

By Senator Saunders

37-1419A-05

1 A bill to be entitled
2 An act relating to medical malpractice
3 insurance; creating the Enterprise Act for
4 Patient Protection and Provider Liability;
5 providing legislative findings; amending s.
6 381.0271, F.S.; authorizing the Florida Patient
7 Safety Corporation to intervene as a party in
8 certain actions involving patient safety;
9 amending s. 395.0197, F.S., relating to
10 internal risk management programs; conforming
11 provisions to changes made by the act; amending
12 s. 458.320, F.S.; exempting certain physicians
13 who perform surgery in certain patient safety
14 facilities from the requirement to establish
15 financial responsibility; requiring a licensed
16 physician who is covered for medical negligence
17 claims by a hospital that assumes liability
18 under the act to prominently post notice or
19 provide a written statement to patients;
20 requiring a licensed physician who meets
21 certain requirements for payment or settlement
22 of a medical malpractice claim and who is
23 covered for medical negligence claims by a
24 hospital that assumes liability under the act
25 to prominently post notice or provide a written
26 statement to patients; amending s. 459.0085,
27 F.S.; requiring a licensed osteopathic
28 physician who is covered for medical negligence
29 claims by a hospital that assumes liability
30 under the act to prominently post notice or
31 provide a written statement to patients;

1 requiring a licensee of osteopathic medicine
2 who meets certain requirements for payment or
3 settlement of a medical malpractice claim and
4 who is covered for medical negligence claims by
5 a hospital that assumes liability under the act
6 to prominently post notice or provide a written
7 statement to patients; creating s. 627.41485,
8 F.S.; authorizing insurers to offer liability
9 insurance coverage to physicians which has an
10 exclusion for certain acts of medical
11 negligence under certain conditions;
12 authorizing the Department of Health to adopt
13 rules; amending s. 766.316, F.S.; requiring
14 hospitals that assume liability for affected
15 physicians under the act to provide notice to
16 obstetrical patients regarding the limited
17 no-fault alternative to birth-related
18 neurological injuries; amending s. 766.110,
19 F.S.; requiring hospitals that assume liability
20 for acts of medical negligence under the act to
21 carry insurance; requiring the hospital's
22 policy regarding medical liability insurance to
23 satisfy certain statutory
24 financial-responsibility requirements;
25 authorizing an insurer who is authorized to
26 write casualty insurance to write such
27 coverage; authorizing certain hospitals to
28 indemnify certain medical staff for legal
29 liability of loss, damages, or expenses arising
30 from medical malpractice within hospital
31 premises; requiring a hospital to acquire a

1 policy of professional liability insurance or a
2 fund for malpractice coverage; requiring an
3 annual certified financial statement to the
4 Patient Safety Corporation and the Office of
5 Insurance Regulation within the Department of
6 Financial Services; authorizing certain
7 hospitals to charge physicians a fee for
8 malpractice coverage; creating s. 766.401,
9 F.S.; providing definitions; creating s.
10 766.402, F.S.; authorizing an eligible hospital
11 to petition the Agency for Health Care
12 Administration to enter an order certifying the
13 hospital as a patient safety facility;
14 providing requirements for certification as a
15 patient safety facility; creating s. 766.403,
16 F.S.; providing requirements for a hospital to
17 demonstrate that it is engaged in a common
18 enterprise for the care and treatment of
19 patients; specifying required patient safety
20 measures; prohibiting a report or document
21 generated under the act, from being admissible
22 or discoverable as evidence; creating s.
23 766.404, F.S.; authorizing the agency to enter
24 an order certifying a hospital as a patient
25 safety facility and providing that the hospital
26 bears liability for acts of medical negligence
27 for its health care providers or an agent of
28 the hospital; providing that certain persons or
29 entities are not liable for medically negligent
30 acts occurring in a certified patient safety
31 facility; requiring that an affected

1 practitioner prominently post notice regarding
2 exemption from personal liability; requiring an
3 affected physician who is covered by an
4 enterprise plan in a licensed facility that
5 receives sovereign immunity to prominently post
6 notice regarding exemption from personal
7 liability; providing that an agency order
8 certifying approval of an enterprise plan is
9 evidence of a hospital's compliance with
10 applicable patient safety requirements;
11 providing circumstances in which notice is not
12 required; providing that the order certifying
13 approval of an enterprise plan applies
14 prospectively to causes of action for medical
15 negligence; authorizing the agency to conduct
16 onsite examinations of a licensed facility;
17 providing circumstances under which the agency
18 may revoke its order certifying approval of an
19 enterprise plan; providing that an employee or
20 agent of a certified patient safety facility
21 may not be joined as a defendant in an action
22 for medical negligence; requiring an affected
23 physician to cooperate in good faith in an
24 investigation of a claim for medical
25 malpractice; providing a cause of action for
26 failure of a physician to act in good faith;
27 providing that strict liability or liability
28 without fault is not imposed for medical
29 incidents that occur in the affected facility;
30 providing requirements that a claimant must
31 prove to demonstrate medical negligence by an

1 employee, agent, or medical staff of a licensed
2 facility; providing that the act does not
3 create an independent cause of action or waive
4 sovereign immunity; creating s. 766.405, F.S.;
5 requiring an eligible hospital to execute an
6 enterprise agreement; requiring certain
7 conditions to be contained within an enterprise
8 agreement; creating s. 766.406, F.S.; requiring
9 a certified patient safety facility to report
10 medical incidents occurring on its premises and
11 adverse findings of medical negligence to the
12 Department of Health; authorizing an affected
13 facility to require an affected practitioner to
14 undertake additional training, education, or
15 professional counseling under certain
16 conditions; authorizing an affected facility to
17 limit, suspend, or terminate clinical
18 privileges of an affected practitioner under
19 certain circumstances; providing that a
20 licensed facility and its officers, directors,
21 employees, and agents are immune from liability
22 for certain sanctions; providing that
23 deliberations and findings of a peer review
24 committee are not discoverable or admissible as
25 evidence; authorizing the department to adopt
26 rules; creating s. 766.407, F.S.; providing
27 that an enterprise agreement may provide
28 clinical privileges to certain persons;
29 requiring certain organizations to share in the
30 cost of omnibus medical liability insurance
31 premiums subject to certain conditions;

1 authorizing a licensed facility to impose a
2 reasonable assessment against an affected
3 practitioner who commits medical negligence;
4 providing for the revocation of clinical
5 privileges for failure to pay the assessment;
6 exempting certain employees and agents from
7 such assessments; creating s. 766.408, F.S.;
8 requiring a certified patient safety facility
9 to submit an annual report to the agency and
10 the Legislature; providing requirements for the
11 annual report; providing that the annual report
12 may include certain information from the Office
13 of Insurance Regulation within the Department
14 of Financial Services; providing that the
15 annual report is subject to public-records
16 requirements, but is not admissible as evidence
17 in a legal proceeding; creating s. 766.409,
18 F.S.; providing rulemaking authority; creating
19 s. 766.410, F.S.; authorizing certain teaching
20 hospitals and eligible hospitals to petition
21 the agency for certification; providing for
22 limitations on damages for eligible hospitals
23 that are certified for compliance with certain
24 patient safety measures; authorizing the agency
25 to conduct onsite examinations of certified
26 eligible hospitals; authorizing the agency to
27 revoke its order certifying approval of an
28 enterprise plan; providing that an agency order
29 certifying approval of an enterprise plan is
30 evidence of a hospital's compliance with
31 applicable patient safety requirements;

1 providing that evidence of noncompliance is
2 inadmissible in any action for medical
3 malpractice; providing that entry of the
4 agency's order does not impose enterprise
5 liability on the licensed facility for acts or
6 omissions of medical negligence; providing that
7 a hospital may not be approved for
8 certification for both enterprise liability and
9 limitations on damages; amending s. 768.28,
10 F.S.; providing limitations on payment of a
11 claim or judgment for an action for medical
12 negligence within a certified patient safety
13 facility that is covered by sovereign immunity;
14 providing definitions; providing that a
15 certified patient safety facility is an agent
16 of a state university board of trustees to the
17 extent that the licensed facility is solely
18 liable for acts of medical negligence of
19 physicians providing health care services
20 within the licensed facility; providing for
21 severability; providing for broad statutory
22 view of the act; providing for self-execution
23 of the act; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Short title.--This act may be cited as the
28 "Enterprise Act for Patient Protection and Provider
29 Liability."

30 Section 2. Legislative findings.--
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1 (1) The Legislature finds that this state is in the
2 midst of a prolonged medical malpractice insurance crisis that
3 has serious adverse effects on patients, practitioners,
4 licensed healthcare facilities, and all residents of this
5 state.

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

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

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

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

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

28 (7) The Legislature finds statutory incentives are
29 necessary to facilitate innovative approaches for patient
30 protection in hospitals.

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1 (8) The Legislature finds that an enterprise approach
2 to patient protection and provider liability in hospitals will
3 lead to a reduction in the frequency and severity of incidents
4 of medical malpractice in hospitals.

5 (9) The Legislature finds that a reduction in the
6 frequency and severity of incidents of medical malpractice in
7 hospitals will reduce attorney's fees and other expenses
8 inherent in the medical liability system.

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

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

14 (12) The Legislature finds that statutory teaching
15 hospitals and hospitals owned by and operated by universities
16 that maintain accredited medical schools are essential for
17 high-quality medical care and medical education in this state.

18 (13) The Legislature finds that the critical mission
19 of statutory teaching hospitals and hospitals owned and
20 operated by universities that maintain accredited medical
21 schools is severely undermined by the ongoing medical
22 malpractice crisis.

