

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

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

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

29 prehospital emergency medical treatment or transport may not be
30 denied by emergency medical services providers to persons who
31 have or are likely to have an emergency medical condition. Such
32 governmental requirements have imposed a unilateral obligation
33 for emergency services and care providers to provide services to
34 all persons seeking emergency care without ensuring payment or
35 other consideration for provision of such care. The Legislature
36 also recognizes that emergency services and care providers
37 provide a significant amount of uncompensated emergency medical
38 care in furtherance of such governmental interest. The
39 Legislature finds that a significant proportion of the residents
40 of this state who are uninsured or are Medicaid or Medicare
41 recipients are unable to access needed health care because
42 health care providers fear the increased risk of medical
43 malpractice liability. The Legislature finds that such patients,
44 in order to obtain medical care, are frequently forced to seek
45 care through providers of emergency medical services and care.
46 The Legislature finds that providers of emergency medical
47 services and care in this state have reported significant
48 problems with both the availability and affordability of
49 professional liability coverage. The Legislature finds that
50 medical malpractice liability insurance premiums have increased
51 dramatically, and a number of insurers have ceased providing
52 medical malpractice coverage for emergency medical services and
53 care in this state. This results in a significant unavailability
54 of malpractice coverage for providers of emergency medical
55 services and care. The Legislature further finds that a
56 significant number of specialist physicians have resigned from

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57 serving on hospital staffs or have otherwise declined to provide
58 on-call coverage to hospital emergency departments due to
59 increased medical malpractice liability exposure created by
60 treating such emergency department patients, creating a void
61 that has an adverse impact on emergency patient care. It is the
62 intent of the Legislature that hospitals, emergency medical
63 services providers, and physicians be able to ensure that
64 patients who might need emergency medical services treatment or
65 transportation or who present to hospitals for emergency medical
66 services and care have access to such needed services.

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

69 768.28 Waiver of sovereign immunity in tort actions;
70 recovery limits; limitation on attorney fees; statute of
71 limitations; exclusions; indemnification; risk management
72 programs.--

73 (9) (a) No officer, employee, or agent of the state or of
74 any of its subdivisions shall be held personally liable in tort
75 or named as a party defendant in any action for any injury or
76 damage suffered as a result of any act, event, or omission of
77 action in the scope of her or his employment or function, unless
78 such officer, employee, or agent acted in bad faith or with
79 malicious purpose or in a manner exhibiting wanton and willful
80 disregard of human rights, safety, or property. However, such
81 officer, employee, or agent shall be considered an adverse
82 witness in a tort action for any injury or damage suffered as a
83 result of any act, event, or omission of action in the scope of
84 her or his employment or function. The exclusive remedy for

85 injury or damage suffered as a result of an act, event, or
86 omission of an officer, employee, or agent of the state or any
87 of its subdivisions or constitutional officers shall be by
88 action against the governmental entity, or the head of such
89 entity in her or his official capacity, or the constitutional
90 officer of which the officer, employee, or agent is an employee,
91 unless such act or omission was committed in bad faith or with
92 malicious purpose or in a manner exhibiting wanton and willful
93 disregard of human rights, safety, or property. The state or its
94 subdivisions shall not be liable in tort for the acts or
95 omissions of an officer, employee, or agent committed while
96 acting outside the course and scope of her or his employment or
97 committed in bad faith or with malicious purpose or in a manner
98 exhibiting wanton and willful disregard of human rights, safety,
99 or property.

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

101 1. "Employee" includes any volunteer firefighter.

102 2. "Officer, employee, or agent" includes, but is not
103 limited to:⁷

104 a. Any health care provider when providing services
105 pursuant to s. 766.1115, any member of the Florida Health
106 Services Corps, as defined in s. 381.0302, who provides
107 uncompensated care to medically indigent persons referred by the
108 Department of Health, and any public defender or her or his
109 employee or agent, including, among others, an assistant public
110 defender and an investigator.

111 b. Any emergency health care provider acting pursuant to
112 obligations imposed by s. 395.1041 or s. 401.45, except for

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113 persons or entities that are otherwise covered under this
114 section.

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

119 2. Any emergency health care provider who is licensed by
120 the state and who fails to indemnify the state after reasonable
121 notice and written demand to indemnify the state is subject to
122 an emergency suspension order of the regulating authority having
123 jurisdiction over the licensee.

