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1 A bill to be entitled

2 An act relating to informed consent; amending s. 401.445,  
3 F.S.; adding additional medical personnel to provisions  
4 allowing immunity for certain emergency examination and  
5 treatment of incapacitated persons done without consent if  
6 informed consent would have reasonably been given under  
7 the medical consent law; conforming provisions; amending  
8 s. 766.103, F.S.; adding additional medical personnel to  
9 the medical consent law; providing an effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13 Section 1. Subsections (1) and (2) of section 401.445,  
14 Florida Statutes, are amended to read:

15 401.445 Emergency examination and treatment of  
16 incapacitated persons.--

17 (1) No recovery shall be allowed in any court in this  
18 state against any emergency medical technician, paramedic, or  
19 physician as defined in this chapter, any advanced registered  
20 nurse practitioner certified under s. 464.012, or any physician  
21 assistant licensed under s. 458.347 or s. 459.022, or any person  
22 acting under the direct medical supervision of a physician, in  
23 an action brought for examining or treating a patient without  
24 his or her informed consent if:

25 (a) The patient at the time of examination or treatment is  
26 intoxicated, under the influence of drugs, or otherwise  
27 incapable of providing informed consent as provided in s.  
28 766.103;

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29 (b) The patient at the time of examination or treatment is  
 30 experiencing an emergency medical condition; and

31 (c) The patient would reasonably, under all the  
 32 surrounding circumstances, undergo such examination, treatment,  
 33 or procedure if he or she were advised by the emergency medical  
 34 technician, paramedic, ~~or~~ physician, advanced registered nurse  
 35 practitioner, or physician assistant in accordance with s.  
 36 766.103(3).

37  
 38 Examination and treatment provided under this subsection shall  
 39 be limited to reasonable examination of the patient to determine  
 40 the medical condition of the patient and treatment reasonably  
 41 necessary to alleviate the emergency medical condition or to  
 42 stabilize the patient.

43 (2) In examining and treating a person who is apparently  
 44 intoxicated, under the influence of drugs, or otherwise  
 45 incapable of providing informed consent, the emergency medical  
 46 technician, paramedic, ~~or~~ physician, advanced registered nurse  
 47 practitioner, or physician assistant, or any person acting under  
 48 the direct medical supervision of a physician, shall proceed  
 49 wherever possible with the consent of the person. If the person  
 50 reasonably appears to be incapacitated and refuses his or her  
 51 consent, the person may be examined, treated, or taken to a  
 52 hospital or other appropriate treatment resource if he or she is  
 53 in need of emergency attention, without his or her consent, but  
 54 unreasonable force shall not be used.

55 Section 2. Subsection (3) of section 766.103, Florida  
 56 Statutes, is amended to read:

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57 766.103 Florida Medical Consent Law.--

58 (3) No recovery shall be allowed in any court in this  
59 state against any physician licensed under chapter 458,  
60 osteopathic physician licensed under chapter 459, chiropractic  
61 physician licensed under chapter 460, podiatric physician  
62 licensed under chapter 461, ~~or~~ dentist licensed under chapter  
63 466, advanced registered nurse practitioner certified under s.  
64 464.012, or physician assistant licensed under s. 458.347 or s.  
65 459.022 in an action brought for treating, examining, or  
66 operating on a patient without his or her informed consent when:

67 (a)1. The action of the physician, osteopathic physician,  
68 chiropractic physician, podiatric physician, ~~or~~ dentist,  
69 advanced registered nurse practitioner, or physician assistant  
70 in obtaining the consent of the patient or another person  
71 authorized to give consent for the patient was in accordance  
72 with an accepted standard of medical practice among members of  
73 the medical profession with similar training and experience in  
74 the same or similar medical community; and

75 2. A reasonable individual, from the information provided  
76 by the physician, osteopathic physician, chiropractic physician,  
77 podiatric physician, ~~or~~ dentist, advanced registered nurse  
78 practitioner, or physician assistant, under the circumstances,  
79 would have a general understanding of the procedure, the  
80 medically acceptable alternative procedures or treatments, and  
81 the substantial risks and hazards inherent in the proposed  
82 treatment or procedures, which are recognized among other  
83 physicians, osteopathic physicians, chiropractic physicians,

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84 | podiatric physicians, or dentists in the same or similar  
85 | community who perform similar treatments or procedures; or  
86 |       (b) The patient would reasonably, under all the  
87 | surrounding circumstances, have undergone such treatment or  
88 | procedure had he or she been advised by the physician,  
89 | osteopathic physician, chiropractic physician, podiatric  
90 | physician, ~~or dentist~~, advanced registered nurse practitioner,  
91 | or physician assistant in accordance with the provisions of  
92 | paragraph (a).

93 |       Section 3. This act shall take effect July 1, 2007.