23 (14) The Legislature finds that statutory teaching
24 hospitals and hospitals owned and operated by universities
25 that maintain accredited medical schools are appropriate
26 health care facilities for the implementation of innovative
27 approaches to patient protection and provider liability.

28 (15) The Legislature finds an overwhelming public
29 necessity to impose reasonable limitations on actions for
30 medical malpractice against statutory teaching hospitals and
31 hospitals that are owned and operated by universities that

1 maintain accredited medical schools, in furtherance of the
2 critical public interest in promoting access to high-quality
3 medical care, medical education, and innovative approaches to
4 patient protection.

5 (16) The Legislature finds an overwhelming public
6 necessity for statutory teaching hospitals and hospitals owned
7 and operated by universities that maintain accredited medical
8 schools to implement innovative measures for patient
9 protection and provider liability in order to generate
10 empirical data for state policymakers on the effectiveness of
11 these measures. Such data may lead to broader application of
12 these measures in a wider array of hospitals after a
13 reasonable period of evaluation and review.

14 (17) The Legislature finds an overwhelming public
15 necessity to promote the academic mission of statutory
16 teaching hospitals and hospitals owned and operated by
17 universities that maintain accredited medical schools.
18 Furthermore, the Legislature finds that the academic mission
19 of these medical facilities is materially enhanced by
20 statutory authority for the implementation of innovative
21 approaches to patient protection and provider liability. Such
22 approaches can be carefully studied and learned by medical
23 students, medical school faculty, and affiliated physicians in
24 appropriate clinical settings, thereby enlarging the body of
25 knowledge concerning patient protection and provider liability
26 which is essential for advancement of patient safety,
27 reduction of expenses inherent in the medical liability
28 system, and curtailment of the medical malpractice insurance
29 crisis in this state.

30 Section 3. Paragraph (b) of subsection (7) of section
31 381.0271, Florida Statutes, is amended to read:

1 381.0271 Florida Patient Safety Corporation.--

2 (7) POWERS AND DUTIES.--

3 (b) In carrying out its powers and duties, the
4 corporation may also:

5 1. Assess the patient safety culture at volunteering
6 hospitals and recommend methods to improve the working
7 environment related to patient safety at these hospitals.

8 2. Inventory the information technology capabilities
9 related to patient safety of health care facilities and health
10 care practitioners and recommend a plan for expediting the
11 implementation of patient safety technologies statewide.

12 3. Recommend continuing medical education regarding
13 patient safety to practicing health care practitioners.

14 4. Study and facilitate the testing of alternative
15 systems of compensating injured patients as a means of
16 reducing and preventing medical errors and promoting patient
17 safety.

18 5. Intervene as a party, as defined by s. 120.52, in
19 any administrative action related to patient safety in
20 hospitals or other licensed health care facilities.

21 ~~6.5-~~ Conduct other activities identified by the board
22 of directors to promote patient safety in this state.

23 Section 4. Subsection (3) of section 395.0197, Florida
24 Statutes, is amended to read:

25 395.0197 Internal risk management program.--

26 (3) In addition to the programs mandated by this
27 section, other innovative approaches intended to reduce the
28 frequency and severity of medical malpractice and patient
29 injury claims shall be encouraged and their implementation and
30 operation facilitated. Such additional approaches may include
31 extending internal risk management programs to health care

1 providers' offices and the assuming of provider liability by a
2 licensed health care facility for acts or omissions occurring
3 within the licensed facility pursuant to the Enterprise Act
4 for Patient Protection and Provider Liability, inclusive of
5 ss. 766.401-766.409. Each licensed facility shall annually
6 report to the agency and the Department of Health the name and
7 judgments entered against each health care practitioner for
8 which it assumes liability. The agency and Department of
9 Health, in their respective annual reports, shall include
10 statistics that report the number of licensed facilities that
11 assume such liability and the number of health care
12 practitioners, by profession, for whom they assume liability.

13 Section 5. Subsection (2) and paragraphs (f) and (g)
14 of subsection (5) of section 458.320, Florida Statutes, are
15 amended to read:

16 458.320 Financial responsibility.--

17 (2) Physicians who perform surgery in an ambulatory
18 surgical center licensed under chapter 395 and, as a
19 continuing condition of hospital staff privileges, physicians
20 who have staff privileges must also establish financial
21 responsibility by one of the following methods:

22 (a) Establishing and maintaining an escrow account
23 consisting of cash or assets eligible for deposit in
24 accordance with s. 625.52 in the per claim amounts specified
25 in paragraph (b). The required escrow amount set forth in this
26 paragraph may not be used for litigation costs or attorney's
27 fees for the defense of any medical malpractice claim.

28 (b) Obtaining and maintaining professional liability
29 coverage in an amount not less than \$250,000 per claim, with a
30 minimum annual aggregate of not less than \$750,000 from an
31 authorized insurer as defined under s. 624.09, from a surplus

1 | lines insurer as defined under s. 626.914(2), from a risk
2 | retention group as defined under s. 627.942, from the Joint
3 | Underwriting Association established under s. 627.351(4),
4 | through a plan of self-insurance as provided in s. 627.357, or
5 | through a plan of self-insurance which meets the conditions
6 | specified for satisfying financial responsibility in s.
7 | 766.110. The required coverage amount set forth in this
8 | paragraph may not be used for litigation costs or attorney's
9 | fees for the defense of any medical malpractice claim.

10 | (c) Obtaining and maintaining an unexpired irrevocable
11 | letter of credit, established pursuant to chapter 675, in an
12 | amount not less than \$250,000 per claim, with a minimum
13 | aggregate availability of credit of not less than \$750,000.
14 | The letter of credit must be payable to the physician as
15 | beneficiary upon presentment of a final judgment indicating
16 | liability and awarding damages to be paid by the physician or
17 | upon presentment of a settlement agreement signed by all
18 | parties to such agreement when such final judgment or
19 | settlement is a result of a claim arising out of the rendering
20 | of, or the failure to render, medical care and services. The
21 | letter of credit may not be used for litigation costs or
22 | attorney's fees for the defense of any medical malpractice
23 | claim. The letter of credit must be nonassignable and
24 | nontransferable. The letter of credit must be issued by any
25 | bank or savings association organized and existing under the
26 | laws of this state or any bank or savings association
27 | organized under the laws of the United States which has its
28 | principal place of business in this state or has a branch
29 | office that is authorized under the laws of this state or of
30 | the United States to receive deposits in this state. This
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1 subsection shall be inclusive of the coverage in subsection
2 (1).

3
4 A physician who only performs surgery or who has only clinical
5 privileges or admitting privileges in one or more certified
6 patient safety facilities, which health care facility or
7 facilities are legally liable for medical negligence of
8 affected practitioners, pursuant to the Enterprise Act for
9 Patient Protection and Provider Liability, inclusive of ss.
10 766.401-766.409, is exempt from the requirements of this
11 subsection.

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

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

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

19 2. The licensee has either retired from the practice
20 of medicine or maintains a part-time practice of no more than
21 1,000 patient contact hours per year.

22 3. The licensee has had no more than two claims for
23 medical malpractice resulting in an indemnity exceeding
24 \$25,000 within the previous 5-year period.

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

29 5. The licensee has not been subject within the last
30 10 years of practice to license revocation or suspension for
31 any period of time; probation for a period of 3 years or

1 | longer; or a fine of \$500 or more for a violation of this
2 | chapter or the medical practice act of another jurisdiction.
3 | The regulatory agency's acceptance of a physician's
4 | relinquishment of a license, stipulation, consent order, or
5 | other settlement, offered in response to or in anticipation of
6 | the filing of administrative charges against the physician's
7 | license, constitutes action against the physician's license
8 | for the purposes of this paragraph.

9 | 6. The licensee has submitted a form supplying
10 | necessary information as required by the department and an
11 | affidavit affirming compliance with this paragraph.

12 | 7. The licensee must submit biennially to the
13 | department certification stating compliance with the
14 | provisions of this paragraph. The licensee must, upon request,
15 | demonstrate to the department information verifying compliance
16 | with this paragraph.

17 |
18 | A licensee who meets the requirements of this paragraph must
19 | post notice in the form of a sign prominently displayed in the
20 | reception area and clearly noticeable by all patients or
21 | provide a written statement to any person to whom medical
22 | services are being provided. The sign or statement must read
23 | as follows: "Under Florida law, physicians are generally
24 | required to carry medical malpractice insurance or otherwise
25 | demonstrate financial responsibility to cover potential claims
26 | for medical malpractice. However, certain part-time physicians
27 | who meet state requirements are exempt from the financial
28 | responsibility law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND
29 | HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This
30 | notice is provided pursuant to Florida law." In addition, a
31 | licensee who is covered for claims of medical negligence

1 arising from care and treatment of patients in a hospital that
2 assumes sole and exclusive liability for all such claims
3 pursuant to the Enterprise Act for Patient Protection and
4 Provider Liability, inclusive of ss. 766.401-766.409, shall
5 post notice in the form of a sign prominently displayed in the
6 reception area and clearly noticeable by all patients or
7 provide a written statement to any person for whom the
8 physician may provide medical care and treatment in any such
9 hospital in accordance with the requirements of s. 766.404.

