577 severable.

1578 Section 21. If a conflict between any provision of this  
1579 act and s. 456.052, s. 456.053, s. 456.054, s. 458.331, s.  
1580 459.015, or s. 817.505, Florida Statutes, the provisions of this  
1581 act shall govern. The provisions of this act should be broadly  
1582 construed in furtherance of the overriding legislative intent to  
1583 facilitate innovative approaches for patient protection and  
1584 provider liability in eligible hospitals.

1585 Section 22. It is the intention of the Legislature that  
1586 the provisions of this act are self-executing.

1587 |           Section 23. This act shall take effect upon becoming a  
1588 | law.