

By Senator Baker

20-02636A-08

20081640__

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.

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

13
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, physicians,
17 and emergency medical services providers to every person in need
18 of such care. The Legislature finds that emergency services and
19 care providers are critical elements in responding to disaster
20 and emergency situations that might affect our local communities,
21 state, and country. The Legislature recognizes the importance of
22 maintaining a viable system of providing for the emergency
23 medical needs of the state's residents and visitors. The
24 Legislature and the Federal Government have required such
25 providers of emergency medical services and care to provide
26 emergency services and care to all persons who present themselves
27 to hospitals seeking such care. The Legislature finds that the
28 Legislature has further mandated that prehospital emergency
29 medical treatment or transport may not be denied by emergency

20-02636A-08

20081640__

30 medical services providers to persons who have or are likely to
31 have an emergency medical condition. Such governmental
32 requirements have imposed a unilateral obligation for emergency
33 services and care providers to provide services to all persons
34 seeking emergency care without ensuring payment or other
35 consideration for provision of such care. The Legislature also
36 recognizes that emergency services and care providers provide a
37 significant amount of uncompensated emergency medical care in
38 furtherance of such governmental interest. The Legislature finds
39 that a significant proportion of the residents of this state who
40 are uninsured or are Medicaid or Medicare recipients are unable
41 to access needed health care on an elective basis because health
42 care providers fear the increased risk of medical malpractice
43 liability. The Legislature finds that such patients, in order to
44 obtain medical care, are frequently forced to seek care through
45 providers of emergency medical services and care. The Legislature
46 finds that providers of emergency medical services and care in
47 this state have reported significant problems with affordability
48 of professional liability insurance, which is more expensive in
49 Florida than the national average. The Legislature further finds
50 that a significant number of specialist physicians have resigned
51 from serving on hospital staffs or have otherwise declined to
52 provide on-call coverage to hospital emergency departments due to
53 increased medical malpractice liability exposure created by
54 treating such emergency department patients, creating a void that
55 has an adverse impact on emergency patient care. It is the intent
56 of the Legislature that hospitals, emergency medical services
57 providers, and physicians be able to ensure that patients who
58 might need emergency medical services treatment or transportation

20-02636A-08

20081640__

59 or who present themselves to hospitals for emergency medical
60 services and care have access to such needed services.

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

63 768.28 Waiver of sovereign immunity in tort actions;
64 recovery limits; limitation on attorney fees; statute of
65 limitations; exclusions; indemnification; risk management
66 programs.--

67 (9) (a) No officer, employee, or agent of the state or of
68 any of its subdivisions shall be held personally liable in tort
69 or named as a party defendant in any action for any injury or
70 damage suffered as a result of any act, event, or omission of
71 action in the scope of her or his employment or function, unless
72 such officer, employee, or agent acted in bad faith or with
73 malicious purpose or in a manner exhibiting wanton and willful
74 disregard of human rights, safety, or property. However, such
75 officer, employee, or agent shall be considered an adverse
76 witness in a tort action for any injury or damage suffered as a
77 result of any act, event, or omission of action in the scope of
78 her or his employment or function. The exclusive remedy for
79 injury or damage suffered as a result of an act, event, or
80 omission of an officer, employee, or agent of the state or any of
81 its subdivisions or constitutional officers shall be by action
82 against the governmental entity, or the head of such entity in
83 her or his official capacity, or the constitutional officer of
84 which the officer, employee, or agent is an employee, unless such
85 act or omission was committed in bad faith or with malicious
86 purpose or in a manner exhibiting wanton and willful disregard of
87 human rights, safety, or property. The state or its subdivisions

20-02636A-08

20081640__

88 shall not be liable in tort for the acts or omissions of an
89 officer, employee, or agent committed while acting outside the
90 course and scope of her or his employment or committed in bad
91 faith or with malicious purpose or in a manner exhibiting wanton
92 and willful disregard of human rights, safety, or property.

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

94 1. "Employee" includes any volunteer firefighter.

