

CHAMBER ACTION

1 The Health Care Regulation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to medical malpractice insurance;
7 providing a short title; creating the Patient Safety and
8 Provider Liability Act; providing legislative findings;
9 amending s. 766.110, F.S.; specifying certain authorized
10 insurers who may make available liability insurance;
11 amending s. 766.118, F.S.; providing a limitation on
12 noneconomic damages for a hospital facility that complies
13 with certain patient-safety measures; creating s. 766.401,
14 F.S.; providing definitions; creating s. 766.402, F.S.;
15 authorizing an eligible hospital to petition the agency
16 for an order certifying the hospital as a certified
17 patient-safety facility; providing requirements for
18 certification as a patient-safety facility; authorizing
19 the agency to conduct onsite examinations; providing for
20 revocation of an order certifying approval of a certified
21 patient-safety facility; providing that an order
22 certifying the approval of a certified patient-safety
23 facility is conclusive evidence of compliance with

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24 statutory patient-safety requirements; providing that
25 evidence of noncompliance is not admissible for any action
26 for medical malpractice; creating s. 766.403, F.S.;
27 providing requirements for a hospital to demonstrate that
28 it is engaged in a common enterprise for the care and
29 treatment of patients; specifying required patient-safety
30 measures; prohibiting a report or document generated under
31 the act from being admissible or discoverable as evidence;
32 creating s. 766.404, F.S.; requiring a certified patient-
33 safety facility to submit an annual report to the agency
34 and the Legislature; providing requirements for the annual
35 report; providing that the annual report may include
36 certain information from the Office of Insurance
37 Regulation within the Department of Financial Services;
38 providing that the annual report is subject to public-
39 records requirements but is not admissible as evidence in
40 a legal proceeding; creating s. 766.405, F.S.; providing
41 for limitations on damages for eligible hospitals that are
42 certified for compliance with certain patient-safety
43 measures; creating s. 766.406, F.S.; providing rulemaking
44 authority; providing for severability; providing for broad
45 statutory view of the act; providing for self-execution of
46 the act; providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Short title.--This act may be cited as the
51 "Patient Safety and Provider Liability Act."

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52 Section 2. Legislative findings.--The Legislature finds
53 that:

54 (1) This state is in the midst of a prolonged medical
55 malpractice insurance crisis that has serious adverse effects on
56 patients, practitioners, licensed health care facilities, and
57 all residents of this state.

58 (2) Hospitals are central components of the modern health
59 care delivery system.

60 (3) The medical malpractice insurance crisis in this state
61 can be alleviated by the adoption of innovative approaches for
62 patient safety in teaching hospitals, which can lead to a
63 reduction in medical errors coupled with a limitation on
64 noneconomic damages that can be awarded against a teaching
65 hospital that implements such innovative approaches.

66 (4) Statutory incentives are necessary to facilitate
67 innovative approaches for patient safety in hospitals and that
68 such incentives and patient-safety measures will benefit all
69 persons seeking health care services in this state.

70 (5) Coupling patient safety measures and a limitation on
71 provider liability in teaching hospitals will lead to a
72 reduction in the frequency and severity of incidents of medical
73 malpractice in hospitals.

74 (6) A reduction in the frequency and severity of incidents
75 of medical malpractice in hospitals will reduce attorney's fees
76 and other expenses inherent in the medical liability system.

77 (7) There is no alternative method that addresses the
78 overwhelming public necessity to implement patient-safety
79 measures and limit provider liability.

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80 (8) Making high-quality health care available to the
81 residents of this state is an overwhelming public necessity.

82 (9) Medical education in this state is an overwhelming
83 public necessity.

84 (10) Statutory teaching hospitals are essential for high-
85 quality medical care and medical education in this state.

86 (11) The critical mission of statutory teaching hospitals
87 is severely undermined by the ongoing medical malpractice
88 crisis.

89 (12) Teaching hospitals are appropriate health care
90 facilities for the implementation of innovative approaches to
91 enhancing patient safety and limiting provider liability.

