

1 A bill to be entitled

2 An act relating to treatment programs for impaired  
3 practitioners; amending s. 456.076, F.S.; revising  
4 requirements for program consultants; authorizing the  
5 Department of Health to contract with consultants to  
6 provide treatment services for allopathic and osteopathic  
7 physician students alleged to be impaired; providing for  
8 absence of liability in civil actions of certain schools  
9 for referring students to such consultants or taking  
10 certain actions without intentional fraud; providing  
11 limited sovereign immunity for certain program consultants  
12 under specific contractual conditions; requiring the  
13 Department of Financial Services to defend certain actions  
14 against program consultants; providing an effective date.

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

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18 Section 1. Subsections (1) and (2) of section 456.076,  
19 Florida Statutes, are amended, and subsection (7) is added to  
20 that section, to read:

21 456.076 Treatment programs for impaired practitioners.--

22 (1) For professions that do not have impaired practitioner  
23 programs provided for in their practice acts, the department  
24 shall, by rule, designate approved impaired practitioner  
25 programs under this section. The department may adopt rules  
26 setting forth appropriate criteria for approval of treatment  
27 providers. The rules may specify the manner in which the  
28 consultant, retained as set forth in subsection (2), works with

29 | the department in intervention, requirements for evaluating and  
 30 | treating a professional, and requirements for ~~the~~ continued care  
 31 | and monitoring ~~of a professional~~ by the consultant ~~by an~~  
 32 | ~~approved treatment provider.~~

33 | (2) The department shall retain one or more impaired  
 34 | practitioner consultants. The A consultant shall be either a  
 35 | licensee under the jurisdiction of the Division of Medical  
 36 | Quality Assurance within the department who is, and at least one  
 37 | consultant must be a practitioner or recovered practitioner  
 38 | licensed under chapter 458, chapter 459, or part I of chapter  
 39 | 464 or an entity that employs a medical director who is a  
 40 | practitioner or recovered practitioner licensed under chapter  
 41 | 458, chapter 459, or part I of chapter 464. The consultant shall  
 42 | assist the probable cause panel and department in carrying out  
 43 | the responsibilities of this section. This shall include working  
 44 | with department investigators to determine whether a  
 45 | practitioner is, in fact, impaired. The department may contract  
 46 | with the consultant, for appropriate compensation, for services  
 47 | to be provided, if requested by a school, for students enrolled  
 48 | in schools in preparation for licensure as allopathic physicians  
 49 | under chapter 458 or osteopathic physicians under chapter 459  
 50 | who are alleged to be impaired as a result of the misuse or  
 51 | abuse of alcohol or drugs, or both, or due to a mental or  
 52 | physical condition. A medical school accredited by the Liaison  
 53 | Committee on Medical Education or the Commission on Osteopathic  
 54 | College Accreditation, or any other school that provides for the  
 55 | education of students enrolled in preparation for licensure as  
 56 | allopathic physicians under chapter 458 or osteopathic

57 physicians under chapter 459, that is governed by accreditation  
58 standards that require notice and the provision of due process  
59 procedures to students shall not be held liable in any civil  
60 action for referring a student to the consultant retained by the  
61 department or for disciplinary actions that adversely affect the  
62 status of a student when the disciplinary actions are instituted  
63 in reasonable reliance on the recommendations, reports, or  
64 conclusions provided by such consultant, provided that the  
65 school, in referring the student or taking disciplinary action,  
66 adheres to the due process procedures adopted by the applicable  
67 accreditation entities and provided that the school committed no  
68 intentional fraud in carrying out the provisions of this  
69 section.

70 (7) (a) A consultant retained pursuant to subsection (2),  
71 the consultant's officers and employees, and those acting at the  
72 direction of the consultant for the limited purpose of an  
73 emergency intervention on behalf of a licensee or student as  
74 described in subsection (2) when the consultant is unable to  
75 perform such intervention shall be considered agents of the  
76 department for purposes of s. 768.28 while acting within the  
77 scope of the consultant's duties under the contract with the  
78 department if the contract complies with the requirements of  
79 this section. The contract must provide that:

80 1. The consultant establish a quality assurance program to  
81 monitor services delivered under the contract.

82 2. The consultant's quality assurance program, treatment,  
83 and monitoring records be evaluated quarterly.

84 3. The consultant's quality assurance program be subject  
85 to review and approval by the department.

86 4. The consultant operate under policies and procedures  
87 approved by the department.

88 5. The consultant provide to the department for approval a  
89 policy and procedure manual that comports with all statutes,  
90 rules, and contract provisions approved by the department.

91 6. The department be entitled to review the records  
92 relating to the consultant's performance under the contract for  
93 the purpose of management audits, financial audits, or program  
94 evaluation.

95 7. All performance measures and standards be subject to  
96 verification and approval by the department.

97 8. The department be entitled to terminate the contract  
98 with the consultant for noncompliance with the contract.

99 (b) In accordance with s. 284.385, the Department of  
100 Financial Services shall defend any claim, suit, action, or  
101 proceeding against the consultant, the consultant's officers or  
102 employees, or those acting at the direction of the consultant  
103 for the limited purpose of an emergency intervention on behalf  
104 of a licensee or student as described in subsection (2) when the  
105 consultant is unable to perform such intervention when such  
106 claim, suit, action, or proceeding is brought as a result of any  
107 act or omission of action of any of the consultant's officers or  
108 employees or those acting at the direction of the consultant for  
109 the limited purpose of an emergency intervention on behalf of a  
110 licensee or student as described in subsection (2) when the  
111 consultant is unable to perform such intervention and when such

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112 act or omission arises out of and in the scope of the  
113 consultant's duties under the consultant's contract with the  
114 department.

115 (c) If the consultant retained pursuant to subsection (2)  
116 is retained by any other state agency and the contract between  
117 such state agency and the consultant complies with the  
118 requirements of this section, then the consultant, the  
119 consultant's officers and employees, and those acting at the  
120 direction of the consultant for the limited purpose of an  
121 emergency intervention on behalf of a licensee or student as  
122 described in subsection (2) when the consultant is unable to  
123 perform such intervention shall be considered agents of the  
124 state for the purposes of this section while acting within the  
125 scope of and pursuant to guidelines established in the contract  
126 between such state agency and the consultant.

127 Section 2. This act shall take effect July 1, 2008.