10 (g) Any person holding an active license under this
11 chapter who agrees to meet all of the following criteria:

12 1. Upon the entry of an adverse final judgment arising
13 from a medical malpractice arbitration award, from a claim of
14 medical malpractice either in contract or tort, or from
15 noncompliance with the terms of a settlement agreement arising
16 from a claim of medical malpractice either in contract or
17 tort, the licensee shall pay the judgment creditor the lesser
18 of the entire amount of the judgment with all accrued interest
19 or either \$100,000, if the physician is licensed pursuant to
20 this chapter but does not maintain hospital staff privileges,
21 or \$250,000, if the physician is licensed pursuant to this
22 chapter and maintains hospital staff privileges, within 60
23 days after the date such judgment became final and subject to
24 execution, unless otherwise mutually agreed to in writing by
25 the parties. Such adverse final judgment shall include any
26 cross-claim, counterclaim, or claim for indemnity or
27 contribution arising from the claim of medical malpractice.
28 Upon notification of the existence of an unsatisfied judgment
29 or payment pursuant to this subparagraph, the department shall
30 notify the licensee by certified mail that he or she shall be
31

1 subject to disciplinary action unless, within 30 days from the
2 date of mailing, he or she either:

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

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

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

9 (II) An order from a court of competent jurisdiction
10 staying execution on the final judgment pending disposition of
11 the appeal.

12 2. The Department of Health shall issue an emergency
13 order suspending the license of any licensee who, after 30
14 days following receipt of a notice from the Department of
15 Health, has failed to: satisfy a medical malpractice claim
16 against him or her; furnish the Department of Health a copy of
17 a timely filed notice of appeal; furnish the Department of
18 Health a copy of a supersedeas bond properly posted in the
19 amount required by law; or furnish the Department of Health an
20 order from a court of competent jurisdiction staying execution
21 on the final judgment pending disposition of the appeal.

22 3. Upon the next meeting of the probable cause panel
23 of the board following 30 days after the date of mailing the
24 notice of disciplinary action to the licensee, the panel shall
25 make a determination of whether probable cause exists to take
26 disciplinary action against the licensee pursuant to
27 subparagraph 1.

28 4. If the board determines that the factual
29 requirements of subparagraph 1. are met, it shall take
30 disciplinary action as it deems appropriate against the
31 licensee. Such disciplinary action shall include, at a

1 minimum, probation of the license with the restriction that
2 the licensee must make payments to the judgment creditor on a
3 schedule determined by the board to be reasonable and within
4 the financial capability of the physician. Notwithstanding any
5 other disciplinary penalty imposed, the disciplinary penalty
6 may include suspension of the license for a period not to
7 exceed 5 years. In the event that an agreement to satisfy a
8 judgment has been met, the board shall remove any restriction
9 on the license.

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

12
13 A licensee who meets the requirements of this paragraph shall
14 be required either to post notice in the form of a sign
15 prominently displayed in the reception area and clearly
16 noticeable by all patients or to provide a written statement
17 to any person to whom medical services are being provided.
18 Such sign or statement shall state: "Under Florida law,
19 physicians are generally required to carry medical malpractice
20 insurance or otherwise demonstrate financial responsibility to
21 cover potential claims for medical malpractice. YOUR DOCTOR
22 HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This
23 is permitted under Florida law subject to certain conditions.
24 Florida law imposes penalties against noninsured physicians
25 who fail to satisfy adverse judgments arising from claims of
26 medical malpractice. This notice is provided pursuant to
27 Florida law." In addition, a licensee who meets the
28 requirements of this paragraph and who is covered for claims
29 of medical negligence arising from care and treatment of
30 patients in a hospital that assumes sole and exclusive
31 liability for all such claims pursuant to the Enterprise Act

1 for Patient Protection and Provider Liability, inclusive of
2 ss. 766.401-766.409, shall post notice in the form of a sign
3 prominently displayed in the reception area and clearly
4 noticeable by all patients or provide a written statement to
5 any person for whom the physician may provide medical care and
6 treatment in any such hospital. The sign or statement must
7 adhere to the requirements of s. 766.404.

8 Section 6. Paragraphs (f) and (g) of subsection (5) of
9 section 459.0085, Florida Statutes, are amended to read:

10 459.0085 Financial responsibility.--

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

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

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

18 2. The licensee has either retired from the practice
19 of osteopathic medicine or maintains a part-time practice of
20 osteopathic medicine of no more than 1,000 patient contact
21 hours per year.

22 3. The licensee has had no more than two claims for
23 medical malpractice resulting in an indemnity exceeding
24 \$25,000 within the previous 5-year period.

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

28 5. The licensee has not been subject within the last
29 10 years of practice to license revocation or suspension for
30 any period of time, probation for a period of 3 years or
31 longer, or a fine of \$500 or more for a violation of this

1 | chapter or the medical practice act of another jurisdiction.
2 | The regulatory agency's acceptance of an osteopathic
3 | physician's relinquishment of a license, stipulation, consent
4 | order, or other settlement, offered in response to or in
5 | anticipation of the filing of administrative charges against
6 | the osteopathic physician's license, constitutes action
7 | against the physician's license for the purposes of this
8 | paragraph.

9 | 6. The licensee has submitted a form supplying
10 | necessary information as required by the department and an
11 | affidavit affirming compliance with this paragraph.

12 | 7. The licensee must submit biennially to the
13 | department a certification stating compliance with this
14 | paragraph. The licensee must, upon request, demonstrate to the
15 | department information verifying compliance with this
16 | paragraph.

17 |
18 | A licensee who meets the requirements of this paragraph must
19 | post notice in the form of a sign prominently displayed in the
20 | reception area and clearly noticeable by all patients or
21 | provide a written statement to any person to whom medical
22 | services are being provided. The sign or statement must read
23 | as follows: "Under Florida law, osteopathic physicians are
24 | generally required to carry medical malpractice insurance or
25 | otherwise demonstrate financial responsibility to cover
26 | potential claims for medical malpractice. However, certain
27 | part-time osteopathic physicians who meet state requirements
28 | are exempt from the financial responsibility law. YOUR
29 | OSTEOPATHIC PHYSICIAN MEETS THESE REQUIREMENTS AND HAS DECIDED
30 | NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This notice is
31 | provided pursuant to Florida law." In addition, a licensee who

1 is covered for claims of medical negligence arising from care
2 and treatment of patients in a hospital that assumes sole and
3 exclusive liability for all such claims pursuant to the
4 Enterprise Act for Patient Protection and Provider Liability,
5 inclusive of ss. 766.401-766.409, shall post notice in the
6 form of a sign prominently displayed in the reception area and
7 clearly noticeable by all patients or provide a written
8 statement to any person for whom the osteopathic physician may
9 provide medical care and treatment in any such hospital in
10 accordance with the requirements of s. 766.404.

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

13 1. Upon the entry of an adverse final judgment arising
14 from a medical malpractice arbitration award, from a claim of
15 medical malpractice either in contract or tort, or from
16 noncompliance with the terms of a settlement agreement arising
17 from a claim of medical malpractice either in contract or
18 tort, the licensee shall pay the judgment creditor the lesser
19 of the entire amount of the judgment with all accrued interest
20 or either \$100,000, if the osteopathic physician is licensed
21 pursuant to this chapter but does not maintain hospital staff
22 privileges, or \$250,000, if the osteopathic physician is
23 licensed pursuant to this chapter and maintains hospital staff
24 privileges, within 60 days after the date such judgment became
25 final and subject to execution, unless otherwise mutually
26 agreed to in writing by the parties. Such adverse final
27 judgment shall include any cross-claim, counterclaim, or claim
28 for indemnity or contribution arising from the claim of
29 medical malpractice. Upon notification of the existence of an
30 unsatisfied judgment or payment pursuant to this subparagraph,
31 the department shall notify the licensee by certified mail

1 that he or she shall be subject to disciplinary action unless,
2 within 30 days from the date of mailing, the licensee either:

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

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

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

9 (II) An order from a court of competent jurisdiction
10 staying execution on the final judgment, pending disposition
11 of the appeal.

12 2. The Department of Health shall issue an emergency
13 order suspending the license of any licensee who, after 30
14 days following receipt of a notice from the Department of
15 Health, has failed to: satisfy a medical malpractice claim
16 against him or her; furnish the Department of Health a copy of
17 a timely filed notice of appeal; furnish the Department of
18 Health a copy of a supersedeas bond properly posted in the
19 amount required by law; or furnish the Department of Health an
20 order from a court of competent jurisdiction staying execution
21 on the final judgment pending disposition of the appeal.

22 3. Upon the next meeting of the probable cause panel
23 of the board following 30 days after the date of mailing the
24 notice of disciplinary action to the licensee, the panel shall
25 make a determination of whether probable cause exists to take
26 disciplinary action against the licensee pursuant to
27 subparagraph 1.

28 4. If the board determines that the factual
29 requirements of subparagraph 1. are met, it shall take
30 disciplinary action as it deems appropriate against the
31 licensee. Such disciplinary action shall include, at a

1 | minimum, probation of the license with the restriction that
2 | the licensee must make payments to the judgment creditor on a
3 | schedule determined by the board to be reasonable and within
4 | the financial capability of the osteopathic physician.
5 | Notwithstanding any other disciplinary penalty imposed, the
6 | disciplinary penalty may include suspension of the license for
7 | a period not to exceed 5 years. In the event that an
8 | agreement to satisfy a judgment has been met, the board shall
9 | remove any restriction on the license.

10 | 5. The licensee has completed a form supplying
11 | necessary information as required by the department.

12 |
13 | A licensee who meets the requirements of this paragraph shall
14 | be required either to post notice in the form of a sign
15 | prominently displayed in the reception area and clearly
16 | noticeable by all patients or to provide a written statement
17 | to any person to whom medical services are being provided.
18 | Such sign or statement shall state: "Under Florida law,
19 | osteopathic physicians are generally required to carry medical
20 | malpractice insurance or otherwise demonstrate financial
21 | responsibility to cover potential claims for medical
22 | malpractice. YOUR OSTEOPATHIC PHYSICIAN HAS DECIDED NOT TO
23 | CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under
24 | Florida law subject to certain conditions. Florida law
25 | imposes strict penalties against noninsured osteopathic
26 | physicians who fail to satisfy adverse judgments arising from
27 | claims of medical malpractice. This notice is provided
28 | pursuant to Florida law." In addition, a licensee who meets
29 | the requirements of this paragraph and who is covered for
30 | claims of medical negligence arising from care and treatment
31 | of patients in a hospital that assumes sole and exclusive

1 liability for all such claims pursuant to an enterprise plan
2 for patient protection and provider liability under ss.
3 766.401-766.409, shall post notice in the form of a sign
4 prominently displayed in the reception area and clearly
5 noticeable by all patients or provide a written statement to
6 any person for whom the osteopathic physician may provide
7 medical care and treatment in any such hospital. The sign or
8 statement must adhere to the requirements of s. 766.404.

