

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.

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

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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;

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:

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 as that of the person

75 treating, examining, or operating on the patient for whom the

76 consent is obtained; and

77 2. A reasonable individual, from the information provided

78 by the physician, osteopathic physician, chiropractic physician,

79 podiatric physician, ~~or~~ dentist, advanced registered nurse

80 practitioner, or physician assistant, under the circumstances,

81 would have a general understanding of the procedure, the

82 medically acceptable alternative procedures or treatments, and

83 the substantial risks and hazards inherent in the proposed

84 treatment or procedures, which are recognized among other

CS/HB 469

2007

85 | physicians, osteopathic physicians, chiropractic physicians,
86 | podiatric physicians, ~~or~~ dentists, advanced registered nurse
87 | practitioners, or physician assistants in the same or similar
88 | community who perform similar treatments or procedures; or

89 | (b) The patient would reasonably, under all the
90 | surrounding circumstances, have undergone such treatment or
91 | procedure had he or she been advised by the physician,
92 | osteopathic physician, chiropractic physician, podiatric
93 | physician, ~~or~~ dentist, advanced registered nurse practitioner,
94 | or physician assistant in accordance with the provisions of
95 | paragraph (a).

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