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1 A bill to be entitled
2 An act relating to sovereign immunity; providing
3 legislative findings and intent; amending s. 766.1115,
4 F.S.; providing that specified provisions relating to
5 sovereign immunity for health care providers do not apply
6 to certain affiliation agreements or contracts to provide
7 certain comprehensive health care services; amending s.
8 768.28, F.S.; expanding the definition of the term
9 "officer, employee, or agent" for purposes of sovereign
10 immunity to include certain health care providers;
11 providing that certain colleges and universities that own
12 or operate a medical school or any of its employees or
13 agents that have agreed in an affiliation agreement to
14 provide patient services as agents of a teaching hospital
15 that is owned or operated by a governmental entity having
16 health care responsibilities, or a not-for-profit entity
17 that operates such facilities as an agent of that
18 governmental entity under a lease, are agents of the state
19 and are immune from certain liability for torts; requiring
20 the contract to provide for indemnification; providing
21 definitions; requiring that each patient, or the patient's
22 legal representative, receive written notice regarding the
23 patient's exclusive remedy for injury or damage suffered;
24 providing that an employee providing patient services is
25 not an employee or agent of the state for purposes of
26 workers' compensation; providing for application;
27 providing an effective date.
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29 Be It Enacted by the Legislature of the State of Florida:

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31 Section 1. (1) The Legislature finds that access to
32 quality, affordable health care for residents of this state is a
33 necessary goal for the state and that public teaching hospitals
34 play an essential role in providing access to comprehensive
35 health care services.

36 (2) The Legislature finds that this state:

37 (a) Has the largest and fastest growing percentage of
38 citizens over the age of 65, who typically have their health
39 care needs increase as their age increases.

40 (b) Ranks fifth highest in the nation in the number of
41 citizens who are uninsured.

42 (c) Ranks eighth highest in the nation in active
43 physicians age 60 or older, with 25 percent of this state's
44 physicians over the age of 65.

45 (d) Ranks third highest in the nation in the number of
46 active physicians who are international medical graduates,
47 creating a dependency on physicians educated and trained in
48 other states and countries.

49 (e) Has been impacted by medical malpractice, liability,
50 and reimbursement issues.

51 (3) The Legislature finds that the rapidly growing
52 population and changing demographics of this state make it
53 imperative that students continue to choose this state as the
54 place to receive their medical education and practice medicine.

55 (4) The Legislature finds that graduate medical education
56 is the process of comprehensive specialty training that a

57 medical school graduate undertakes to develop and refine skills.
58 Residents work under the direct supervision of medical faculty,
59 who provide guidance, training, and oversight, serving as role
60 models to young physicians. The vast majority of this care takes
61 place in large teaching hospitals, which serve as "safety nets"
62 to many indigent and underserved patients who otherwise might
63 not receive help. Resident training, including the supervision
64 component, is an important part of ensuring access to care by
65 residents and medical doctors in training who render appropriate
66 and quality care. Medical faculty provide the vital link between
67 access to quality care and balancing the demands of educating
68 and training residents. Physicians who assume this role are
69 often juggling the demands of patient care, teaching, research,
70 and policy and budgetary issues related to the programs they
71 administer.

72 (5) The Legislature finds that access to quality health
73 care at public teaching hospitals is enhanced when public
74 teaching hospitals affiliate and coordinate their common
75 endeavors with medical schools. The existing definition of a
76 teaching hospital in s. 408.07, Florida Statutes, contemplates
77 such affiliations between teaching hospitals and accredited
78 medical schools in this state. These affiliations are an
79 integral part of the delivery of more efficient and economical
80 health care services to patients in public teaching hospitals by
81 offering a single, high quality of care to all patients
82 regardless of income. These affiliations also provide quality
83 graduate medical education programs to resident physicians who
84 provide patient services at public teaching hospitals. These

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85 affiliations ensure continued access to quality, comprehensive
86 health care services for residents of this state and, therefore,
87 should be encouraged in order to maintain and expand such
88 services.

89 (6) (a) The Legislature finds that s. 381.0403, Florida
90 Statutes, "The Community Hospital Education Act" (CHEP),
91 established programs "intended to provide additional outpatient
92 and inpatient services, a continuing supply of highly trained
93 physicians, and graduate medical education." Section
94 381.0403(9), Florida Statutes, before its amendment by chapter
95 2010-161, Laws of Florida, required the Executive Office of the
96 Governor, the Department of Health, and the Agency for Health
97 Care Administration to collaborate in the establishment of a
98 committee to produce an annual report on graduate medical
99 education which addressed the role of residents and medical
100 faculty in the provision of health care; the relationship of
101 graduate medical education to the state's physician workforce;
102 the costs of training medical residents for hospitals, medical
103 schools, teaching hospitals, including all hospital-medical
104 affiliations, practice plans at all of the medical schools, and
105 municipalities; the availability and adequacy of all sources of
106 revenue to support graduate medical education and recommended
107 alternative sources of funding for graduate medical education;
108 and the use of state and federal funds for graduate medical
109 education by hospitals receiving such funds.

