Florida Senate - 2006

 ${\bf By}$ the Committee on Health and Human Services Appropriations; and Senators Fasano and Lynn

603-2305-06

1	A bill to be entitled
2	An act relating to community behavioral health
3	agencies; creating s. 394.9085, F.S.; providing
4	that certain facilities or programs have
5	liability limits in negligence actions under
6	certain circumstances; limiting net economic
7	damages allowed per claim; requiring that
8	damages be offset by collateral source payment
9	in accordance with s. 768.76, F.S.; requiring
10	that costs to defend actions be assumed by the
11	provider or its insurer; specifying occasions
12	upon which the limitations on liability enjoyed
13	by the provider extend to the employee;
14	requiring that providers obtain and maintain
15	specified liability coverage; specifying that
16	persons providing contractual services to the
17	state are not considered agents or employees
18	under ch. 440, F.S.; providing for an annual
19	increase in the conditional limitations on
20	damages; providing definitions; providing
21	construction; preserving sovereign immunity for
22	governmental units and entities protected by
23	sovereign immunity; providing an effective
24	date.
25	
26	Be It Enacted by the Legislature of the State of Florida:
27	
28	Section 1. Section 394.9085, Florida Statutes, is
29	created to read:
30	<u>394.9085 Behavioral provider liability</u>
31	

1

personal injury or wronqful death arising out of the provis of services for crisis stabilization brought against a detoxification program, an addictions receiving facility, o designated public receiving facility, net economic damages shall be limited to \$1 million per liability claim, includi but not limited to, past and future medical expenses, wage loss, and loss of earning capacity. In computing net econom damages, such damages shall be offset by any collateral sou payment paid in accordance with s. 768.76.	r a ng, ic rce
4 detoxification program, an addictions receiving facility, o 5 designated public receiving facility, net economic damages 6 shall be limited to \$1 million per liability claim, includi 7 but not limited to, past and future medical expenses, wage 8 loss, and loss of earning capacity. In computing net econom 9 damages, such damages shall be offset by any collateral sou 10 payment paid in accordance with s. 768.76.	<u>nq,</u> ic rce
5 designated public receiving facility, net economic damages 6 shall be limited to \$1 million per liability claim, includi 7 but not limited to, past and future medical expenses, wage 8 loss, and loss of earning capacity. In computing net econom 9 damages, such damages shall be offset by any collateral sou 10 payment paid in accordance with s. 768.76.	<u>nq,</u> ic rce
6 shall be limited to \$1 million per liability claim, includi 7 but not limited to, past and future medical expenses, wage 8 loss, and loss of earning capacity. In computing net econom 9 damages, such damages shall be offset by any collateral sou 10 payment paid in accordance with s. 768.76.	<u>ic</u> rce
7 but not limited to, past and future medical expenses, wage 8 loss, and loss of earning capacity. In computing net econom 9 damages, such damages shall be offset by any collateral sou 10 payment paid in accordance with s. 768.76.	<u>ic</u> rce
8 loss, and loss of earning capacity. In computing net econom 9 damages, such damages shall be offset by any collateral sou 10 payment paid in accordance with s. 768.76.	<u>rce</u>
9 <u>damages</u> , such damages shall be offset by any collateral sou 10 payment paid in accordance with s. 768.76.	<u>rce</u>
10 payment paid in accordance with s. 768.76.	_
	<u>1</u>
11 (b) In any negligence action for damages for persona	<u>1</u>
12 <u>injury or wrongful death arising out of the provision of</u>	
13 services for crisis stabilization brought against any	
14 detoxification program, an addictions receiving facility, o	<u>r a</u>
15 designated public receiving facility, noneconomic damages	
16 shall be limited to \$200,000 per claim.	
17 (c) Any costs in defending actions brought under thi	<u>s</u>
18 section shall be assumed by the provider or its insurer.	
19 (2) The limitations on liability of a detoxification	
20 program, an addictions receiving facility, or any designate	<u>d</u>
21 public receiving facility as described in subsection (1) sh	<u>all</u>
22 <u>be exclusive. Such limitations apply to each employee of th</u>	<u>e</u>
23 provider when the employee is acting in furtherance of the	
24 provider's responsibilities under its contract with the	
25 department. Such limitations do not apply to a provider or	
26 employee who acts in a culpably negligent manner or with	
27 willful and wanton disregard or unprovoked physical aggress	ion
28 <u>if such acts result in injury or death.</u>	
29 (3) The eligible provider under this section must, a	<u>s</u>
30 part of its contract, obtain and maintain an insurance poli	CY
31	

2

1	providing a minimum of \$1 million per claim and \$3 million per
2	incident in coverage for claims described in subsection (1).
3	(4) This section does not designate a person who
4	provides contracted services to the department as an employee
5	or agent of the state for purposes of chapter 440.
6	(5) The Legislature is cognizant of the increasing
7	costs of goods and services each year and recognizes that
8	fixing a set amount of compensation actually has the effect of
9	a reduction in compensation each year. Accordingly, the
10	conditional limitations on damages in this section shall be
11	increased at the rate of 5 percent each year, prorated from
12	July 1, 2006, to the date at which damages subject to such
13	limitations are awarded by final judgment or settlement.
14	(6) For purposes of this section, the terms
15	"detoxification program," "addictions receiving facility," and
16	"receiving facility" have the same meanings as those provided
17	<u>in ss. 397.311(18)(b), 397.311(18)(a), and 394.455(26),</u>
18	respectively.
19	(7) This section does not waive sovereign immunity for
20	any governmental unit or other entity protected by sovereign
21	immunity. Section 768.28 shall continue to apply to all
22	governmental units and such entities.
23	Section 2. This act shall take effect July 1, 2006.
24	
25	
26	
27	
28	
29	
30	
31	

Florida Senate - 2006 603-2305-06

CS for SB 280

1	STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR
2 3	<u>Senate Bill 280</u>
4 5 6 7	Clarifies that the bill applies to negligence actions arising out of the provision of crisis stabilization services. Removes the provision allowing the filing of a claims bill. Clarifies that the required insurance coverage is for paying claims arising out of negligence actions.
8 9 10	Clarifies that the newly created s. 394.9085, F.S., is not to be construed to waive sovereign immunity for any governmental unit or other entity protected by sovereign immunity, and that s. 768.28, F.S., shall continue to apply to all governmental units and such entities.
11 12	
13	
14	
15	
16	
17 18	
19	
20	
21	
22	
23	
24	
25	
26	
27 28	
28 29	
30	
31	