

By the Committee on Higher Education; and Senator Oelrich

589-2151-07

1 A bill to be entitled
2 An act relating to state universities; amending
3 s. 1004.24, F.S.; transferring responsibility
4 for securing liability insurance from the State
5 Board of Education to the Board of Governors;
6 authorizing discussion of patient care
7 information for certain purposes; amending ss.
8 1004.43 and 1004.445, F.S.; conforming
9 provisions; amending s. 1012.965, F.S.;
10 authorizing a university board of trustees to
11 intervene in a civil action for medical
12 negligence under certain circumstances;
13 providing legal status of employees and agents
14 of a university board of trustees and
15 university faculty practice plan entities;
16 providing an effective date.

18 Be It Enacted by the Legislature of the State of Florida:

20 Section 1. Section 1004.24, Florida Statutes, is
21 amended to read:

22 1004.24 Board of Governors ~~State Board of Education~~
23 authorized to secure liability insurance.--

24 (1) The Board of Governors ~~State Board of Education~~ is
25 authorized to secure, or otherwise provide as a self-insurer,
26 or by a combination thereof, comprehensive general liability
27 insurance, including professional liability for health care
28 and veterinary sciences, for:

29 (a) The Board of Governors ~~State Board of Education~~
30 and its officers and members.

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1 (b) A university board of trustees and its officers
2 and members.

3 (c) The faculty and other employees and agents of a
4 university board of trustees.

5 (d) The students of a state university.

6 (e) A state university or any college, school,
7 institute, center, or program thereof.

8 (f) Any not-for-profit corporation organized pursuant
9 to chapter 617, and the directors, officers, employees, and
10 agents thereof, which is affiliated with a state university,
11 if the corporation is operated for the benefit of the state
12 university in a manner consistent with the best interests of
13 the state, and if such participation is approved by a
14 self-insurance program council, the university president, and
15 the board of trustees.

16 (2) In the event the Board of Governors ~~State Board of~~
17 ~~Education~~ adopts a self-insurance program, a governing council
18 chaired by the vice president for health affairs or his or her
19 academic equivalent shall be established to administer the
20 program and its duties and responsibilities, including the
21 administration of self-insurance program assets and
22 expenditure policies, which shall be defined by ~~in~~ rules
23 adopted by the Board of Governors ~~as authorized by this~~
24 ~~section~~. The council shall have an annual actuary review
25 performed to establish funding requirements to maintain the
26 fiscal integrity of the self-insurance program. The assets of
27 a self-insurance program shall be deposited outside the State
28 Treasury and shall be administered in accordance with rules as
29 authorized by this section.

30 (3) Any self-insurance program created under this
31 section shall be funded by the entities and individuals

1 | protected by such program. There shall be no funds
2 | appropriated to any self-insurance program. The assets of the
3 | self-insurance program shall be the property of the Board of
4 | Governors State Board of Education and shall be used only to
5 | pay the administrative expenses of the self-insurance program
6 | and to pay any claim, judgment, or claims bill arising out of
7 | activities for which the self-insurance program was created.
8 | Investment income that is in excess of that income necessary
9 | to ensure the solvency of a self-insurance program as
10 | established by a casualty actuary may be used to defray the
11 | annual contribution paid into the program by the entities and
12 | individuals protected by the program.

13 | (4) No self-insurance program adopted by the Board of
14 | Governors State Board of Education may sue or be sued. The
15 | claims files of any such program are privileged and
16 | confidential, exempt from the provisions of s. 119.07(1), and
17 | are only for the use of the program in fulfilling its duties.
18 | Physicians, health care providers, and other agents or
19 | employees of participants in a self-insurance program, as
20 | described in this section, are authorized to discuss patient
21 | care information for the purposes of quality improvement,
22 | incident investigation, and claim defense with self-insurance
23 | program council members, staff, and attorneys retained by the
24 | self-insurance program, and such communications do not
25 | constitute a violation of any statute or rule relating to
26 | patient privacy or confidentiality. Any self insurance trust
27 | fund and revenues generated by that fund shall only be used to
28 | pay claims and administration expenses.

29 | (5) Each self-insurance program council shall make
30 | provision for an annual financial audit pursuant to s. 11.45
31 | of its accounts to be conducted by an independent certified

1 public accountant. The annual audit report must include a
2 management letter and shall be submitted to the Board of
3 ~~Governors State Board of Education~~ for review. The Board of
4 ~~Governors State Board of Education~~ shall have the authority to
5 require and receive from the self-insurance program council or
6 from its independent auditor any detail or supplemental data
7 relative to the operation of the self-insurance program.

8 (6) The Board of Governors ~~State Board of Education~~
9 may adopt ~~make~~ such rules as are necessary to carry out the
10 provisions of this section.

11 Section 2. Subsection (3) of section 1004.43, Florida
12 Statutes, is amended to read:

13 1004.43 H. Lee Moffitt Cancer Center and Research
14 Institute.--There is established the H. Lee Moffitt Cancer
15 Center and Research Institute at the University of South
16 Florida.

