

By Senator Baker

20-1354-07

See HB 929

1 A bill to be entitled
2 An act relating to emergency health care
3 providers; providing legislative findings and
4 intent; amending s. 768.28, F.S.; providing
5 that certain emergency health care providers
6 are agents of the state for purposes of
7 sovereign immunity when acting pursuant to
8 specified statutory obligations; requiring
9 certain indemnity for the state from providers;
10 providing penalties; providing definitions;
11 providing applicability; providing an effective
12 date.

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

16 Section 1. Legislative findings and intent.--The
17 Legislature finds and declares it to be of vital importance
18 that emergency services and care be provided by hospitals,
19 physicians, and emergency medical services providers to every
20 person in need of such care. The Legislature finds that
21 emergency services and care providers are critical elements in
22 responding to disaster and emergency situations that might
23 affect our local communities, state, and country. The
24 Legislature recognizes the importance of maintaining a viable
25 system of providing for the emergency medical needs of the
26 state's residents and visitors. The Legislature and the
27 Federal Government have required such providers of emergency
28 medical services and care to provide emergency services and
29 care to all persons who present to hospitals seeking such
30 care. The Legislature finds that the Legislature has further
31 mandated that prehospital emergency medical treatment or

1 transport may not be denied by emergency medical services
2 providers to persons who have or are likely to have an
3 emergency medical condition. Such governmental requirements
4 have imposed a unilateral obligation for emergency services
5 and care providers to provide services to all persons seeking
6 emergency care without ensuring payment or other consideration
7 for provision of such care. The Legislature also recognizes
8 that emergency services and care providers provide a
9 significant amount of uncompensated emergency medical care in
10 furtherance of such governmental interest. The Legislature
11 finds that a significant proportion of the residents of this
12 state who are uninsured or are Medicaid or Medicare recipients
13 are unable to access needed health care because health care
14 providers fear the increased risk of medical malpractice
15 liability. The Legislature finds that such patients, in order
16 to obtain medical care, are frequently forced to seek care
17 through providers of emergency medical services and care. The
18 Legislature finds that providers of emergency medical services
19 and care in this state have reported significant problems with
20 both the availability and affordability of professional
21 liability coverage. The Legislature finds that medical
22 malpractice liability insurance premiums have increased
23 dramatically, and a number of insurers have ceased providing
24 medical malpractice coverage for emergency medical services
25 and care in this state. This results in a significant
26 unavailability of malpractice coverage for providers of
27 emergency medical services and care. The Legislature further
28 finds that a significant number of specialist physicians have
29 resigned from serving on hospital staffs or have otherwise
30 declined to provide on-call coverage to hospital emergency
31 departments due to increased medical malpractice liability

1 exposure created by treating such emergency department
2 patients, creating a void that has an adverse impact on
3 emergency patient care. It is the intent of the Legislature
4 that hospitals, emergency medical services providers, and
5 physicians be able to ensure that patients who might need
6 emergency medical services treatment or transportation or who
7 present to hospitals for emergency medical services and care
8 have access to such needed services.

9 Section 2. Subsection (9) of section 768.28, Florida
10 Statutes, is amended to read:

11 768.28 Waiver of sovereign immunity in tort actions;
12 recovery limits; limitation on attorney fees; statute of
13 limitations; exclusions; indemnification; risk management
14 programs.--

15 (9)(a) No officer, employee, or agent of the state or
16 of any of its subdivisions shall be held personally liable in
17 tort or named as a party defendant in any action for any
18 injury or damage suffered as a result of any act, event, or
19 omission of action in the scope of her or his employment or
20 function, unless such officer, employee, or agent acted in bad
21 faith or with malicious purpose or in a manner exhibiting
22 wanton and willful disregard of human rights, safety, or
23 property. However, such officer, employee, or agent shall be
24 considered an adverse witness in a tort action for any injury
25 or damage suffered as a result of any act, event, or omission
26 of action in the scope of her or his employment or function.
27 The exclusive remedy for injury or damage suffered as a result
28 of an act, event, or omission of an officer, employee, or
29 agent of the state or any of its subdivisions or
30 constitutional officers shall be by action against the
31 governmental entity, or the head of such entity in her or his

1 | official capacity, or the constitutional officer of which the
2 | officer, employee, or agent is an employee, unless such act or
3 | omission was committed in bad faith or with malicious purpose
4 | or in a manner exhibiting wanton and willful disregard of
5 | human rights, safety, or property. The state or its
6 | subdivisions shall not be liable in tort for the acts or
7 | omissions of an officer, employee, or agent committed while
8 | acting outside the course and scope of her or his employment
9 | or committed in bad faith or with malicious purpose or in a
10 | manner exhibiting wanton and willful disregard of human
11 | rights, safety, or property.

12 | (b) As used in this subsection, the term:

13 | 1. "Employee" includes any volunteer firefighter.

14 | 2. "Officer, employee, or agent" includes, but is not
15 | limited to:

16 | a. Any health care provider when providing services
17 | pursuant to s. 766.1115, any member of the Florida Health
18 | Services Corps, as defined in s. 381.0302, who provides
19 | uncompensated care to medically indigent persons referred by
20 | the Department of Health, and any public defender or her or
21 | his employee or agent, including, among others, an assistant
22 | public defender and an investigator.

23 | b. Any emergency health care provider acting pursuant
24 | to obligations imposed by s. 395.1041 or s. 401.45, except for
25 | persons or entities that are otherwise covered under this
26 | section.

27 | (c)1. Emergency health care providers are considered
28 | agents of the state and shall indemnify the state for any
29 | judgments, settlement costs, or other liabilities incurred,
30 | only up to the liability limits in subsection (5).

