

HB 839

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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,  
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 themselves to hospitals seeking such care.  
28 The Legislature finds that the Legislature has further mandated

29 that prehospital emergency medical treatment or transport may  
30 not be denied by emergency medical services providers to persons  
31 who have or are likely to have an emergency medical condition.  
32 Such governmental requirements have imposed a unilateral  
33 obligation for emergency services and care providers to provide  
34 services to all persons seeking emergency care without ensuring  
35 payment or other consideration for provision of such care. The  
36 Legislature also recognizes that emergency services and care  
37 providers provide a significant amount of uncompensated  
38 emergency medical care in furtherance of such governmental  
39 interest. The Legislature finds that a significant proportion of  
40 the residents of this state who are uninsured or are Medicaid or  
41 Medicare recipients are unable to access needed health care on  
42 an elective basis because health care providers fear the  
43 increased risk of medical malpractice liability. The Legislature  
44 finds that such patients, in order to obtain medical care, are  
45 frequently forced to seek care through providers of emergency  
46 medical services and care. The Legislature finds that providers  
47 of emergency medical services and care in this state have  
48 reported significant problems with affordability of professional  
49 liability insurance, which is more expensive in Florida than the  
50 national average. The Legislature further finds that a  
51 significant number of specialist physicians have resigned from  
52 serving on hospital staffs or have otherwise declined to provide  
53 on-call coverage to hospital emergency departments due to  
54 increased medical malpractice liability exposure created by  
55 treating such emergency department patients, creating a void  
56 that has an adverse impact on emergency patient care. It is the

57 intent of the Legislature that hospitals, emergency medical  
58 services providers, and physicians be able to ensure that  
59 patients who might need emergency medical services treatment or  
60 transportation or who present themselves to hospitals for  
61 emergency medical services and care have access to such needed  
62 services.

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

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

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

85 | entity in her or his official capacity, or the constitutional  
 86 | officer of which the officer, employee, or agent is an employee,  
 87 | unless such act or omission was committed in bad faith or with  
 88 | malicious purpose or in a manner exhibiting wanton and willful  
 89 | disregard of human rights, safety, or property. The state or its  
 90 | subdivisions shall not be liable in tort for the acts or  
 91 | omissions of an officer, employee, or agent committed while  
 92 | acting outside the course and scope of her or his employment or  
 93 | committed in bad faith or with malicious purpose or in a manner  
 94 | exhibiting wanton and willful disregard of human rights, safety,  
 95 | or property.

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

- 97 | 1. "Employee" includes any volunteer firefighter.
- 98 | 2. "Officer, employee, or agent" includes, but is not  
 99 | limited to:<sup>7</sup>

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

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

111 | (c)1. Emergency health care providers are considered  
 112 | agents of the state and shall indemnify the state for any

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113 judgments, settlement costs, or other liabilities incurred, only  
114 up to the liability limits in subsection (5).

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

120 3. The Department of Health shall issue an emergency order  
121 suspending the license of any licensee under its jurisdiction or  
122 any licensee of a regulatory board within the Department of  
123 Health who, after 30 days following receipt of a notice from the  
124 Division of Risk Management of the Department of Financial  
125 Services that the licensee has failed to satisfy his or her  
126 obligation to indemnify the state or enter into a repayment  
127 agreement with the state for costs under this subsection, has  
128 not complied. The terms of such agreement must provide assurance  
129 of repayment of the obligation that is satisfactory to the  
130 state. For licensees within the Division of Medical Quality  
131 Assurance of the Department of Health, failure to comply with  
132 this paragraph constitutes grounds for disciplinary action under  
133 each respective practice act and under s. 456.072(1)(k). For  
134 licensees and certificateholders under part III of chapter 401,  
135 failure to comply with this paragraph constitutes grounds for  
136 disciplinary action by the Department of Health under s.  
137 401.411.

138 4. If the emergency health care provider is licensed under  
139 chapter 395 and has failed to indemnify the state after  
140 reasonable notice and written demand to do so, any state funds

141 payable to the licensed facility shall be withheld until the  
 142 facility satisfies its obligation to indemnify the state or  
 143 enters into a repayment agreement. The terms of such an  
 144 agreement must provide assurance of repayment of the obligation  
 145 which is satisfactory to the state. In addition, the Agency for  
 146 Health Care Administration shall impose an administrative fine,  
 147 not to exceed \$10,000 per violation of this paragraph.

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

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

154 (I) An emergency medical services provider licensed under  
 155 chapter 401 and persons operating as employees or agents of such  
 156 an emergency medical services provider.

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

159 (III) A physician licensed under chapter 458, chapter 459,  
 160 chapter 460, or chapter 461.

161 (IV) A physician assistant licensed under chapter 458 or  
 162 chapter 459.

163 (V) An emergency medical technician or paramedic certified  
 164 under chapter 401.

165 (VI) A registered nurse, nurse midwife, licensed practical  
 166 nurse, or advanced registered nurse practitioner licensed or  
 167 registered under part I of chapter 464.

168 (VII) A midwife licensed under chapter 467.

169 (VIII) A health care professional association and its  
 170 employees or agents or a corporate medical group and its  
 171 employees or agents.

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

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

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

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

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

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

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

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

215            3. The pursuit is conducted by the officer pursuant to a  
 216 written policy governing high-speed pursuit adopted by the  
 217 employing agency. The policy must contain specific procedures  
 218 concerning the proper method to initiate and terminate high-  
 219 speed pursuit. The law enforcement officer must have received  
 220 instructional training from the employing agency on the written  
 221 policy governing high-speed pursuit.

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