

## CHAMBER ACTION

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1 The Health Care Appropriations Committee recommends the  
2 following:

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4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

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

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24 |       protected by sovereign immunity; providing an effective  
25 |       date.

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27 | Be It Enacted by the Legislature of the State of Florida:

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29 |       Section 1. Section 394.9085, Florida Statutes, is created  
30 | to read:

31 |       394.9085 Behavioral provider liability.--

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

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

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

50 |       (2) The limitations on liability of a detoxification  
51 | program, an addictions receiving facility, or any designated

52 public receiving facility as described in subsection (1) shall  
53 be exclusive. Such limitations apply to each employee of the  
54 provider when the employee is acting in furtherance of the  
55 provider's responsibilities under its contract with the  
56 department. Such limitations do not apply to a provider or  
57 employee who acts in a culpably negligent manner or with willful  
58 and wanton disregard or unprovoked physical aggression if such  
59 acts result in injury or death.

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

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

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

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

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80           (7) This section shall not be construed to waive sovereign  
81 immunity for any governmental unit or other entity protected by  
82 sovereign immunity. Section 768.28 shall continue to apply to  
83 all governmental units and such entities.

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