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1 2. Any emergency health care provider who is licensed
2 by the state and who fails to indemnify the state after
3 reasonable notice and written demand to indemnify the state is
4 subject to an emergency suspension order of the regulating
5 authority having jurisdiction over the licensee.

6 3. The Department of Health shall issue an emergency
7 order suspending the license of any licensee under its
8 jurisdiction or any licensee of a regulatory board within the
9 Department of Health who, after 30 days following receipt of a
10 notice from the Division of Risk Management of the Department
11 of Financial Services that the licensee has failed to satisfy
12 his or her obligation to indemnify the state or enter into a
13 repayment agreement with the state for costs under this
14 subsection, has not complied. The terms of such agreement must
15 provide assurance of repayment of the obligation that is
16 satisfactory to the state. For licensees within the Division
17 of Medical Quality Assurance of the Department of Health,
18 failure to comply with this paragraph constitutes grounds for
19 disciplinary action under each respective practice act and
20 under s. 456.072(1)(k). For licensees and certificateholders
21 under part III of chapter 401, failure to comply with this
22 paragraph constitutes grounds for disciplinary action by the
23 Department of Health under s. 401.411.

24 4. If the emergency health care provider is licensed
25 under chapter 395 and has failed to indemnify the state after
26 reasonable notice and written demand to indemnify the state,
27 any state funds payable to the licensed facility shall be
28 withheld until the facility satisfies its obligation to
29 indemnify the state or enters into a repayment agreement. The
30 terms of such an agreement must provide assurance of repayment
31 of the obligation which is satisfactory to the state. In

1 addition, the Agency for Health Care Administration shall
2 impose an administrative fine, not to exceed \$10,000 per
3 violation of this paragraph.

4 5. As used in this subsection, the term:

5 a. "Emergency health care providers" includes all
6 persons and entities providing services pursuant to
7 obligations imposed by s. 395.1041 or s. 401.45, except those
8 persons or entities that are otherwise covered under this
9 section. The term includes:

10 (I) An emergency medical services provider licensed
11 under chapter 401 and persons operating as employees or agents
12 of such an emergency medical services provider.

13 (II) A hospital licensed under chapter 395 and persons
14 operating as employees or agents of such a hospital.

15 (III) A physician licensed under chapter 458, chapter
16 459, chapter 460, or chapter 461.

17 (IV) A physician assistant licensed under chapter 458
18 or chapter 459.

19 (V) An emergency medical technician or paramedic
20 certified under chapter 401.

21 (VI) A registered nurse, nurse midwife, licensed
22 practical nurse, or advanced registered nurse practitioner
23 licensed or registered under part I of chapter 464.

24 (VII) A midwife licensed under chapter 467.

25 (VIII) A health care professional association and its
26 employees or agents or a corporate medical group and its
27 employees or agents.

28 (IX) Any student or medical resident who is enrolled
29 in an accredited program or licensed program that prepares the
30 student for licensure or certification in any one of the
31 professions listed in sub-sub-subparagraphs (III)-(VII), the

1 program that prepares the student for licensure or
2 certification, and the entity responsible for training of the
3 student or medical resident.

4 (X) Any receiving facility designated under chapter
5 394 and persons operating as employees or agents of the
6 receiving facility when providing emergency treatment to a
7 person presented for evaluation in accordance with chapter
8 394.

9 (XI) Any other person or entity that is providing
10 services pursuant to obligations imposed by s. 395.1041 or s.
11 401.45.

12 b. "Emergency medical services" means ambulance
13 assessment, treatment, or transport services provided pursuant
14 to obligations imposed by s. 395.1041 or s. 401.45; all
15 screening, examination, and evaluation by a physician,
16 hospital, or other person or entity acting pursuant to
17 obligations imposed by s. 395.1041 or s. 401.45; and the care,
18 treatment, surgery, or other medical services provided,
19 whether as an outpatient or inpatient, to relieve or eliminate
20 the emergency medical condition, including all medical
21 services to eliminate the likelihood that the emergency
22 medical condition will deteriorate or recur without further
23 medical attention within a reasonable period of time.

24 (d)(e) For purposes of the waiver of sovereign
25 immunity only, a member of the Florida National Guard is not
26 acting within the scope of state employment when performing
27 duty under the provisions of Title 10 or Title 32 of the
28 United States Code or other applicable federal law; and
29 neither the state nor any individual may be named in any
30 action under this chapter arising from the performance of such
31 federal duty.

1 ~~(e)~~(d) The employing agency of a law enforcement
2 officer as defined in s. 943.10 is not liable for injury,
3 death, or property damage effected or caused by a person
4 fleeing from a law enforcement officer in a motor vehicle if:

5 1. The pursuit is conducted in a manner that does not
6 involve conduct by the officer which is so reckless or wanting
7 in care as to constitute disregard of human life, human
8 rights, safety, or the property of another;

9 2. At the time the law enforcement officer initiates
10 the pursuit, the officer reasonably believes that the person
11 fleeing has committed a forcible felony as defined in s.
12 776.08; and

13 3. The pursuit is conducted by the officer pursuant to
14 a written policy governing high-speed pursuit adopted by the
15 employing agency. The policy must contain specific procedures
16 concerning the proper method to initiate and terminate
17 high-speed pursuit. The law enforcement officer must have
18 received instructional training from the employing agency on
19 the written policy governing high-speed pursuit.

20 Section 3. This act shall take effect upon becoming a
21 law, and applies to any cause of action accruing on or after
22 that date.
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