

By Senator Bennett

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1 A bill to be entitled

2 An act relating to sovereign immunity for law enforcement
3 agencies; providing a short title; providing legislative
4 findings and intent; amending s. 768.28, F.S.; prescribing
5 conditions under which a law enforcement agency is immune
6 from liability for damages resulting from its conduct of a
7 criminal investigation; specifying certain discretionary
8 acts that are not subject to liability; amending ss.
9 29.0081, 163.01, 456.048, 458.320, 459.0085, 616.242,
10 624.461, 624.462, 627.733, 984.09, and 985.037, F.S.;
11 conforming statutory cross-references; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. This act may be cited as the "Mark Lunsford Show
17 Respect and Gratitude to Law Enforcement Act."

18 Section 2. The Legislature finds that a law enforcement
19 agency, in the course of conducting a criminal investigation,
20 must make difficult and complex decisions while under significant
21 pressure concerning the manner in which it conducts the
22 investigation. These decisions include, but are not limited to,
23 decisions regarding which individuals the agency should question,
24 which leads or theories the agency should pursue, and which
25 properties the agency should search. Therefore, it is the intent
26 of the Legislature that a law enforcement agency, when acting in
27 good faith and in the best interests of crime victims, their
28 families, and the public and using professional judgment and

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29 experience, not face civil liability for damages that may result
30 from these types actions in conducting a criminal investigation.

31 Section 3. Present subsections (10) through (20) of section
32 768.28, Florida Statutes, are renumbered as subsections (11)
33 through (21), respectively, and a new subsection (10) is added to
34 that section, to read:

35 768.28 Waiver of sovereign immunity in tort actions;
36 recovery limits; limitation on attorney fees; statute of
37 limitations; exclusions; indemnification; risk management
38 programs.--

39 (10) (a) A law enforcement agency acting in good faith and
40 in the course of its business is not liable for damages under
41 this section arising from the manner in which it conducts a
42 criminal investigation unless the damages result from a wholly
43 operational, rather than discretionary, act of the agency or its
44 officers, employees, or agents, and the agency or its officers,
45 employees, or agents failed to use reasonable care in performing
46 that operational act.

47 (b) For purposes of this subsection, discretionary acts
48 include, but are not limited to:

49 1. Decisions relating to which investigatory leads or
50 theories to pursue;

51 2. Decisions relating to which individuals to question; and

52 3. Decisions relating to which properties to search and
53 under what conditions.

54 Section 4. Paragraph (b) of subsection (2) of section
55 29.0081, Florida Statutes, is amended to read:

56 29.0081 County funding of additional court personnel.--

57 (2) The agreement shall, at a minimum, provide that:

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58 (b) The personnel whose employment is funded under the
59 agreement are hired, supervised, managed, and fired by personnel
60 of the judicial circuit. The county shall be considered the
61 employer for purposes of s. 440.10 and chapter 443. Employees
62 funded by the county under this section and other county
63 employees may be aggregated for purposes of a flexible benefits
64 plan pursuant to s. 125 of the Internal Revenue Code of 1986. The
65 judicial circuit shall supervise the personnel whose employment
66 is funded under the agreement; be responsible for compliance with
67 all requirements of federal and state employment laws, including,
68 but not limited to, Title VII of the Civil Rights Act of 1964,
69 Title I of the Americans with Disabilities Act, 42 U.S.C. s.
70 1983, the Family Medical Leave Act, the Fair Labor Standards Act,
71 chapters 447 and 760, and ss. 112.3187, 440.105, and 440.205; and
72 fully indemnify the county from any liability under such laws, as
73 authorized by s. 768.28(20) ~~s. 768.28(19)~~, to the extent such
74 liability is the result of the acts or omissions of the judicial
75 circuit or its agents or employees.

76 Section 5. Paragraph (h) of subsection (3) of section
77 163.01, Florida Statutes, is amended to read:

78 163.01 Florida Interlocal Cooperation Act of 1969.--

79 (3) As used in this section:

80 (h) "Local government liability pool" means a reciprocal
81 insurer as defined in s. 629.021 or any self-insurance program
82 created pursuant to s. 768.28(17) ~~s. 768.28(16)~~, formed and
83 controlled by counties or municipalities of this state to provide
84 liability insurance coverage for counties, municipalities, or
85 other public agencies of this state, which pool may contract with

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86 other parties for the purpose of providing claims administration,
87 processing, accounting, and other administrative facilities.

88 Section 6. Paragraph (a) of subsection (2) of section
89 456.048, Florida Statutes, is amended to read:

90 456.048 Financial responsibility requirements for certain
91 health care practitioners.--

92 (2) The board or department may grant exemptions upon
93 application by practitioners meeting any of the following
94 criteria:

95 (a) Any person licensed under chapter 457, s. 458.3475, s.
96 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or
97 chapter 467 who practices exclusively as an officer, employee, or
98 agent of the Federal Government or of the state or its agencies
99 or its subdivisions. For the purposes of this subsection, an
100 agent of the state, its agencies, or its subdivisions is a person
101 who is eligible for coverage under any self-insurance or
102 insurance program authorized by the provisions of s. 768.28(17)
103 ~~s. 768.28(16)~~ or who is a volunteer under s. 110.501(1).