9 Section 7. Section 627.41485, Florida Statutes, is
10 created to read:

11 627.41485 Medical malpractice insurers; optional
12 coverage exclusion for insureds who are covered by an
13 enterprise plan for patient protection and provider
14 liability.--

15 (1) An insurer issuing policies of professional
16 liability coverage for claims arising out of the rendering of,
17 or the failure to render, medical care or services may make
18 available to physicians licensed under chapter 458 and to
19 osteopathic physicians licensed under chapter 459 coverage
20 having an appropriate exclusion for acts of medical negligence
21 occurring within a certified patient safety facility that
22 bears sole and exclusive liability for acts of medical
23 negligence pursuant to the Enterprise Act for Patient
24 Protection and Provider Liability, inclusive of ss.
25 766.401-766.409, subject to the usual underwriting standards.

26 (2) The Department of Health may adopt rules to
27 administer this section.

28 Section 8. Section 766.316, Florida Statutes, is
29 amended to read:

30 766.316 Notice to obstetrical patients of
31 participation in the plan.--Each hospital with a participating

1 | physician on its staff, each hospital that assumes liability
2 | for affected physicians pursuant to the Enterprise Act for
3 | Patient Protection and Provider Liability, inclusive of ss.
4 | 766.401-766.409, and each participating physician, other than
5 | residents, assistant residents, and interns deemed to be
6 | participating physicians under s. 766.314(4)(c), under the
7 | Florida Birth-Related Neurological Injury Compensation Plan
8 | shall provide notice to the obstetrical patients as to the
9 | limited no-fault alternative for birth-related neurological
10 | injuries. Such notice shall be provided on forms furnished by
11 | the association and shall include a clear and concise
12 | explanation of a patient's rights and limitations under the
13 | plan. The hospital or the participating physician may elect to
14 | have the patient sign a form acknowledging receipt of the
15 | notice form. Signature of the patient acknowledging receipt of
16 | the notice form raises a rebuttable presumption that the
17 | notice requirements of this section have been met. Notice need
18 | not be given to a patient when the patient has an emergency
19 | medical condition as defined in s. 395.002(9)(b) or when
20 | notice is not practicable.

21 | Section 9. Subsection (2) of section 766.110, Florida
22 | Statutes, is amended to read:

23 | 766.110 Liability of health care facilities.--

24 | (2)(a) Every hospital licensed under chapter 395 may
25 | carry liability insurance or adequately insure itself in an
26 | amount of not less than \$1.5 million per claim, \$5 million
27 | annual aggregate to cover all medical injuries to patients
28 | resulting from negligent acts or omissions on the part of
29 | those members of its medical staff who are covered thereby in
30 | furtherance of the requirements of ss. 458.320 and 459.0085.
31 | Self-insurance coverage extended hereunder to a member of a

1 hospital's medical staff meets the financial responsibility
2 requirements of ss. 458.320 and 459.0085 if the physician's
3 coverage limits are not less than the minimum limits
4 established in ss. 458.320 and 459.0085 and the hospital is a
5 verified trauma center that has extended self-insurance
6 coverage continuously to members of its medical staff for
7 activities both inside and outside of the hospital. Any
8 insurer authorized to write casualty insurance may make
9 available, but ~~is shall~~ not ~~be~~ required to write, such
10 coverage. The hospital may assess on an equitable and pro
11 rata basis the following professional health care providers
12 for a portion of the total hospital insurance cost for this
13 coverage: physicians licensed under chapter 458, osteopathic
14 physicians licensed under chapter 459, podiatric physicians
15 licensed under chapter 461, dentists licensed under chapter
16 466, and nurses licensed under part I of chapter 464. The
17 hospital may provide for a deductible amount to be applied
18 against any individual health care provider found liable in a
19 law suit in tort or for breach of contract. The legislative
20 intent in providing for the deductible to be applied to
21 individual health care providers found negligent or in breach
22 of contract is to instill in each individual health care
23 provider the incentive to avoid the risk of injury to the
24 fullest extent and ensure that the citizens of this state
25 receive the highest quality health care obtainable.

26 (b) Except with regard to hospitals that receive
27 sovereign immunity under s. 768.28, each hospital licensed
28 under chapter 395 which assumes sole and exclusive liability
29 for acts of medical negligence by affected providers pursuant
30 to the Enterprise Act for Patient Protection and Provider
31 Liability, inclusive in ss. 766.401-766.409, shall carry

1 liability insurance or adequately insure itself in an amount
2 of not less than \$2.5 million per claim, \$7.5 million annual
3 aggregate to cover all medical injuries to patients resulting
4 from negligent acts or omissions on the part of affected
5 members of its medical staff and others who are covered by an
6 enterprise plan for patient protection and provider liability.
7 The hospital's policy of medical liability insurance or
8 self-insurance must satisfy the financial-responsibility
9 requirements of ss. 458.320(2) and 459.0085(2) for affected
10 providers. Any insurer authorized to write casualty insurance
11 may make available, but is not required to write, such
12 coverage.

13 (c) Notwithstanding any provision in the Insurance
14 Code to the contrary, a statutory teaching hospital, as
15 defined in s. 408.07, other than a hospital that receives
16 sovereign immunity under s. 768.28, which complies with the
17 patient safety measures specified in s. 766.403 and all other
18 requirements of s. 766.410, including approval by the Agency
19 for Health Care Administration, may agree to indemnify some or
20 all members of its medical staff, including, but not limited
21 to, physicians having clinical privileges who are not
22 employees or agents of the hospital and any organization,
23 association, or group of persons liable for the negligent acts
24 of such physicians, whether incorporated or unincorporated,
25 and some or all medical, nursing, or allied health students
26 affiliated with the hospital, collectively covered persons,
27 other than persons exempt from liability due to sovereign
28 immunity under s. 768.28, for legal liability of such covered
29 persons for loss, damages, or expense arising out of medical
30 malpractice or professional error or mistake within the
31 hospital premises, as defined in s. 766.401, thereby providing

1 limited malpractice coverage for such covered persons. Any
2 hospital that agrees to provide malpractice coverage for
3 covered persons pursuant to this section shall acquire an
4 appropriate policy of professional liability insurance or
5 establish and maintain a fund from which such malpractice
6 coverage is provided, in accordance with usual underwriting
7 standards. Such insurance or self-insurance may be separate
8 and apart from any insurance or self-insurance maintained by
9 or on behalf of the hospital or combined in a single policy of
10 insurance or a single self-insurance fund maintained by or on
11 behalf of the hospital. Any hospital that provides malpractice
12 coverage to covered persons through a self-insurance fund, or
13 a self-insurance fund providing any such malpractice coverage,
14 shall annually provide a certified financial statement
15 containing actuarial projections as to the soundness of
16 reserves to the Patient Safety Corporation and the Office of
17 Insurance Regulation within the Department of Financial
18 Services. The indemnity agreements or malpractice coverage
19 provided by this section shall be in amounts that, at a
20 minimum, meet the financial responsibility requirements of ss.
21 458.320 and 459.0085 for affected physicians. Any such
22 indemnity agreement or malpractice coverage in such amounts
23 satisfies the financial responsibility requirements of ss.
24 458.320 and 459.0085 for affected physicians. Any statutory
25 teaching hospital that agrees to indemnify physicians or other
26 covered persons for medical negligence on the premises
27 pursuant to this section may charge such physicians or other
28 covered persons a reasonable fee for malpractice coverage,
29 notwithstanding any provision in the Insurance Code to the
30 contrary. Such fee shall be based on appropriate actuarial
31

1 criteria. This paragraph does not constitute a waiver of
2 sovereign immunity under s. 768.28.

3 Section 10. Section 766.401, Florida Statutes, is
4 created to read:

5 766.401 Definitions.--As used in ss. 766.401-766.410,
6 the term:

7 (1) "Affected facility" means a certified patient
8 safety facility.

9 (2) "Affected patient" means a patient of a certified
10 patient safety facility.

11 (3) "Affected practitioner" and "affected physician"
12 means a medical staff member who is covered by an enterprise
13 plan for patient protection and provider liability in a
14 certified patient safety facility.

15 (4) "Agency" means the Agency for Health Care
16 Administration.

17 (5) "Certified patient safety facility" means any
18 eligible hospital that is solely and exclusively liable for
19 acts or omissions of medical negligence within the licensed
20 facility in accordance with an agency order approving an
21 enterprise plan for patient protection and provider liability.

22 (6) "Clinical privileges" means the privileges granted
23 to a physician or other licensed health care practitioner to
24 render patient care services in a hospital.

25 (7) "Eligible hospital" or "licensed facility" means:

26 (a) A statutory teaching hospital as defined by s.
27 408.07; or

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

31

1 (8) "Enterprise agreement" means a document executed
2 by the governing board of an eligible hospital and the
3 governing board of the medical staff of the eligible hospital,
4 however defined, manifesting concurrence and setting forth
5 certain rights, duties, privileges, obligations, and
6 responsibilities of the health care facility and its medical
7 staff in furtherance of an enterprise plan for patient
8 protection and provider liability in a certified patient
9 safety facility.