92 (13) There is an overwhelming public necessity to impose
93 reasonable limitations on actions for medical malpractice
94 against teaching hospitals in furtherance of the critical public
95 interest in promoting access to high-quality medical care,
96 medical education, and innovative approaches to patient safety
97 and provider liability.

98 (14) There is an overwhelming public necessity for
99 teaching hospitals to implement innovative measures for patient
100 safety and limit provider liability in order to generate
101 empirical data for state policymakers concerning the
102 effectiveness of these measures. Such data may lead to broader
103 application of these measures in a wider array of hospitals
104 after a reasonable period of evaluation and review.

105 (15) There is an overwhelming public necessity to promote
106 the academic mission of teaching hospitals. Furthermore, the
107 Legislature finds that the academic mission of these medical

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108 facilities is materially enhanced by statutory authority for the
 109 implementation of innovative approaches to promoting patient
 110 safety and limiting provider liability. Such approaches can be
 111 carefully studied and learned by medical students, medical
 112 school faculty, and affiliated physicians in appropriate
 113 clinical settings, thereby enlarging the body of knowledge
 114 concerning patient safety and provider liability which is
 115 essential for advancement of patient safety, reduction of
 116 expenses inherent in the medical liability system, and
 117 curtailment of the medical malpractice insurance crisis in this
 118 state.

119 Section 3. Subsection (2) of section 766.110, Florida
 120 Statutes, is amended to read:

121 766.110 Liability of health care facilities.--

122 (2) Every hospital licensed under chapter 395 may carry
 123 liability insurance or adequately insure itself in an amount of
 124 not less than \$1.5 million per claim, \$5 million annual
 125 aggregate to cover all medical injuries to patients resulting
 126 from negligent acts or omissions on the part of those members of
 127 its medical staff who are covered thereby in furtherance of the
 128 requirements of ss. 458.320 and 459.0085. Notwithstanding s.
 129 626.901, a licensed hospital may extend insurance and self-
 130 insurance coverage to members of the medical staff, including
 131 physicians' practices, individually or through a professional
 132 association, as defined in chapter 621, and other health care
 133 practitioners, as defined in s. 456.001(4), including students
 134 preparing for licensure. Such coverage shall be limited to legal
 135 liability arising out of medical negligence within the hospital

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136 | premises as defined under s. 766.401. ~~Self-insurance~~ Coverage
137 | extended hereunder to a member of a hospital's medical staff
138 | meets the financial responsibility requirements of ss. 458.320
139 | and 459.0085 if the physician's coverage limits are not less
140 | than the minimum limits established in ss. 458.320 and 459.0085
141 | ~~and the hospital is a verified trauma center that has extended~~
142 | ~~self insurance coverage continuously to members of its medical~~
143 | ~~staff for activities both inside and outside of the hospital.~~
144 | Any approved insurer, authorized insurer as defined in s.
145 | 624.09, risk retention group as defined in s. 627.942, or joint
146 | underwriting association established under s. 627.351(4) which
147 | is approved or authorized to write casualty insurance may make
148 | available, but is ~~shall~~ not be required to write, such coverage.
149 | The hospital may assess on an equitable and pro rata basis the
150 | following individuals to whom it extends coverage pursuant to
151 | this section ~~professional health care providers~~ for a portion of
152 | the total hospital insurance cost for this coverage: physicians
153 | licensed under chapter 458, osteopathic physicians licensed
154 | under chapter 459, podiatric physicians licensed under chapter
155 | 461, dentists licensed under chapter 466, ~~and~~ nurses licensed
156 | under part I of chapter 464, and other health professionals. The
157 | hospital may provide for a deductible amount to be applied
158 | against any individual health care provider found liable in a
159 | law suit in tort or for breach of contract. The legislative
160 | intent in providing for the deductible to be applied to
161 | individual health care providers found negligent or in breach of
162 | contract is to instill in each individual health care provider
163 | the incentive to avoid the risk of injury to the fullest extent

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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164 and ensure that the citizens of this state receive the highest
165 quality health care obtainable.