104 Section 7. Paragraph (a) of subsection (5) of section
105 458.320, Florida Statutes, is amended to read:

106 458.320 Financial responsibility.--

107 (5) The requirements of subsections (1), (2), and (3) do
108 not apply to:

109 (a) Any person licensed under this chapter who practices
110 medicine exclusively as an officer, employee, or agent of the
111 Federal Government or of the state or its agencies or its
112 subdivisions. For the purposes of this subsection, an agent of
113 the state, its agencies, or its subdivisions is a person who is
114 eligible for coverage under any self-insurance or insurance

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115 program authorized by the provisions of s. 768.28(17) ~~s.~~
116 ~~768.28(16)~~.

117 Section 8. Paragraph (a) of subsection (5) of section
118 459.0085, Florida Statutes, is amended to read:

119 459.0085 Financial responsibility.--

120 (5) The requirements of subsections (1), (2), and (3) do
121 not apply to:

122 (a) Any person licensed under this chapter who practices
123 medicine exclusively as an officer, employee, or agent of the
124 Federal Government or of the state or its agencies or its
125 subdivisions. For the purposes of this subsection, an agent of
126 the state, its agencies, or its subdivisions is a person who is
127 eligible for coverage under any self-insurance or insurance
128 program authorized by the provisions of s. 768.28(17) ~~s.~~
129 ~~768.28(16)~~.

130 Section 9. Paragraph (c) of subsection (9) of section
131 616.242, Florida Statutes, is amended to read:

132 616.242 Safety standards for amusement rides.--

133 (9) INSURANCE REQUIREMENTS.--

134 (c) The insurance requirements imposed under this
135 subsection do not apply to a governmental entity that is covered
136 by the provisions of s. 768.28(17) ~~s. 768.28(16)~~.

137 Section 10. Section 624.461, Florida Statutes, is amended
138 to read:

139 624.461 Definition.--For the purposes of the Florida
140 Insurance Code, "self-insurance fund" means both commercial self-
141 insurance funds organized under s. 624.462 and group self-
142 insurance funds organized under s. 624.4621. The term "self-

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143 insurance fund" does not include a governmental self-insurance
144 pool created under s. 768.28(17) ~~s. 768.28(16)~~.

145 Section 11. Subsection (6) of section 624.462, Florida
146 Statutes, is amended to read:

147 624.462 Commercial self-insurance funds.--

148 (6) A governmental self-insurance pool created pursuant to
149 s. 768.28(17) ~~s. 768.28(16)~~ shall not be considered a commercial
150 self-insurance fund.

151 Section 12. Paragraph (b) of subsection (3) of section
152 627.733, Florida Statutes, is amended to read:

153 627.733 Required security.--

154 (3) Such security shall be provided:

155 (b) By any other method authorized by s. 324.031(2), (3),
156 or (4) and approved by the Department of Highway Safety and Motor
157 Vehicles as affording security equivalent to that afforded by a
158 policy of insurance or by self-insuring as authorized by s.
159 768.28(17) ~~s. 768.28(16)~~. The person filing such security shall
160 have all of the obligations and rights of an insurer under ss.
161 627.730-627.7405.

162 Section 13. Subsection (3) of section 984.09, Florida
163 Statutes, is amended to read:

164 984.09 Punishment for contempt of court; alternative
165 sanctions.--

166 (3) ALTERNATIVE SANCTIONS.--Each judicial circuit shall
167 have an alternative sanctions coordinator who shall serve under
168 the chief administrative judge of the juvenile division of the
169 circuit court, and who shall coordinate and maintain a spectrum
170 of contempt sanction alternatives in conjunction with the circuit
171 plan implemented in accordance with s. 790.22(4)(c). Upon

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172 determining that a child has committed direct contempt of court
173 or indirect contempt of a valid court order, the court may
174 immediately request the alternative sanctions coordinator to
175 recommend the most appropriate available alternative sanction and
176 shall order the child to perform up to 50 hours of community-
177 service manual labor or a similar alternative sanction, unless an
178 alternative sanction is unavailable or inappropriate, or unless
179 the child has failed to comply with a prior alternative sanction.
180 Alternative contempt sanctions may be provided by local industry
181 or by any nonprofit organization or any public or private
182 business or service entity that has entered into a contract with
183 the Department of Juvenile Justice to act as an agent of the
184 state to provide voluntary supervision of children on behalf of
185 the state in exchange for the manual labor of children and
186 limited immunity in accordance with s. 768.28(12) ~~s. 768.28(11)~~.

187 Section 14. Subsection (3) of section 985.037, Florida
188 Statutes, is amended to read:

189 985.037 Punishment for contempt of court; alternative
190 sanctions.--

191 (3) ALTERNATIVE SANCTIONS.--Each judicial circuit shall
192 have an alternative sanctions coordinator who shall serve under
193 the chief administrative judge of the juvenile division of the
194 circuit court, and who shall coordinate and maintain a spectrum
195 of contempt sanction alternatives in conjunction with the circuit
196 plan implemented in accordance with s. 790.22(4)(c). Upon
197 determining that a child has committed direct contempt of court
198 or indirect contempt of a valid court order, the court may
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200 recommend the most appropriate available alternative sanction and

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201 shall order the child to perform up to 50 hours of community-
202 service manual labor or a similar alternative sanction, unless an
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204 the child has failed to comply with a prior alternative sanction.
205 Alternative contempt sanctions may be provided by local industry
206 or by any nonprofit organization or any public or private
207 business or service entity that has entered into a contract with
208 the Department of Juvenile Justice to act as an agent of the
209 state to provide voluntary supervision of children on behalf of
210 the state in exchange for the manual labor of children and
211 limited immunity in accordance with s. 768.28(12) ~~s. 768.28(11)~~.

212 Section 15. This act shall take effect July 1, 2008.