

By Senator Lynn

7-136-05

1 A bill to be entitled

2 An act relating to sovereign immunity; amending

3 s. 768.28, F.S.; providing that certain

4 contractors acting on behalf of the Department

5 of Children and Family Services, and their

6 employees and agents, be considered agents of

7 the state for purposes of the waiver of

8 sovereign immunity in tort actions; providing

9 that such persons are not employees or agents

10 for purposes of workers' compensation;

11 requiring contracts to provide for

12 indemnification of the state by such agents;

13 amending ss. 163.01, 456.048, 458.320,

14 459.0085, 624.461, 624.462, 627.733, F.S., to

15 conform cross-references; providing an

16 effective date.

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

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20 Section 1. Present subsections (12) through (20) of

21 section 768.28, Florida Statutes, are renumbered as

22 subsections (13) through (21), respectively, and a new

23 subsection (12) is added to that section, to read:

24 768.28 Waiver of sovereign immunity in tort actions;

25 recovery limits; limitation on attorney fees; statute of

26 limitations; exclusions; indemnification; risk management

27 programs.--

28 (12)(a) Providers or vendors, or any of their

29 employees or agents, that have contractually agreed to act on

30 behalf of the state as agents of the Department of Children

31 and Family Services to provide services to individuals in need

1 of detoxification and services through an addictions receiving
2 facility under chapter 397 are, solely with respect to such
3 services, agents of the state for purposes of this section
4 while acting within the scope of and pursuant to guidelines
5 established in the contract or by rule. A contract must
6 provide for the indemnification of the state by the agent for
7 any liabilities incurred up to the limits set out in this
8 chapter.

9 (b) This subsection does not designate a person who
10 provides contracted services to the Department of Children and
11 Family Services as an employee or agent of the state for
12 purposes of chapter 440.

13 Section 2. Paragraph (h) of subsection (3) of section
14 163.01, Florida Statutes, is amended to read:

15 163.01 Florida Interlocal Cooperation Act of 1969.--

16 (3) As used in this section:

17 (h) "Local government liability pool" means a
18 reciprocal insurer as defined in s. 629.021 or any
19 self-insurance program created pursuant to s. 768.28(17) ~~s.~~
20 ~~768.28(16)~~, formed and controlled by counties or
21 municipalities of this state to provide liability insurance
22 coverage for counties, municipalities, or other public
23 agencies of this state, which pool may contract with other
24 parties for the purpose of providing claims administration,
25 processing, accounting, and other administrative facilities.

26 Section 3. Paragraph (a) of subsection (2) of section
27 456.048, Florida Statutes, is amended to read:

28 456.048 Financial responsibility requirements for
29 certain health care practitioners.--

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1 (2) The board or department may grant exemptions upon
2 application by practitioners meeting any of the following
3 criteria:

4 (a) Any person licensed under chapter 457, s.
5 458.3475, s. 459.023, chapter 460, chapter 461, s. 464.012,
6 chapter 466, or chapter 467 who practices exclusively as an
7 officer, employee, or agent of the Federal Government or of
8 the state or its agencies or its subdivisions. For the
9 purposes of this subsection, an agent of the state, its
10 agencies, or its subdivisions is a person who is eligible for
11 coverage under any self-insurance or insurance program
12 authorized by s. 768.28(17) ~~the provisions of s. 768.28(16)~~ or
13 who is a volunteer under s. 110.501(1).

14 Section 4. Paragraph (a) of subsection (5) of section
15 458.320, Florida Statutes, is amended to read:

16 458.320 Financial responsibility.--

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

19 (a) Any person licensed under this chapter who
20 practices medicine exclusively as an officer, employee, or
21 agent of the Federal Government or of the state or its
22 agencies or its subdivisions. For the purposes of this
23 subsection, an agent of the state, its agencies, or its
24 subdivisions is a person who is eligible for coverage under
25 any self-insurance or insurance program authorized by s.
26 768.28(17) ~~the provisions of s. 768.28(16)~~.

27 Section 5. Paragraph (a) of subsection (5) of section
28 459.0085, Florida Statutes, is amended to read:

29 459.0085 Financial responsibility.--

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

1 (a) Any person licensed under this chapter who
2 practices medicine exclusively as an officer, employee, or
3 agent of the Federal Government or of the state or its
4 agencies or its subdivisions. For the purposes of this
5 subsection, an agent of the state, its agencies, or its
6 subdivisions is a person who is eligible for coverage under
7 any self-insurance or insurance program authorized by s.
8 768.28(17) ~~the provisions of s. 768.28(16)~~.

9 Section 6. Section 624.461, Florida Statutes, is
10 amended to read:

11 624.461 Definition.--For the purposes of the Florida
12 Insurance Code, "self-insurance fund" means both commercial
13 self-insurance funds organized under s. 624.462 and group
14 self-insurance funds organized under s. 624.4621. The term
15 "self-insurance fund" does not include a governmental
16 self-insurance pool created under s. 768.28(17) ~~s. 768.28(16)~~.

17 Section 7. Subsection (6) of section 624.462, Florida
18 Statutes, is amended to read:

19 624.462 Commercial self-insurance funds.--

20 (6) A governmental self-insurance pool created
21 pursuant to s. 768.28(17) ~~s. 768.28(16)~~ shall not be
22 considered a commercial self-insurance fund.

23 Section 8. Subsection (3) of section 627.733, Florida
24 Statutes, is amended to read:

25 627.733 Required security.--

26 (3) Such security shall be provided:

27 (a) By an insurance policy delivered or issued for
28 delivery in this state by an authorized or eligible motor
29 vehicle liability insurer which provides the benefits and
30 exemptions contained in ss. 627.730-627.7405. Any policy of
31 insurance represented or sold as providing the security

1 required hereunder shall be deemed to provide insurance for
2 the payment of the required benefits; or

3 (b) By any other method authorized by s. 324.031(2),
4 (3), or (4) and approved by the Department of Highway Safety
5 and Motor Vehicles as affording security equivalent to that
6 afforded by a policy of insurance or by self-insuring as
7 authorized by s. 768.28(17) ~~s. 768.28(16)~~. The person filing
8 such security shall have all of the obligations and rights of
9 an insurer under ss. 627.730-627.7405.

10 Section 9. This act shall take effect July 1, 2005.

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13 SENATE SUMMARY

14 Provides that contractors that provide the Department of
15 Children and Family Services with detoxification services
16 and services at an addiction recovery facility, and the
17 employees and agents of such contractors, are considered
18 agents of the state for purposes of the waiver of
19 sovereign immunity, but are not considered state
20 employees for purposes of workers' compensation.
21 Contracts must provide for indemnification of the state
22 by the agent for liabilities incurred.
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