10 (9) "Health care provider" or "provider" means:

11 (a) An eligible hospital.

12 (b) A physician or physician assistant licensed under
13 chapter 458.

14 (c) An osteopathic physician or osteopathic physician
15 assistant licensed under chapter 459.

16 (d) A registered nurse, nurse midwife, licensed
17 practical nurse, or advanced registered nurse practitioner
18 licensed or registered under part I of chapter 464 or any
19 facility that employs nurses licensed or registered under part
20 I of chapter 464 to supply all or part of the care delivered
21 by that facility.

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

24 (f) Any other medical facility the primary purpose of
25 which is to deliver human medical diagnostic services or which
26 delivers nonsurgical human medical treatment, including an
27 office maintained by a provider.

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

31

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

5
6 The term includes any person, organization, or entity that is
7 vicariously liable under the theory of respondent superior or
8 any other theory of legal liability for medical negligence
9 committed by any licensed professional listed in this
10 subsection. The term also includes any nonprofit corporation
11 qualified as exempt from federal income taxation under s.
12 501(a) of the Internal Revenue Code, and described in s.
13 501(c) of the Internal Revenue Code, including any university
14 or medical school that employs licensed professionals listed
15 in this subsection or that delivers health care services
16 provided by licensed professionals listed in this subsection,
17 any federally funded community health center, and any
18 volunteer corporation or volunteer health care provider that
19 delivers health care services.

20 (10) "Health care practitioner" or "practitioner"
21 means any person, entity, or organization identified in
22 subsection (9), except for a hospital.

23 (11) "Medical incident" or "adverse incident" has the
24 same meaning as provided in ss. 381.0271, 395.0197, 458.351,
25 and 459.026.

26 (12) "Medical negligence" means medical malpractice,
27 whether grounded in tort or in contract. The term does not
28 include intentional acts.

29 (13) "Medical staff" means a physician licensed under
30 chapter 458 or chapter 459 having privileges in a licensed
31 facility, as well as any other licensed health care

1 practitioner having clinical privileges as approved by a
2 licensed facility's governing board. The term includes any
3 affected physician, regardless of his or her status as an
4 employee, agent, or independent contractor with regard to the
5 licensed facility.

6 (14) "Person" means any individual, partnership,
7 corporation, association, or governmental unit.

8 (15) "Premises" means those buildings, beds, and
9 equipment located at the address of the licensed facility and
10 all other buildings, beds, and equipment for the provision of
11 hospital, ambulatory surgical, mobile surgical care, primary
12 care, or comprehensive health care under the dominion and
13 control of the licensee, or located in such reasonable
14 proximity to the address of the licensed facility as to appear
15 to the public to be under the dominion and control of the
16 licensee, including offices and locations where the licensed
17 facility provides medical care and treatment to affected
18 patients.

19 (16) "Statutory teaching hospital" or "teaching
20 hospital" has the same meaning as provided in s. 408.07.

21 (17) "Within the licensed facility" or "within the
22 premises" means anywhere on the premises of the licensed
23 facility or the premises of any office, clinic, or ancillary
24 facility that is owned, operated, leased, or controlled by the
25 licensed facility.

26 Section 11. Section 766.402, Florida Statutes, is
27 created to read:

28 766.402 Agency approval of enterprise plans for
29 patient protection and provider liability.--

30 (1) An eligible hospital in conjunction with its
31 medical staff, or vice versa, may petition the Agency for

1 Health Care Administration to enter an order certifying
2 approval of the hospital as a certified patient safety
3 facility.

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

9 (a) The petitioners are engaged in a common enterprise
10 for the care and treatment of hospital patients;

11 (b) The petitioners satisfy requirements for patient
12 protection measures, as specified in s. 766.403;

13 (c) The petitioners acknowledge and agree to
14 hospital-centered enterprise liability for medical negligence
15 within the premises, as specified in s. 766.404;

16 (d) The petitioners have executed an enterprise
17 agreement, as specified in s. 766.405;

18 (e) The petitioners satisfy requirements for
19 professional accountability of affected practitioners, as
20 specified in s. 766.406;

21 (f) The petitioners satisfy requirements for financial
22 accountability of affected practitioners, as specified in s.
23 766.407;

24 (g) The petitioners satisfy all other requirements of
25 ss. 766.401-766.410; and

26 (h) The public interest in assuring access to quality
27 health care services and the promotion of patient safety in
28 licensed health care facilities is served by entry of the
29 order.

30 (3) The Florida Patient Safety Corporation may
31 intervene and participate as a party, as defined in s. 120.52,

1 or otherwise present relevant testimony in any administrative
2 hearing conducted pursuant to this section.

3 Section 12. Section 766.403, Florida Statutes, is
4 created to read:

5 766.403 Enterprise-wide patient safety measures.--

6 (1) In order to satisfy the requirements of s.
7 766.402(2)(a) or s. 766.410, the licensed facility shall:

8 (a) Have in place a process, either through the
9 facility's patient safety committee or a similar body, for
10 coordinating the quality control, risk management, and patient
11 relations functions of the facility and for reporting to the
12 facility's governing board at least quarterly regarding such
13 efforts.

14 (b) Establish within the facility a system for
15 reporting near misses and agree to submit any information
16 collected to the Florida Patient Safety Corporation. Such
17 information must be submitted by the facility and made
18 available by the Patient Safety Corporation in accordance with
19 s. 381.0271(7).

20 (c) Design and make available to facility staff,
21 including medical staff, a patient safety curriculum that
22 provides lecture and web-based training on recognized patient
23 safety principles, which may include communication-skills
24 training, team-performance assessment and training,
25 risk-prevention strategies, and best practices and
26 evidence-based medicine. The licensed facility shall report
27 annually to the agency the programs presented.

28 (d) Implement a program to identify health care
29 providers on the facility's staff who may be eligible for an
30 early-intervention program providing additional skills
31 assessment and training and offer such training to the staff

1 on a voluntary and confidential basis with established
2 mechanisms to assess program performance and results.

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

6 (f) Designate a patient advocate that reports to the
7 facility's risk manager who coordinates with members of the
8 medical staff and the facility's chief medical officer
9 regarding disclosure of medical incidents to patients. In
10 addition, the patient advocate shall establish an advisory
11 panel, consisting of providers, patients or their families,
12 and other health care consumer or consumer groups to review
13 general patient safety concerns and other issues related to
14 relations among and between patients and providers and to
15 identify areas where additional education and program
16 development may be appropriate.

17 (g) Establish a procedure for a semiannual review of
18 the facility's patient safety program and its compliance with
19 requirements of this section. Such review shall be conducted
20 by an independent patient safety organization as defined in s.
21 766.1016(1) or other professional organization approved by the
22 agency. The organization performing the review shall prepare a
23 written report with detailed findings and recommendations. The
24 report shall be forwarded to the facility's risk manager or
25 patient safety officer, who may make written comments in
26 response thereto. The report and any written comments shall be
27 presented to the governing board of the licensed facility. A
28 copy of the report and any of the facilities' responses to the
29 findings and recommendations shall be provided to the agency
30 within 60 days after the date that the governing board
31 reviewed the report. The report is confidential and exempt

1 from production or discovery in any civil action. Likewise,
2 the report, and the information contained therein, is not
3 admissible as evidence for any purpose in any action for
4 medical malpractice.

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

9 (i) Provide assistance to affected physicians, upon
10 request, in their establishment, implementation, and
11 evaluation of individual risk-management, patient-safety, and
12 incident-reporting systems in clinical settings outside the
13 premises of the licensed facility.

14 (2) This section does not constitute an applicable
15 standard of care in any action for medical negligence or
16 otherwise create a private right of action, and evidence of
17 noncompliance with this section is not admissible for any
18 purpose in any action for medical negligence against an
19 affected facility or any other health care provider.

20 (3) This section does not prohibit the licensed
21 facility from implementing other measures for promoting
22 patient safety within the premises. This section does not
23 relieve the licensed facility from the duty to implement any
24 other patient safety measure that is required by state law.
25 The Legislature intends that the patient safety measures
26 specified in this section are in addition to all other patient
27 safety measures required by state law, federal law, and
28 applicable accreditation standards for licensed facilities.

29 (4) A review, report, or other document created,
30 produced, delivered, or discussed pursuant to this section is
31

1 not discoverable or admissible as evidence in any legal
2 action.

3 Section 13. Section 766.404, Florida Statutes, is
4 created to read:

5 766.404 Enterprise liability in certain health care
6 facilities.--

7 (1) Subject to the requirements of ss.
8 766.401-766.410, the Agency for Health Care Administration may
9 enter an order certifying the petitioner-hospital as a
10 certified patient safety facility and providing that the
11 hospital bears sole and exclusive liability for any and all
12 acts of medical negligence within the licensed facility when
13 such acts of medical negligence within the premises cause
14 damage to affected patients, including, but not limited to,
15 acts of medical negligence by physicians or other licensed
16 health care providers who exercise clinical privileges in a
17 licensed hospital, whether or not the active tortfeasor is an
18 employee or agent of the health care facility when the
19 incident of medical negligence occurred.

20 (2) In any action for personal injury or wrongful
21 death, whether in contract or tort, arising out of medical
22 negligence resulting in damages to a patient of a certified
23 patient safety facility, the licensed facility bears sole and
24 exclusive liability for medical negligence, whether or not the
25 practitioner was an employee or agent of the facility when the
26 incident of medical negligence occurred. Any other provider,
27 person, organization, or entity that commits medical
28 negligence within the premises, and any other provider,
29 person, organization, or entity that is vicariously liable for
30 medical negligence within the premises of an affected
31 practitioner under the theory of respondent superior or

1 otherwise, may not be named as a defendant in any such action
2 and any such provider, person, organization, or entity is not
3 liable for the medical negligence of a covered practitioner.
4 This subsection does not impose liability or confer immunity
5 on any other provider, person, organization, or entity for
6 acts of medical malpractice committed on any person before
7 admission as a patient of a certified patient safety facility,
8 or on any person after being discharged from the affected
9 facility, or on affected patients in clinical settings other
10 than the premises of the affected facility.