124 3. The Department of Health shall issue an emergency order
125 suspending the license of any licensee under its jurisdiction or
126 any licensee of a regulatory board within the Department of
127 Health who, after 30 days following receipt of a notice from the
128 Division of Risk Management of the Department of Financial
129 Services that the licensee has failed to satisfy his or her
130 obligation to indemnify the state or enter into a repayment
131 agreement with the state for costs under this subsection, has
132 not complied. The terms of such agreement must provide assurance
133 of repayment of the obligation that is satisfactory to the
134 state. For licensees within the Division of Medical Quality
135 Assurance of the Department of Health, failure to comply with
136 this paragraph constitutes grounds for disciplinary action under
137 each respective practice act and under s. 456.072(1)(k). For
138 licensees and certificateholders under part III of chapter 401,
139 failure to comply with this paragraph constitutes grounds for

140 disciplinary action by the Department of Health under s.
 141 401.411.

142 4. If the emergency health care provider is licensed under
 143 chapter 395 and has failed to indemnify the state after
 144 reasonable notice and written demand to indemnify the state, any
 145 state funds payable to the licensed facility shall be withheld
 146 until the facility satisfies its obligation to indemnify the
 147 state or enters into a repayment agreement. The terms of such an
 148 agreement must provide assurance of repayment of the obligation
 149 which is satisfactory to the state. In addition, the Agency for
 150 Health Care Administration shall impose an administrative fine,
 151 not to exceed \$10,000 per violation of this paragraph.

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

153 a. "Emergency health care providers" includes all persons
 154 and entities providing services pursuant to obligations imposed
 155 by s. 395.1041 or s. 401.45, except those persons or entities
 156 that are otherwise covered under this section. The term
 157 includes:

158 (I) An emergency medical services provider licensed under
 159 chapter 401 and persons operating as employees or agents of such
 160 an emergency medical services provider.

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

163 (III) A physician licensed under chapter 458, chapter 459,
 164 chapter 460, or chapter 461.

165 (IV) A physician assistant licensed under chapter 458 or
 166 chapter 459.

167 (V) An emergency medical technician or paramedic certified
168 under chapter 401.

169 (VI) A registered nurse, nurse midwife, licensed practical
170 nurse, or advanced registered nurse practitioner licensed or
171 registered under part I of chapter 464.

172 (VII) A midwife licensed under chapter 467.

173 (VIII) A health care professional association and its
174 employees or agents or a corporate medical group and its
175 employees or agents.

176 (IX) Any student or medical resident who is enrolled in an
177 accredited program or licensed program that prepares the student
178 for licensure or certification in any one of the professions
179 listed in sub-sub-subparagraphs (III)-(VII), the program that
180 prepares the student for licensure or certification, and the
181 entity responsible for training of the student or medical
182 resident.

183 (X) Any receiving facility designated under chapter 394
184 and persons operating as employees or agents of the receiving
185 facility when providing emergency treatment to a person
186 presented for evaluation in accordance with chapter 394.

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

189 b. "Emergency medical services" means ambulance
190 assessment, treatment, or transport services provided pursuant
191 to obligations imposed by s. 395.1041 or s. 401.45; all
192 screening, examination, and evaluation by a physician, hospital,
193 or other person or entity acting pursuant to obligations imposed
194 by s. 395.1041 or s. 401.45; and the care, treatment, surgery,

195 or other medical services provided, whether as an outpatient or
 196 inpatient, to relieve or eliminate the emergency medical
 197 condition, including all medical services to eliminate the
 198 likelihood that the emergency medical condition will deteriorate
 199 or recur without further medical attention within a reasonable
 200 period of time.

201 (d)~~(e)~~ For purposes of the waiver of sovereign immunity
 202 only, a member of the Florida National Guard is not acting
 203 within the scope of state employment when performing duty under
 204 the provisions of Title 10 or Title 32 of the United States Code
 205 or other applicable federal law; and neither the state nor any
 206 individual may be named in any action under this chapter arising
 207 from the performance of such federal duty.

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

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

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

219 3. The pursuit is conducted by the officer pursuant to a
 220 written policy governing high-speed pursuit adopted by the
 221 employing agency. The policy must contain specific procedures
 222 concerning the proper method to initiate and terminate high-

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223 speed pursuit. The law enforcement officer must have received
224 instructional training from the employing agency on the written
225 policy governing high-speed pursuit.

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