166 Section 4. Present subsections (6) and (7) of section
167 766.118, Florida Statutes, are renumbered as subsections (7) and
168 (8), respectively, and a new subsection (6) is added to that
169 section, to read:

170 766.118 Determination of noneconomic damages.--

171 (6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF
172 CERTAIN HOSPITALS.--With respect to a complaint for personal
173 injury or wrongful death arising from medical negligence, a
174 hospital that has received an order from the Agency for Health
175 Care Administration pursuant to s. 766.402 which certifies that
176 the facility complies with patient-safety measures specified in
177 s. 766.403 shall be liable for no more than \$500,000 in
178 noneconomic damages, regardless of the number of claimants,
179 number of claims, or theory of liability, including vicarious
180 liability, arising from the same nucleus of operative fact,
181 notwithstanding any other provision of this section.

182 Section 5. Section 766.401, Florida Statutes, is created
183 to read:

184 766.401 Definitions.--As used in this section and ss.
185 766.402-766.405, the term:

186 (1) "Affected patient" means a patient of a certified
187 patient-safety facility.

188 (2) "Affected practitioner" means any person, including a
189 physician, who is credentialed by the eligible hospital to
190 provide health care services in a certified patient-safety
191 facility.

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192 (3) "Agency" means the Agency for Health Care
193 Administration.

194 (4) "Certified patient-safety facility" means any eligible
195 hospital that, in accordance with an order from the Agency for
196 Health Care Administration, has adopted a patient-safety plan.

197 (5) "Clinical privileges" means the privileges granted to
198 a physician or other licensed health care practitioner to render
199 patient-care services in a hospital.

200 (6) "Eligible hospital" or "licensed facility" means a
201 statutory teaching hospital, as defined by s. 408.07, which
202 maintains at least seven different accredited programs in
203 graduate medical education and has 100 or more full-time
204 equivalent resident physicians.

205 (7) "Health care provider" or "provider" means:

206 (a) An eligible hospital.

207 (b) A physician or a physician assistant licensed under
208 chapter 458.

209 (c) An osteopathic physician or an osteopathic physician
210 assistant licensed under chapter 459.

211 (d) A registered nurse, nurse midwife, licensed practical
212 nurse, or advanced registered nurse practitioner licensed or
213 registered under part I of chapter 464 or any facility that
214 employs nurses licensed or registered under part I of chapter
215 464 to supply all or part of the care delivered by that
216 facility.

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

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219 (f) Any other medical facility in which the primary
220 purpose is to deliver human medical diagnostic services or to
221 deliver nonsurgical human medical treatment, including an office
222 maintained by a provider.

223 (g) A free clinic that delivers only medical diagnostic
224 services or nonsurgical medical treatment free of charge to low-
225 income persons not otherwise covered by Medicaid or other
226 programs for low-income persons.

227 (h) Any other health care professional, practitioner, or
228 provider, including a student enrolled in an accredited program,
229 who prepares the student for licensure as any one of the
230 professionals listed in this subsection.

231 (i) Any person, organization, or entity that is
232 vicariously liable under the theory of respondeat superior or
233 any other theory of legal liability for medical negligence
234 committed by any licensed professional listed in this
235 subsection.

236 (j) Any nonprofit corporation qualified as exempt from
237 federal income taxation under s. 501(a) of the Internal Revenue
238 Code and described in s. 501(c) of the Internal Revenue Code,
239 including any university or medical school that employs licensed
240 professionals listed in this subsection or which delivers health
241 care services provided by licensed professionals listed in this
242 subsection, any federally funded community health center, and
243 any volunteer corporation or volunteer health care provider that
244 delivers health care services.

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245 (8) "Health care practitioner" or "practitioner" means any
 246 person, entity, or organization identified in subsection (7),
 247 except for a hospital.

248 (9) "Medical incident" or "adverse incident" has the same
 249 meaning as provided in ss. 381.0271, 395.0197, 458.351, and
 250 459.026.

251 (10) "Medical negligence" means medical malpractice,
 252 whether grounded in tort or in contract, arising out of the
 253 rendering of or failure to render medical care or services.