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

13 (a) An affected practitioner shall post notice in the
14 form of a sign prominently displayed in the reception area and
15 clearly noticeable by all patients or provide a written
16 statement to any person to whom medical services are being
17 provided. The sign or statement must read as follows: "In
18 general, physicians in the State of Florida are personally
19 liable for acts of medical negligence, subject to certain
20 limitations. However, physicians who perform medical services
21 within a certified patient safety facility are exempt from
22 personal liability because the licensed hospital bears sole
23 and exclusive liability for acts of medical negligence within
24 the health care facility pursuant to an administrative order
25 of the Agency for Health Care Administration entered in
26 accordance with the Enterprise Act for Patient Protection and
27 Provider Liability. YOUR DOCTOR HOLDS CLINICAL STAFF
28 PRIVILEGES IN A CERTIFIED PATIENT SAFETY FACILITY. UNDER
29 FLORIDA LAW, ANY CLAIM FOR MEDICAL NEGLIGENCE WITHIN THE
30 HEALTH CARE FACILITY MUST BE INITIATED AGAINST THE HOSPITAL
31 AND NOT AGAINST YOUR DOCTOR, BECAUSE THE HOSPITAL IS SOLELY

1 RESPONSIBLE FOR ALL ACTS OF PROFESSIONAL NEGLIGENCE WITHIN THE
2 PREMISES. THIS PROVISION DOES NOT AFFECT YOUR PHYSICIAN'S
3 LIABILITY FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER CLINICAL
4 SETTINGS. IF YOU DO NOT UNDERSTAND, PLEASE DISCUSS WITH YOUR
5 DOCTOR BEFORE YOUR CONSULTATION. This notice is provided
6 pursuant to Florida law."

7 (b) If an affected practitioner is covered by an
8 enterprise plan for patient protection and provider liability
9 in one or more licensed facilities that receive sovereign
10 immunity, and one or more other licensed facilities, the
11 affected practitioner shall post notice in the form of a sign
12 prominently displayed in the reception area and clearly
13 noticeable by all patients or provide a written statement to
14 any person to whom medical services are being provided. The
15 sign or statement must read as follows: "In general,
16 physicians in the state of Florida are personally liable for
17 acts of medical negligence, subject to certain limitations
18 such as sovereign immunity. However, physicians who perform
19 medical services within a certified patient safety facility
20 are exempt from personal liability because the licensed
21 hospital bears sole and exclusive liability for acts of
22 medical negligence within the affected facility pursuant to an
23 administrative order of the Agency for Health Care
24 Administration entered in accordance with the Enterprise Act
25 for Patient Protection and Provider Liability. YOUR DOCTOR
26 HOLDS CLINICAL STAFF PRIVILEGES IN ONE OR MORE CERTIFIED
27 PATIENT SAFETY FACILITIES. AT LEAST ONE OF THESE HOSPITALS IS
28 SUBJECT TO SOVEREIGN IMMUNITY. UNDER FLORIDA LAW, ANY CLAIM
29 FOR MEDICAL NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE
30 INITIATED AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR,
31 BECAUSE THE HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF

1 PROFESSIONAL NEGLIGENCE WITHIN THE PREMISES. MOREOVER,
2 RECOVERY AGAINST THE HOSPITAL MAY BE LIMITED, DUE TO FLORIDA'S
3 SOVEREIGN IMMUNITY LAW. THESE PROVISIONS DO NOT AFFECT YOUR
4 PHYSICIAN'S LIABILITY FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER
5 CLINICAL SETTINGS. IF YOU DO NOT UNDERSTAND, PLEASE DISCUSS
6 WITH YOUR DOCTOR BEFORE YOUR CONSULTATION. This notice is
7 provided pursuant to Florida law."

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

9 1. The patient has an emergency medical condition as
10 defined in s. 395.002;

11 2. The practitioner is an employee or agent of a
12 governmental entity and is immune from liability and suit
13 under s. 768.28; or

14 3. Notice is not practicable.

15 (d) This subsection is directory in nature. An agency
16 order certifying approval of an enterprise plan for patient
17 protection and provider liability shall, as a matter of law,
18 constitute conclusive evidence that the hospital complies with
19 all applicable patient safety requirements of s. 766.403 and
20 all other requirements of ss. 766.401-766.410. Evidence of
21 noncompliance with s. 766.403 or any other provision of ss.
22 766.401-766.410 may not be admissible for any purpose in any
23 action for medical malpractice. Failure to comply with the
24 requirements of this subsection does not affect the
25 liabilities or immunities conferred by ss. 766.401-766.410.
26 This subsection does not give rise to an independent cause of
27 action for damages.

28 (4) The agency order certifying approval of an
29 enterprise plan for patient protection and provider liability
30 applies prospectively to causes of action for medical
31

1 negligence that arise on or after the effective date of the
2 order.

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

7 (6) The agency order certifying approval of an
8 enterprise plan for patient protection remains in effect until
9 revoked. The agency shall revoke the order upon the unilateral
10 request of the licensed facility or the affected medical
11 staff. The agency may revoke the order upon reasonable notice
12 to the affected facility that it fails to comply with material
13 requirements of ss. 766.401-766.410 or material conditions of
14 the order certifying approval of the enterprise plan and
15 further upon a determination that the licensed facility has
16 failed to cure stated deficiencies upon reasonable notice. An
17 administrative order revoking approval of an enterprise plan
18 for patient protection and provider liability terminates the
19 plan on January 1 of the year following entry of the order or
20 6 months after entry of the order, whichever is longer.
21 Revocation of an agency order certifying approval of an
22 enterprise plan for patient protection and provider liability
23 applies prospectively to causes of action for medical
24 negligence which arise on or after the effective date of the
25 order of revocation.

26 (7) This section do not exempt a licensed facility
27 from liability for acts of medical negligence committed by
28 employees and agents thereof; although employees and agents of
29 a certified patient safety facility may not be joined as
30 defendants in any action for medical negligence because the
31 licensed facility bears sole and exclusive liability for acts

1 of medical negligence within the premises of the licensed
2 facility, including acts of medical negligence by such
3 employees and agents.

4 (8) Affected physicians shall cooperate in good faith
5 with an affected facility in the investigation and defense of
6 any claim for medical malpractice. Failure to cooperate in
7 good faith is grounds for disciplinary action against an
8 affected physician by the affected facility and the Department
9 of Health. An affected facility shall have a cause of action
10 for damages against an affected physician for bad faith
11 refusal to cooperate in the investigation and defense of any
12 claim of medical malpractice against the licensed facility.

13 (9) Sections 766.401-766.410 does not impose strict
14 liability or liability without fault for medical incidents
15 that occur within an affected facility. To maintain a cause of
16 action against an affected facility pursuant to ss.
17 766.401-766.410, the claimant must allege and prove that an
18 employee or agent of the licensed facility, or an affected
19 member of the medical staff who is covered by an approved
20 enterprise plan for patient protection and provider liability,
21 committed an act or omission within the licensed facility
22 which constitutes medical negligence under state law, even
23 though an active tortfeasor is not named or joined as a party
24 defendant in the lawsuit.

25 (10) Sections 766.401-766.410 do not create an
26 independent cause of action against any health care provider,
27 do not impose enterprise liability on any health care
28 provider, except as expressly provided, and may not be
29 construed to support any cause of action other than an action
30 for medical malpractice as expressly provided against any
31 person, organization, or entity.

1 (11) Sections 766.401-766.410 do not waive sovereign
2 immunity, except as expressly provided in s. 768.28.

3 Section 14. Section 766.405, Florida Statutes, is
4 created to read:

5 766.405 Enterprise agreements.--

6 (1) It is the intent of the Legislature that
7 enterprise plans for patient protection are elective and not
8 mandatory for eligible hospitals. It is further the intent of
9 the Legislature that the medical staff of an eligible hospital
10 must concur with the development and implementation of an
11 enterprise plan for patient protection and provider liability.
12 It is further the intent of the Legislature that the licensed
13 facility and medical staff be accorded wide latitude in
14 formulating enterprise agreements, consistent with the
15 underlying purpose of ss. 766.401-766.410 to encourage
16 innovative, systemic measures for patient protection and
17 quality assurance in licensed facilities, especially in
18 clinical settings where surgery is performed. This section
19 does not require an eligible hospital to commence negotiations
20 or enter into an enterprise agreement with its medical staff.
21 However, execution of an enterprise agreement is a necessary
22 condition for agency approval of an enterprise plan for
23 patient protection and provider liability.

24 (2) An eligible hospital and its medical staff shall
25 execute an enterprise agreement as a necessary condition to
26 agency approval of a certified patient safety facility. An
27 affirmative vote of approval by the regularly constituted
28 board of directors of the medical staff, however named or
29 constituted, is sufficient to manifest approval by the medical
30 staff of the enterprise agreement. Once approved, affected
31 members of the medical staff are subject to the enterprise

1 agreement. The agreement may be conditioned on agency approval
2 of an enterprise plan for patient protection and provider
3 liability for the affected facility. At a minimum, the
4 enterprise agreement must contain provisions covering:

5 (a) Compliance with a patient protection plan;

6 (b) Internal review of medical incidents;

7 (c) Timely reporting of medical incidents to state
8 agencies;

9 (d) Professional accountability of affected
10 practitioners; and

11 (e) Financial accountability of affected
12 practitioners.

