

By Senator Thrasher

8-01505-10

20101474

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

8-01505-10

20101474

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

8-01505-10

20101474

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

8-01505-10

20101474

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:^r

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

8-01505-10

20101474

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(l)(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

8-01505-10

20101474

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 screenings,
149 examinations, and evaluations 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

8-01505-10

20101474

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.