254 (11) "Person" means any individual, partnership,
 255 corporation, association, or governmental unit.

256 (12) "Premises" means those buildings, beds, and equipment
 257 located at the address of the licensed facility and all other
 258 buildings, beds, and equipment for the provision of the
 259 hospital, ambulatory surgical, mobile surgical care, primary
 260 care, or comprehensive health care under the dominion and
 261 control of the licensee, including offices and locations where
 262 the licensed facility offers medical care and treatment to
 263 affected patients.

264 (13) "Statutory teaching hospital" or "teaching hospital"
 265 has the same meaning as provided in s. 408.07.

266 Section 6. Section 766.402, Florida Statutes, is created
 267 to read:

268 766.402 Agency approval of patient-safety plans.--

269 (1) An eligible hospital that has adopted a patient-safety
 270 plan may petition the agency to enter an order certifying
 271 approval of the hospital as a certified patient-safety facility.

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272 (2) In accordance with chapter 120, the agency shall enter
273 an order certifying approval of the certified patient-safety
274 facility upon a showing that, in furtherance of an approach to
275 patient safety:

276 (a) The petitioner has established safety measures for the
277 care and treatment of patients.

278 (b) The petitioner satisfies requirements for patient-
279 protection measures, as specified in s. 766.403.

280 (c) The petitioner satisfies all other requirements of ss.
281 766.401-766.405.

282 (3) Upon entry of an order approving the petition, the
283 agency may conduct onsite examinations of the licensed facility
284 to ensure continued compliance with the terms and conditions of
285 the order.

286 (4) The order approving a petition under this section
287 remains in effect until revoked. The agency may revoke the order
288 upon reasonable notice to the eligible hospital that it fails to
289 comply with material requirements of s. 766.403 and that the
290 hospital has failed to cure stated deficiencies upon reasonable
291 notice. Revocation of an agency order pursuant to s. 766.403
292 applies prospectively to any cause of action for medical
293 negligence which arises on or after the effective date of the
294 order of revocation.

295 (5) An order approving a petition under this section is,
296 as a matter of law, conclusive evidence that the hospital
297 complies with the applicable patient-safety requirements of s.
298 766.403. A hospital's noncompliance with the requirements of s.
299 766.403 does not affect the limitations on damages conferred by

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300 this section. Evidence of noncompliance with s. 766.403 is not
 301 admissible for any purpose in any action for medical
 302 malpractice. This section, or any portion thereof, may not give
 303 rise to an independent cause of action for damages against any
 304 hospital.

305 Section 7. Section 766.403, Florida Statutes, is created
 306 to read:

307 766.403 Patient-safety plans.--

308 (1) In order to satisfy the requirements of s. 766.402,
 309 the licensed facility shall have a patient-safety plan, which
 310 provides that the facility shall:

311 (a) Have in place a process, either through the facility's
 312 patient-safety committee or a similar body, for coordinating the
 313 quality control, risk management, and patient-relations
 314 functions of the facility and for reporting to the facility's
 315 governing board at least quarterly regarding such efforts.

316 (b) Establish within the facility a system for reporting
 317 near misses and agree to submit any information collected to the
 318 Florida Patient Safety Corporation. Such information must be
 319 submitted by the facility and made available by the Patient
 320 Safety Corporation in accordance with s. 381.0271(7).

321 (c) Design and make available to facility staff, including
 322 medical staff, a patient-safety curriculum that provides lecture
 323 and web-based training on recognized patient-safety principles,
 324 which may include training in communication skills, team-
 325 performance assessment and training, risk-prevention strategies,
 326 and best practices and evidence-based medicine. The licensed

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327 facility shall report annually the programs presented to the
328 agency.

329 (d) Implement a program to identify health care providers
330 on the facility's staff who may be eligible for an early-
331 intervention program that provides additional skills assessment
332 and training and offer such training to the staff on a voluntary
333 and confidential basis with established mechanisms to assess
334 program performance and results.