95 2. "Officer, employee, or agent" includes, but is not
96 limited to:

97 a. Any health care provider when providing services
98 pursuant to s. 766.1115, any member of the Florida Health
99 Services Corps, as defined in s. 381.0302, who provides
100 uncompensated care to medically indigent persons referred by the
101 Department of Health, and any public defender or her or his
102 employee or agent, including, among others, an assistant public
103 defender and an investigator.

104 b. Any emergency health care provider acting pursuant to
105 obligations imposed by s. 395.1041 or s. 401.45, except for
106 persons or entities that are otherwise covered under this
107 section.

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

112 2. Any emergency health care provider who is licensed by
113 the state and who fails to indemnify the state after reasonable
114 notice and written demand to do so is subject to an emergency
115 suspension order of the regulating authority having jurisdiction
116 over the licensee.

20-02636A-08

20081640__

117 3. The Department of Health shall issue an emergency order
118 suspending the license of any licensee under its jurisdiction or
119 any licensee of a regulatory board within the Department of
120 Health who, after 30 days following receipt of a notice from the
121 Division of Risk Management of the Department of Financial
122 Services that the licensee has failed to satisfy his or her
123 obligation to indemnify the state or enter into a repayment
124 agreement with the state for costs under this subsection, has not
125 complied. The terms of such agreement must provide assurance of
126 repayment of the obligation that is satisfactory to the state.
127 For licensees within the Division of Medical Quality Assurance of
128 the Department of Health, failure to comply with this paragraph
129 constitutes grounds for disciplinary action under each respective
130 practice act and under s. 456.072(1)(k). For licensees and
131 certificateholders under part III of chapter 401, failure to
132 comply with this paragraph constitutes grounds for disciplinary
133 action by the Department of Health under s. 401.411.

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

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

20-02636A-08

20081640__

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

149 (I) An emergency medical services provider licensed under
150 chapter 401 and persons operating as employees or agents of such
151 an emergency medical services provider.

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

154 (III) A physician licensed under chapter 458, chapter 459,
155 chapter 460, or chapter 461.

156 (IV) A physician assistant licensed under chapter 458 or
157 chapter 459.

158 (V) An emergency medical technician or paramedic certified
159 under chapter 401.

160 (VI) A registered nurse, nurse midwife, licensed practical
161 nurse, or advanced registered nurse practitioner licensed or
162 registered under part I of chapter 464.

163 (VII) A midwife licensed under chapter 467.

164 (VIII) A health care professional association and its
165 employees or agents or a corporate medical group and its
166 employees or agents.

167 (IX) Any student or medical resident who is enrolled in an
168 accredited program or licensed program that prepares the student
169 for licensure or certification in any one of the professions
170 listed in sub-sub-subparagraphs (III)-(VII), the program that
171 prepares the student for licensure or certification, and the
172 entity responsible for training of the student or medical
173 resident.

20-02636A-08

20081640__

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

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

180 b. "Emergency medical services" means ambulance assessment,
181 treatment, or transport services provided pursuant to obligations
182 imposed by s. 395.1041 or s. 401.45; all screening, examination,
183 and evaluation by a physician, hospital, or other person or
184 entity acting pursuant to obligations imposed by s. 395.1041 or
185 s. 401.45; and the care, treatment, surgery, or other medical
186 services provided, whether as an outpatient or inpatient, to
187 relieve or eliminate the emergency medical condition, including
188 all medical services to eliminate the likelihood that the
189 emergency medical condition will deteriorate or recur without
190 further medical attention within a reasonable period of time.

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

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

20-02636A-08

20081640__

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

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

209 3. The pursuit is conducted by the officer pursuant to a
210 written policy governing high-speed pursuit adopted by the
211 employing agency. The policy must contain specific procedures
212 concerning the proper method to initiate and terminate high-speed
213 pursuit. The law enforcement officer must have received
214 instructional training from the employing agency on the written
215 policy governing high-speed pursuit.

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