

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.

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

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 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 providers of emergency services and care are critical elements
 20 in responding to disaster and emergency situations that may
 21 affect local communities, the state, and the 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 has further mandated that emergency medical

29 treatment may not be denied by emergency medical services
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

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57 | Legislature that hospitals, emergency medical services
58 | providers, and physicians be able to ensure that patients who
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
 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:

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

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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
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
 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
 165 as 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

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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

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.