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

338 (f) Designate a patient advocate who coordinates with
339 members of the medical staff and the facility's chief medical
340 officer regarding the disclosure of adverse medical incidents to
341 patients. In addition, the patient advocate shall establish an
342 advisory panel, consisting of providers, patients or their
343 families, and other health care consumers or consumer groups to
344 review general patient-safety concerns and other issues related
345 to relations among and between patients and providers and to
346 identify areas where additional education and program
347 development may be appropriate.

348 (g) Establish a procedure to biennially review the
349 facility's patient-safety program and its compliance with the
350 requirements of this section. Such review shall be conducted by
351 an independent patient-safety organization as defined in s.
352 766.1016(1) or other professional organization approved by the
353 agency. The organization performing the review shall prepare a
354 written report that contains detailed findings and

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355 recommendations. The report shall be forwarded to the facility's
356 risk manager or patient-safety officer, who may make written
357 comments in response. The report and any written comments shall
358 be presented to the governing board of the licensed facility. A
359 copy of the report and any of the facility's responses to the
360 findings and recommendations shall be provided to the agency
361 within 60 days after the date that the governing board reviewed
362 the report. The report is confidential and exempt from
363 production or discovery in any civil action. Likewise, the
364 report and the information contained therein are not admissible
365 as evidence for any purpose in any action for medical
366 negligence.

367 (h) Establish a system for the trending and tracking of
368 quality and patient-safety indicators that the agency may
369 identify by rule and a method for review of the data at least
370 semiannually by the facility's patient-safety committee.

371 (2) This section does not constitute an applicable
372 standard of care in any action for medical negligence or
373 otherwise create a private right of action, and evidence of
374 noncompliance with this section is not admissible for any
375 purpose in any action for medical negligence against any health
376 care provider.

377 (3) This section does not prohibit the licensed facility
378 from implementing other measures for promoting patient safety
379 within the premises. This section does not relieve the licensed
380 facility from the duty to implement any other patient-safety
381 measure that is required by state law. The Legislature intends
382 that the patient-safety measures specified in this section are

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383 in addition to all other patient-safety measures required by
384 state law, federal law, and applicable accreditation standards
385 for licensed facilities.

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

389 Section 8. Section 766.404, Florida Statutes, is created
390 to read:

391 766.404 Annual report.--

392 (1) Each certified patient-safety facility shall submit an
393 annual report to the agency containing information and data
394 reasonably required by the agency to evaluate performance and
395 effectiveness of its patient-safety plan. However, information
396 may not be submitted or disclosed in violation of any patient's
397 right to privacy under state or federal law.

398 (2) The agency shall aggregate information and data
399 submitted by all certified patient-safety facilities, and each
400 year, on or before March 1, the agency shall submit a report to
401 the President of the Senate and the Speaker of the House of
402 Representatives which evaluates the performance and
403 effectiveness of the approach to enhancing patient safety and
404 limiting provider liability in certified patient-safety
405 facilities. The report must include, but need not be limited to,
406 pertinent data concerning:

407 (a) The number and names of certified patient-safety
408 facilities;

409 (b) The number and types of patient-protection measures
410 currently in effect in these facilities;

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411 (c) The number of affected patients;
 412 (d) The number of surgical procedures on affected
 413 patients;
 414 (e) The number of medical incidents, claims of medical
 415 malpractice, and claims resulting in indemnity;
 416 (f) The average time for resolution of contested and
 417 uncontested claims of medical malpractice;
 418 (g) The percentage of claims which result in civil trials;
 419 (h) The percentage of civil trials which result in adverse
 420 judgments against affected facilities;
 421 (i) The number and average size of an indemnity paid to
 422 claimants;
 423 (j) The estimated liability expense, inclusive of medical
 424 liability insurance premiums; and
 425 (k) The percentage of medical liability expense, inclusive
 426 of medical liability insurance premiums, which is borne by
 427 affected practitioners in certified patient-safety facilities.
 428
 429 The report may also include other information and data that the
 430 agency deems appropriate to gauge the cost and benefit of
 431 patient-safety plans.
 432 (3) The agency's annual report to the President of the
 433 Senate and the Speaker of the House of Representatives may
 434 include relevant information and data obtained from the Office
 435 of Insurance Regulation within the Department of Financial
 436 Services concerning the availability and affordability of
 437 enterprise-wide medical liability insurance coverage for
 438 affected facilities and the availability and affordability of

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439 insurance policies for individual practitioners which contain
440 coverage exclusions for acts of medical negligence in facilities
441 that indemnify health practitioners. The Office of Insurance
442 Regulation shall cooperate with the agency in the reporting of
443 information and data specified in this subsection.