13 (3) This section does not prohibit a patient safety
14 facility from including other provisions of interest to the
15 affected parties in the enterprise agreement, in a separate
16 agreement, as a condition of staff privileges, or by way of
17 contract with an organization providing medical staff for the
18 licensed facility.

19 (4) This section does not limit the power of any
20 licensed facility to enter into other agreements with its
21 medical staff, or members thereof, or otherwise to impose
22 restrictions, requirements, or conditions on clinical
23 privileges, as authorized by law.

24 Section 15. Section 766.406, Florida Statutes, is
25 created to read:

26 766.406 Professional accountability of affected
27 practitioners.--

28 (1) A certified patient safety facility shall report
29 medical incidents occurring in the affected facility to the
30 Department of Health, in accordance with ss. 458.351 and
31 459.026.

1 (2) A certified patient safety facility shall report
2 adverse findings of medical negligence or failure to adhere to
3 applicable standards of professional responsibility by
4 affected practitioners to the Department of Health.

5 (3) Upon a determination by a peer review committee
6 that a practitioner committed an act or omission or a pattern
7 of acts or omissions which adversely affected the safety of
8 any patient in the licensed facility, or which unduly exposed
9 any patient to a risk of injury, the affected facility may
10 require that the affected practitioner undertake additional
11 training, education, or professional counseling as a condition
12 of maintaining clinical privileges, in addition to any other
13 sanction or penalty authorized by law.

14 (4) Upon a determination by a peer review committee
15 that a practitioner committed an act or omission or a pattern
16 of acts or omissions which caused injury or damages to any
17 patient or patients in an affected facility, the facility may
18 limit, suspend, or terminate clinical privileges of the
19 practitioner, in addition to any other sanction or penalty
20 authorized by law. This section does not prohibit an affected
21 facility from taking emergency action to temporarily limit or
22 suspend clinical privileges of an affected practitioner
23 pending a hearing and recommendation by the peer review
24 committee and final action by the governing board of the
25 licensed facility.

26 (5) The licensed facility and its officers, directors,
27 employees, and agents are immune from liability for any
28 sanctions imposed against individual practitioners pursuant to
29 this section.

30 (6) Members of a peer review committee are immune from
31 liability for any acts performed pursuant to this section.

1 (7) Deliberations and findings of a peer review
2 committee are not discoverable or admissible in any legal
3 action.

4 (8) The Department of Health may adopt rules to
5 implement this section.

6 Section 16. Section 766.407, Florida Statutes, is
7 created to read:

8 766.407 Financial accountability of affected
9 practitioners.--

10 (1) An enterprise agreement may provide that any
11 affected member of the medical staff or any affected
12 practitioner having clinical privileges, other than an
13 employee of the licensed facility, and any organization that
14 contracts with the licensed facility to provide practitioners
15 to treat patients within the licensed facility, shall share
16 equitably in the cost of omnibus medical liability insurance
17 premiums covering the facility-based medical enterprise,
18 similar self-insurance expense, or other expenses reasonably
19 related to risk management and adjustment of claims of medical
20 negligence, subject to the following conditions:

21 (a) This subsection does not permit a licensed
22 facility and any affected practitioner to agree on charges for
23 an equitable share of medical liability expense based on the
24 number of patients admitted to the hospital by individual
25 practitioners, patient revenue for the licensed facility
26 generated by individual practitioners, or overall profit or
27 loss sustained by the certified patient safety facility or
28 certified patient safety department of a licensed facility in
29 a given fiscal period.

30 (b) Any agreement described in paragraph (a) must be
31 reviewed and approved by the agency.

1 (2) Pursuant to an enterprise plan for patient
2 protection and provider liability, a licensed facility may
3 impose a reasonable assessment against an affected
4 practitioner that commits medical negligence resulting in
5 injury and damages to an affected patient of the health care
6 facility, upon a determination of professional responsibility
7 by an internal peer review committee. A schedule of
8 assessments, criteria for the levying of assessments,
9 procedures for levying assessments, and due process rights of
10 an affected practitioner must be agreed to by the medical
11 staff. The legislative intent in providing for assessments
12 against an affected physician is to instill in each individual
13 health care practitioner the incentive to avoid the risk of
14 injury to the fullest extent and ensure that the residents of
15 this state receive the highest quality health care obtainable.
16 Failure to pay an assessment constitutes grounds for
17 suspension of clinical privileges by the licensed facility.
18 Assessment may be enforced as bona fide debts in a court of
19 law. The licensed facility may exempt its employees, agents,
20 and other persons for whom it bears vicarious responsibility
21 for acts of medical negligence from all such assessments.
22 Employees and agents of the state, its agencies, and
23 subdivisions, as defined by s. 768.28, are exempt from all
24 such assessments.

25 Section 17. Section 766.408, Florida Statutes, is
26 created to read:

27 766.408 Data collection and reports.--

28 (1) Each certified patient safety facility shall
29 submit an annual report to the agency containing information
30 and data reasonably required by the agency to evaluate
31 performance and effectiveness of the facility's enterprise

1 plan for patient protection and provider liability. However,
2 information may not be submitted or disclosed in violation of
3 any patient's right to privacy under state or federal law.

4 (2) The agency shall aggregate information and data
5 submitted by all affected facilities and each year, on or
6 before March 1, the agency shall submit a report to the
7 Legislature which evaluates the performance and effectiveness
8 of the enterprise approach to patient safety and provider
9 liability in certified health care facilities, which reports
10 must include, but are not limited to, pertinent data on:

11 (a) The number and names of affected facilities;

12 (b) The number and types of patient protection
13 measures currently in effect in these facilities;

14 (c) The number of affected practitioners;

15 (d) The number of affected patients;

16 (e) The number of surgical procedures by affected
17 practitioners on affected patients;

18 (f) The number of medical incidents, claims of medical
19 malpractice, and claims resulting in indemnity;

20 (g) The average time for resolution of contested and
21 uncontested claims of medical malpractice;

22 (h) The percentage of claims that result in civil
23 trials;

24 (i) The percentage of civil trials resulting in
25 adverse judgments against affected facilities;

26 (j) The number and average size of an indemnity paid
27 to claimants;

28 (k) The number and average size of assessments imposed
29 on affected practitioners;

30 (l) The estimated liability expense, inclusive of
31 medical liability insurance premiums; and

1 (m) The percentage of medical liability expense,
2 inclusive of medical liability insurance premiums, which is
3 borne by affected practitioners in affected health care
4 facilities.

5
6 Such reports to the Legislature may also include other
7 information and data that the agency deems appropriate to
8 gauge the cost and benefit of enterprise plans for patient
9 protection and provider liability.

10 (3) The agency's annual report to the Legislature may
11 include relevant information and data obtained from the Office
12 of Insurance Regulation within the Department of Financial
13 Services on the availability and affordability of
14 enterprise-wide medical liability insurance coverage for
15 affected facilities and the availability and affordability of
16 insurance policies for individual practitioners which contain
17 coverage exclusions for acts of medical negligence in
18 certified patient safety facilities and certified patient
19 safety departments of licensed facilities. The Office of
20 Insurance Regulation within the Department of Financial
21 Services shall cooperate with the agency in the reporting of
22 information and data specified in this subsection.

23 (4) Reports submitted to the agency by affected
24 facilities pursuant to this section are public records under
25 chapter 112. However, these reports, and the information
26 contained therein, are not admissible as evidence in a court
27 of law in any action.

28 Section 18. Section 766.409, Florida Statutes, is
29 created to read:

30 766.409 Rulemaking authority.--The agency may adopt
31 rules to administer ss. 766.401-766.410.

1 Section 19. Section 766.410, Florida Statutes, is
2 created to read:

3 766.410 Damages in malpractice actions against certain
4 hospitals that meet patient safety requirements; agency
5 approval of patient safety measures.--

6 (1) In recognition of their essential role in training
7 future health care providers and in providing innovative
8 medical care for this state's residents, in recognition of
9 their commitment to treating indigent patients, and further in
10 recognition that all teaching hospitals, as defined in s.
11 408.07, both public and private, and hospitals licensed under
12 chapter 395 which are owned and operated by a university that
13 maintains an accredited medical school, collectively defined
14 as eligible hospitals in s. 766.401(7), provide benefits to
15 the residents of this state through their roles in improving
16 the quality of medical care, training health care providers,
17 and caring for indigent patients, the limits of liability for
18 medical malpractice arising out of the rendering of, or the
19 failure to render, medical care by all such hospitals, shall
20 be determined in accordance with the requirements of this
21 section, notwithstanding any other provision of state law.

22 (2) Except as otherwise provided in subsections (9)
23 and (10), any eligible hospital may petition the Agency for
24 Health Care Administration to enter an order certifying that
25 the licensed facility complies with patient safety measures
26 specified in s. 766.403.

27 (3) In accordance with chapter 120, the agency shall
28 enter an order approving the petition upon a showing that the
29 eligible hospital complies with the patient safety measures
30 specified in s. 766.403. Upon entry of the agency order, and
31 for the entire period of time that the order remains in

1 effect, the limits of liability for medical malpractice
2 arising out of the rendering of, or the failure to render,
3 medical care by the hospital covered by the order and its
4 employees and agents shall be up to \$500,000 in the aggregate
5 for claims or judgments for noneconomic damages arising out of
6 the same incident or occurrence. Claims or judgments for
7 noneconomic damages and awards of past economic damages shall
8 be offset by collateral sources and paid in full at the time
9 of final settlement. Awards of future economic damages, after
10 being offset by collateral sources at the option of the
11 teaching hospital, shall be reduced by the court to present
12 value and paid in full or paid by means of periodic payments
13 in the form of annuities or reversionary trusts, such payments
14 to be paid for the life of the claimant or for so long as the
15 condition for which the award was made persists, whichever is
16 shorter, without regard to the number of years awarded by the
17 trier of fact, at which time the obligation to make such
18 payments terminates. A company that underwrites an annuity to
19 pay future economic damages shall have a Best Company rating
20 of not less than A. The terms of a reversionary instrument
21 used to periodically pay future economic damages must be
22 approved by the court, such approval may not be unreasonably
23 withheld.

