

By Senator Lawson

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20092662

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  
5 care providers are agents of the state for purposes of  
6 sovereign immunity when acting pursuant to specified  
7 statutory obligations; requiring certain indemnity for  
8 the state from providers; providing penalties;  
9 providing definitions; providing applicability;  
10 providing an effective date.

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

13  
14 Section 1. Legislative findings and intent.—The Legislature  
15 finds and declares it to be of vital importance that emergency  
16 services and care be provided by hospitals, physicians, and  
17 emergency medical services providers to every person in need of  
18 such care. The Legislature finds that providers of emergency  
19 services and care are critical elements in responding to  
20 disaster and emergency situations that may affect local  
21 communities, the state, and the country. The Legislature  
22 recognizes the importance of maintaining a viable system of  
23 providing for the emergency medical needs of the state's  
24 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 has further mandated that emergency medical  
29 treatment may not be denied by emergency medical services

6-01106-09

20092662

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

6-01106-09

20092662

59 may need emergency medical services treatment and who present  
60 themselves to hospitals for emergency medical services and care  
61 have access to such needed services.

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

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

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

6-01106-09

20092662\_\_

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

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

96 1. "Employee" includes any volunteer firefighter.

97 2. "Officer, employee, or agent" includes, but is not  
98 limited to:<sup>7</sup>

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

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

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

114 2. Any emergency health care provider who is licensed by  
115 the state and who fails to indemnify the state after reasonable  
116 notice and written demand to do so is subject to an emergency

6-01106-09

20092662

117 suspension order of the regulating authority having jurisdiction  
118 over the licensee.

119 3. The Department of Health shall issue an emergency order  
120 suspending the license of any licensee under its jurisdiction or  
121 any licensee of a regulatory board within the Department of  
122 Health who fails to comply within 30 days following receipt by  
123 the department of a notice from the Division of Risk Management  
124 of the Department of Financial Services that the licensee has  
125 failed to satisfy his or her obligation to indemnify the state  
126 or enter into a repayment agreement with the state for costs  
127 under this subsection. The terms of such agreement must provide  
128 assurance of repayment of the obligation which is satisfactory  
129 to the state. For licensees within the Division of Medical  
130 Quality Assurance of the Department of Health, failure to comply  
131 with this paragraph constitutes grounds for disciplinary action  
132 under each respective practice act and under s. 456.072(1)(k).

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

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

144 a. "Emergency health care providers" includes all persons  
145 and entities providing services pursuant to obligations imposed

6-01106-09

20092662

146 by s. 395.1041 or s. 401.45, except those persons or entities  
147 that are otherwise covered under this section.

148 b. "Emergency medical services" means all screening,  
149 examination, and evaluation by a physician, hospital, or other  
150 person or entity acting pursuant to obligations imposed by s.  
151 395.1041 or s. 401.45, and the care, treatment, surgery, or  
152 other medical services provided to relieve or eliminate the  
153 emergency medical condition, including all medical services to  
154 eliminate the likelihood that the emergency medical condition  
155 will deteriorate or recur without further medical attention  
156 within a reasonable period of time.

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

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

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

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

6-01106-09

20092662\_\_

175           3. The pursuit is conducted by the officer pursuant to a  
176 written policy governing high-speed pursuit adopted by the  
177 employing agency. The policy must contain specific procedures  
178 concerning the proper method to initiate and terminate high-  
179 speed pursuit. The law enforcement officer must have received  
180 instructional training from the employing agency on the written  
181 policy governing high-speed pursuit.

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