444 (4) Reports submitted to the agency by certified patient-
445 safety facilities pursuant to this section are public records
446 under chapter 119. However, these reports, and the information
447 contained therein, are not admissible as evidence in a court of
448 law in any action.

449 Section 9. Section 766.405, Florida Statutes, is created
450 to read:

451 766.405 Damages in malpractice actions against certain
452 hospitals that meet patient-safety requirements; agency approval
453 of patient-safety measures.--

454 (1) In recognition of their essential role in training
455 future health care providers and in providing innovative medical
456 care for this state's residents, in recognition of their
457 commitment to treating indigent patients, and further in
458 recognition that teaching hospitals, as defined in s. 408.07,
459 provide benefits to the residents of this state through their
460 roles in improving the quality of medical care, training of
461 health care providers, and caring for indigent patients, the
462 limits of liability for medical malpractice arising out of the
463 rendering of, or the failure to render, medical care by all such
464 hospitals shall be determined in accordance with the
465 requirements of this section.

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466 (2) Upon entry of an order and for the entire period of
467 time that the order remains in effect, the damages recoverable
468 from an eligible hospital covered by the order and from its
469 full-time physician employees, full-time and part-time
470 nonphysician employees, and agents in actions arising from
471 medical negligence shall be determined in accordance with the
472 following provisions:

473 (a) Noneconomic damages shall be limited to a maximum of
474 \$500,000, regardless of the number of claimants, number of
475 claims, or the theory of liability pursuant to s. 766.118(6).

476 (b) Awards of economic damages shall be offset by payments
477 from collateral sources, as defined by s. 766.202(2), and any
478 set-offs available under ss. 46.015 and 768.041. Awards for
479 future economic losses shall be offset by future collateral
480 source payments.

481 (c) After being offset by collateral sources, awards of
482 future economic damages shall, at the option of the eligible
483 hospital, be reduced by the court to present value or paid
484 through periodic payments in the form of an annuity or a
485 reversionary trust. A company that underwrites an annuity to pay
486 future economic damages shall have a rating of "A" or higher by
487 A.M. Best Company. The terms of the reversionary instrument used
488 to periodically pay future economic damages must be approved by
489 the court. Such approval may not be unreasonably withheld.

490 (3) The limitations on damages in subsection (2) apply
491 prospectively to causes of action for medical negligence which
492 arise on or after the effective date of the order.

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493 Section 10. Section 766.406, Florida Statutes, is created
494 to read:

495 766.406 Rulemaking authority.--The agency may adopt rules
496 pursuant to ss. 120.536(1) and 120.54 to administer ss. 766.401-
497 766.405.

498 Section 11. If any provision of this act or its
499 application to any person or circumstance is held invalid, the
500 invalidity does not affect other provisions or applications of
501 the act which can be given effect without the invalid provision
502 or application, and to this end, the provisions of this act are
503 severable.

504 Section 12. If a conflict exists between any provision of
505 this act and s. 456.052, s. 456.053, s. 456.054, s. 458.331, s.
506 459.015, or s. 817.505, Florida Statutes, the provisions of this
507 act shall govern. The provisions of this act shall be broadly
508 construed in furtherance of the overriding legislative intent to
509 facilitate innovative approaches for enhancing patient
510 protection and limiting provider liability in eligible
511 hospitals.

512 Section 13. It is the intention of the Legislature that
513 the provisions of this act are self-executing.

514 Section 14. This act shall take effect upon becoming a
515 law.