

CHAMBER ACTION

1 The Judiciary Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to community behavioral health agencies;
7 creating s. 394.9085, F.S.; providing that certain
8 facilities or programs have liability limits in negligence
9 actions under certain circumstances; limiting net economic
10 damages allowed per claim; requiring that damages be
11 offset by collateral source payment in accordance with s.
12 768.76, F.S.; requiring that costs to defend actions be
13 assumed by the provider or its insurer; specifying
14 occasions upon which the limitations on liability enjoyed
15 by the provider extend to the employee; requiring that
16 providers obtain and maintain specified liability
17 coverage; specifying that persons providing contractual
18 services to the state are not considered agents or
19 employees under ch. 440, F.S.; providing for an annual
20 increase in the conditional limitations on damages;
21 providing definitions; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 394.9085, Florida Statutes, is created
26 to read:

27 394.9085 Behavioral provider liability.--

28 (1) (a) In any negligence action for damages for personal
29 injury or wrongful death arising out of the provision of
30 services for crisis stabilization brought against a
31 detoxification program, an addictions receiving facility, or a
32 designated public receiving facility, net economic damages shall
33 be limited to \$1 million per liability claim, including, but not
34 limited to, past and future medical expenses, wage loss, and
35 loss of earning capacity. In computing net economic damages,
36 such damages shall be offset by any collateral source payment
37 paid in accordance with s. 768.76.

38 (b) In any negligence action for damages for personal
39 injury or wrongful death arising out of the provision of
40 services for crisis stabilization brought against any
41 detoxification program, an addictions receiving facility, or a
42 designated public receiving facility, noneconomic damages shall
43 be limited to \$200,000 per claim.

44 (c) Any costs in defending actions brought under this
45 section shall be assumed by the provider or its insurer.

46 (2) The limitations on liability of a detoxification
47 program, an addictions receiving facility, or any designated
48 public receiving facility as described in subsection (1) shall
49 be exclusive. Such limitations apply to each employee of the
50 provider when the employee is acting in furtherance of the
51 provider's responsibilities under its contract with the

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52 department. Such limitations do not apply to a provider or
53 employee who acts in a culpably negligent manner or with willful
54 and wanton disregard or unprovoked physical aggression if such
55 acts result in injury or death.

56 (3) The eligible provider under this section must, as part
57 of its contract, obtain and maintain an insurance policy
58 providing a minimum of \$1 million per claim and \$3 million per
59 incident in coverage for claims described in subsection (1).

60 (4) This section does not designate a person who provides
61 contracted services to the department as an employee or agent of
62 the state for purposes of chapter 440.

63 (5) The Legislature is cognizant of the increasing costs
64 of goods and services each year and recognizes that fixing a set
65 amount of compensation actually has the effect of a reduction in
66 compensation each year. Accordingly, the conditional limitations
67 on damages in this section shall be increased at the rate of 5
68 percent each year, prorated from July 1, 2006, to the date at
69 which damages subject to such limitations are awarded by final
70 judgment or settlement.

71 (6) For purposes of this section, the terms
72 "detoxification program," "addictions receiving facility," and
73 "receiving facility" have the same meanings as those provided in
74 ss. 397.311(18)(b), 397.311(18)(a), and 394.455(26),
75 respectively.

76 Section 2. This act shall take effect July 1, 2006.