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

27 (5) Upon entry of an order approving the petition, the
28 agency may conduct onsite examinations of the licensed
29 facility to assure continued compliance with terms and
30 conditions of the order.

31

1 (6) The agency order certifying approval of an
2 enterprise plan for patient protection under this section
3 remains in effect until revoked. The agency may revoke the
4 order upon reasonable notice to the affected hospital that it
5 fails to comply with material requirements of ss.
6 766.401-766.410 or material conditions of the order certifying
7 compliance with required patient safety measures and that the
8 hospital has failed to cure stated deficiencies upon
9 reasonable notice. Revocation of an agency order certifying
10 approval of an enterprise plan for patient protection and
11 provider liability applies prospectively to causes of action
12 for medical negligence that arise on or after the effective
13 date of the order of revocation.

14 (7) An agency order certifying approval of an
15 enterprise plan for patient protection under this section
16 shall, as a matter of law, constitute conclusive evidence that
17 the hospital complies with all applicable patient safety
18 requirements of s. 766.403. A hospital's noncompliance with
19 the requirements of s. 766.403 may not affect the limitations
20 on damages conferred by this section. Evidence of
21 noncompliance with s. 766.403 may not be admissible for any
22 purpose in any action for medical malpractice. This section,
23 or any portion thereof, may not give rise to an independent
24 cause of action for damages against any hospital.

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

29 (9) An eligible hospital may petition the agency for
30 an order pursuant to this section or an order pursuant to s.
31 766.404. However, a hospital may not be approved for both

1 enterprise liability under s. 766.404 and the limitations on
2 damages under this section.

3 (10) This section may not apply to hospitals that are
4 subject to sovereign immunity under s. 768.28.

5 Section 20. Subsections (5) and (12) of section
6 768.28, Florida Statutes, are amended to read:

7 768.28 Waiver of sovereign immunity in tort actions;
8 recovery limits; limitation on attorney fees; statute of
9 limitations; exclusions; indemnification; risk management
10 programs.--

11 (5)(a) The state and its agencies and subdivisions
12 shall be liable for tort claims in the same manner and to the
13 same extent as a private individual under like circumstances,
14 but liability does ~~shall~~ not include punitive damages or
15 interest for the period before judgment.

16 (b) Except as provided in paragraph (c), neither the
17 state or ~~nor~~ its agencies or subdivisions are ~~shall be~~ liable
18 to pay a claim or a judgment by any one person which exceeds
19 the sum of \$100,000 or any claim or judgment, or portions
20 thereof, which, when totaled with all other claims or
21 judgments paid by the state or its agencies or subdivisions
22 arising out of the same incident or occurrence, exceeds the
23 sum of \$200,000. However, a judgment or judgments may be
24 claimed and rendered in excess of these amounts and may be
25 settled and paid pursuant to this act up to \$100,000 or
26 \$200,000, as the case may be; and that portion of the judgment
27 that exceeds these amounts may be reported to the Legislature,
28 but may be paid in part or in whole only by further act of the
29 Legislature. Notwithstanding the limited waiver of sovereign
30 immunity provided herein, the state or an agency or
31 subdivision thereof may agree, within the limits of insurance

1 coverage provided, to settle a claim made or a judgment
2 rendered against it without further action by the Legislature,
3 but the state or agency or subdivision thereof shall not be
4 deemed to have waived any defense of sovereign immunity or to
5 have increased the limits of its liability as a result of its
6 obtaining insurance coverage for tortious acts in excess of
7 the \$100,000 or \$200,000 waiver provided above. The
8 limitations of liability set forth in this subsection shall
9 apply to the state and its agencies and subdivisions whether
10 or not the state or its agencies or subdivisions possessed
11 sovereign immunity before July 1, 1974.

12 (c) In any action for medical negligence within a
13 certified patient safety facility that is covered by sovereign
14 immunity, given that the licensed health care facility bears
15 sole and exclusive liability for acts of medical negligence
16 pursuant to the Enterprise Act for Patient Protection and
17 Provider Liability, inclusive of ss. 766.401-766.409, neither
18 the state or its agencies or subdivisions are liable to pay a
19 claim or a judgment by any one person which exceeds the sum of
20 \$150,000 or any claim or judgment, or portions thereof, which,
21 when totaled with all other claims or judgments paid by the
22 state or its agencies or subdivisions arising out of the same
23 incident or occurrence, exceeds the sum of \$300,000. However,
24 a judgment may be claimed and rendered in excess of these
25 amounts and may be settled and paid up to \$150,000 or
26 \$300,000, as the case may be. That portion of the judgment
27 which exceeds these amounts may be reported to the
28 Legislature, but may be paid in part or in whole only by
29 further act of the Legislature. Notwithstanding the limited
30 waiver of sovereign immunity provided in this paragraph, the
31 state or an agency or subdivision thereof may agree, within

1 the limits of insurance coverage provided, to settle a claim
2 made or a judgment rendered against it without further action
3 by the Legislature, but the state or agency or subdivision
4 thereof does not waive any defense of sovereign immunity or
5 increase limits of its liability as a result of its obtaining
6 insurance coverage for tortious acts in excess of the \$150,000
7 waiver or the \$300,000 waiver provided in this paragraph. The
8 limitations of liability set forth in this paragraph apply to
9 the state and its agencies and subdivisions whether or not the
10 state or its agencies or subdivisions possessed sovereign
11 immunity before July 1, 1974.

12 (12)(a) A health care practitioner, as defined in s.
13 456.001(4), who has contractually agreed to act as an agent of
14 a state university board of trustees to provide medical
15 services to a student athlete for participation in or as a
16 result of intercollegiate athletics, to include team
17 practices, training, and competitions, ~~is shall be considered~~
18 an agent of the respective state university board of trustees,
19 for the purposes of this section, while acting within the
20 scope of and pursuant to guidelines established in that
21 contract. The contracts shall provide for the indemnification
22 of the state by the agent for any liabilities incurred up to
23 the limits set out in this chapter.

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

28 (c)1. For purposes of this subsection only, the terms
29 "certified patient safety facility," "medical staff," and
30 "medical negligence" have the same meanings as provided in s.
31 766.401.

1 2. A certified patient safety facility, wherein a
2 minimum of 50 percent of the members of the medical staff
3 consist of physicians are employees or agents of a state
4 university, is an agent of the respective state university
5 board of trustees for purposes of this section to the extent
6 that the licensed facility, in accordance with an enterprise
7 plan for patient protection and provider liability, inclusive
8 of ss. 766.401-766.409, approved by the Agency for Health Care
9 Administration, is solely and exclusively liable for acts of
10 medical negligence of physicians providing health care
11 services within the licensed facility. Subject to the
12 acceptance of the Florida Board of Governors and a state
13 university board of trustees, a licensed facility as herein
14 described may secure the limits of liability protection
15 described in paragraph (c) from a self insurance program
16 created pursuant to s. 1004.24.

17 Section 21. If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 invalidity does not affect other provisions or applications of
20 the act which can be given effect without the invalid
21 provision or application, and to this end, the provisions of
22 this act are severable.

23 Section 22. If a conflict between any provision of
24 this act and s. 17.505, s. 456.052, s. 456.053, s. 456.054, s.
25 458.331, or s. 459.015, the provisions of this act shall
26 govern. The provisions of this act should be broadly construed
27 in furtherance of the overriding legislative intent to
28 facilitate innovative approaches for patient protection and
29 provider liability in eligible hospitals.

30 Section 23. It is the intention of the Legislature
31 that the provisions of this act are self-executing.

1 Section 24. This act shall take effect upon becoming a
2 law.

3
4 *****

5 SENATE SUMMARY

6 Creates the Enterprise Act for Patient Protection and
7 Provider Liability. Requires a licensed medical physician
8 or licensed osteopathic physician who is covered for
9 medical negligence claims by a hospital that assumes
10 liability under the act to prominently post notice or
11 provide a written statement to patients. Requires
12 hospitals that assume liability for acts of medical
13 negligence under the act to carry insurance. Authorizes
14 an eligible hospital to petition the Agency for Health
15 Care Administration to enter an order certifying the
16 hospital as a patient safety facility. Provides
17 requirements for certification as a patient safety
18 facility. Authorizes the agency to enter an order
19 certifying a hospital as a patient safety facility and
20 providing that the hospital bears liability for acts of
21 medical negligence for its health care providers or an
22 agent of the hospital. Authorizes the agency to conduct
23 onsite examinations of a licensed facility. Provides
24 circumstances when the agency may revoke its order
25 certifying approval of an enterprise plan. Requires an
26 eligible hospital to execute an enterprise agreement.
27 Requires certain conditions to be contained within an
28 enterprise agreement. Provides that an enterprise
29 agreement may provide clinical privileges to certain
30 persons. Requires a certified patient safety facility to
31 submit an annual report to the agency and the
 Legislature. Authorizes certain teaching hospitals and
 eligible hospitals to petition the agency for
 certification. Provides for limitations on damages for
 eligible hospitals that are certified for compliance with
 certain patient safety measures. Authorizes the agency to
 revoke its order certifying approval of an enterprise
 plan. (See bill for details.)