17 (3) The Board of Governors ~~State Board of Education~~ is
18 authorized to secure comprehensive general liability
19 protection, including professional liability protection, for
20 the not-for-profit corporation and its subsidiaries pursuant
21 to s. 1004.24. The not-for-profit corporation and its
22 subsidiaries shall be exempt from any participation in any
23 property insurance trust fund established by law, including
24 any property insurance trust fund established pursuant to
25 chapter 284, so long as the not-for-profit corporation and its
26 subsidiaries maintain property insurance protection with
27 comparable or greater coverage limits.

28 Section 3. Subsection (4) of section 1004.445, Florida
29 Statutes, is amended to read:

30 1004.445 Johnnie B. Byrd, Sr., Alzheimer's Center and
31 Research Institute.--

1 (4) The ~~Board of Governors State Board of Education~~ is
2 authorized to secure comprehensive general liability
3 protection, including professional liability protection, for
4 the not-for-profit corporation and its subsidiaries, pursuant
5 to s. 1004.24. The not-for-profit corporation and its
6 subsidiaries shall be exempt from any participation in any
7 property insurance trust fund established by law, including
8 any property insurance trust fund established pursuant to
9 chapter 284, so long as the not-for-profit corporation and its
10 subsidiaries maintain property insurance protection with
11 comparable or greater coverage limits.

12 Section 4. Section 1012.965, Florida Statutes, is
13 amended to read:

14 1012.965 Payment of costs of civil action against
15 employees; legal status of employees and agents of university
16 board of trustees and university faculty practice plan
17 entities.--

18 (1) An employee or agent under the right of control of
19 a university board of trustees who, pursuant to the university
20 board's policies or rules, renders medical care or treatment
21 at any hospital or health care facility with which the
22 university board maintains an affiliation agreement whereby
23 the hospital or health care facility provides to the
24 university board a clinical setting for health care education,
25 research, and services, shall not be deemed to be an agent of
26 any person other than the university board in any civil action
27 resulting from any act or omission of the employee or agent
28 while rendering said medical care or treatment. For this
29 subsection to apply, the patient shall be provided separate
30 written conspicuous notice by the university board of trustees
31 or by the hospital or health care facility, and shall

1 acknowledge receipt of this notice, in writing, unless
2 impractical by reason of an emergency, either personally or
3 through another person authorized to give consent for him or
4 her, that he or she will receive care provided by university
5 board's employees and liability, if any, that may arise from
6 that care is limited as provided by law. Compliance by a
7 hospital or health care facility with the requirements of
8 chapter 395 or s. 766.110(1) shall not be used as evidence in
9 any civil action to establish an employment or agency
10 relationship between the hospital or health care facility and
11 an employee or agent of the university board of trustees
12 providing services within the hospital or health care
13 facility.

14 (2) A university board of trustees shall have the
15 unconditional right and shall be permitted to intervene in any
16 civil action for medical negligence filed against an
17 affiliated hospital or health care facility when an employee
18 or agent of a university board of trustees delivered care at
19 such affiliated hospital or health care facility to the
20 patient whose care is at issue in the civil action. For the
21 purpose of ruling on a university's motion to intervene, the
22 court shall accept as conclusive a university's assertion that
23 a person is or was an employee or agent of its board of
24 trustees; however, ultimate resolution of the actual agency
25 status of the person is a factual issue to be determined
26 during the civil action in accordance with established rules
27 of court.

28 (3) Each faculty practice plan entity of a university
29 functions as the university's agent for the orderly collection
30 and administration of income generated from university faculty
31 practice activities that are part of the university board's

1 provision of a clinical setting for health care education,
2 research, and services, which setting is governed by the
3 university board and its rules. A university's faculty
4 practice plan entity is not and shall not be a provider of
5 medical services or an employer of any faculty physicians or
6 other health care professionals and does not have a
7 partnership, joint venture, association, employment, or agency
8 relationship with any university faculty physicians or other
9 health care professionals.

10 ~~(4)(2)~~ All faculty physicians employed by a university
11 board of trustees who are subject to the requirements of s.
12 456.013 shall complete their risk management continuing
13 education on issues specific to academic medicine. Such
14 continuing education shall include instruction for the
15 supervision of resident physicians as required by the
16 Accreditation Council for Graduate Medical Education. The
17 boards described in s. 456.013 shall adopt rules to implement
18 the provisions of this subsection.

19 ~~(5)(3)~~ There are appropriated out of any funds
20 available to a university, not subject to the obligation of
21 contract, covenant, or trust, the amounts necessary to carry
22 out the purposes of this section.

23 ~~(6)(4)~~ Failure of a university board of trustees or an
24 affiliated health care provider to do any act authorized by
25 this section shall not constitute a cause of action against
26 the university board, or an affiliated health care provider,
27 or any of their members, officers, or employees.

28 Section 5. This act shall take effect July 1, 2007.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2012
4 The committee substitute:
5 Transfers State Board of Education authority to secure
6 comprehensive general liability protection to the Board of
7 Governors regarding both the H. Lee Moffitt Cancer Center and
8 Research Institute and the Johnnie B. Byrd, Sr., Alzheimer's
9 Center and Research Institute;
10 Specifies that a university assertion that an employee or
11 agent of the university board of trustees is or was its agent
12 is dispositive regarding a motion to intervene, but not to the
13 case outcome; and
14 Clarifies that the clinical setting providing the basis for
15 the faculty practice plan is subject to control of the
16 university board of trustees and its rules.
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