110 (b) The Graduate Medical Education Committee submitted
111 Reports in 2009 and 2010 and, among other findings, determined
112 that graduate medical education training has a direct impact on

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113 the quality and adequacy of the state's physician specialty and
114 subspecialty workforce and the geographic distribution of
115 physicians; the support and expansion of residency programs in
116 critical need areas could result in more primary care
117 practitioners and specialists practicing in this state; medical
118 residents are more likely to practice in the state where they
119 completed their graduate medical education training than where
120 they went to medical school; quality, prestigious programs
121 attract the best students, who stay as practicing physicians;
122 medical residents act as "safety nets" to care for indigent,
123 uninsured, and underserved patients in this state; supporting
124 residency programs helps ensure this state's ability to train
125 and retain the caliber of medical doctors its citizens and
126 visitors deserve; and ongoing strategic planning for the
127 expanded capacity of graduate medical education programs is
128 crucial in order for the state to meet its health care needs.
129 However, the January 2010 Annual Report of Graduate Medical
130 Education in Florida by the Graduate Medical Education Committee
131 indicated that the Association of American Medical Colleges
132 ranked Florida 43rd nationally in the number of resident
133 physicians in training per 100,000 population.

134 (7) The Legislature finds that ss. 28 and 29, chapter
135 2010-161, Laws of Florida, which amended ss. 381.0403 and
136 381.4018, Florida Statutes, respectively, modified the existing
137 law that established the responsibility of the Department of
138 Health for physician workforce development and created a
139 Physician Workforce Advisory Council and a graduate medical
140 education innovation program. The legislative intent in s.

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141 381.4018, Florida Statutes, recognizes that "physician workforce
142 planning is an essential component of ensuring that there is an
143 adequate and appropriate supply of well-trained physicians to
144 meet this state's future health care service needs as the
145 general population and elderly population of the state
146 increase." According to the Council on Graduate Medical
147 Education's sixteenth report entitled "Physician Workforce
148 Policy Guidelines for the United States, 2000-2010 (January
149 2005)," this country could see shortages as high as 85,000
150 physicians by 2020.

151 (8) The Legislature finds, based upon the 2008 Florida
152 Physician Workforce Annual Report from the Department of Health,
153 that although the American Association of Medical Colleges
154 reports that this state ranks 15th nationally in the number of
155 active physicians per 100,000 population, these national-level
156 data do not take into account many factors that determine the
157 number of actively practicing physicians. Rather, additional
158 concerns impact this state's physician workforce, including the
159 current practice environment for physicians. These concerns
160 include malpractice insurance and liability costs, reimbursement
161 rates, administrative burdens, and the impact of Amendment 8,
162 approved in November 2004, which created s. 26, Article X of the
163 State Constitution, which prohibits persons found to have
164 committed three or more incidents of medical malpractice from
165 being licensed by this state to provide health care services as
166 a medical doctor. As the department concluded, these service
167 delivery concerns may hinder the recruitment of doctors to this
168 state based on the real or perceived influence of the severity

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169 of the medical liability climate in this state.

170 (9) The Legislature finds that when medical schools
171 affiliate or enter into contracts with public teaching hospitals
172 to provide patient services, but medical schools and their
173 employees do not have the same level of protection against
174 liability claims as public teaching hospitals and their public
175 employees when providing the same patient services to the same
176 patients, the exposure of these medical schools and their
177 employees to claims arising out of alleged medical malpractice
178 and other allegedly negligent acts is increased
179 disproportionately. With the recent growth in the availability
180 of state-established medical schools and medical education
181 programs and ongoing efforts to support, strengthen, and
182 increase the available residency training positions and medical
183 faculty in both existing and newly designated teaching
184 hospitals, this exposure and the consequent disparity will
185 continue to increase. This will add to the current crisis with
186 respect to the physician workforce in the state, which will be
187 alleviated only through legislative relief.

188 (10) The Legislature finds that the high cost of
189 litigation and unequal liability exposure have adversely
190 impacted the ability of some medical schools to provide or
191 permit their employees to provide patient services to patients
192 in public teaching hospitals. If corrective action is not taken,
193 this health care crisis will lead to the reduction of patient
194 services in public teaching hospitals. In addition, it will
195 reduce the ability of public teaching hospitals to further
196 support their public mission through the admission of patients

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197 to their teaching services and reduce the ability of public
198 teaching hospitals to act as teaching sites for medical students
199 from private and public medical schools. It will also contribute
200 to a reduction in the high-quality medical care and training
201 provided through public teaching hospitals that are affiliated
202 with accredited medical schools as well as a reduction in
203 essential research, program development, and infrastructure
204 improvements in public teaching hospitals.

205 (11) The Legislature finds that the public will benefit
206 from corrective action to address the foregoing concerns.
207 Designating medical schools and their employees as agents of the
208 state who are subject to the protections of sovereign immunity
209 when providing patient services in public teaching hospitals
210 pursuant to an affiliation agreement or other written contract
211 will maintain and increase that public benefit.

212 (12) The Legislature finds that making high-quality health
213 care available to the residents of this state is an overwhelming
214 public necessity.

215 (13) The Legislature finds that ensuring that medical
216 schools and their employees are able continue to practice, treat
217 patients, supervise medical and graduate education, engage in
218 research, and provide administrative support and services in
219 public teaching hospitals is an overwhelming public necessity.

220 (14) It is the intent of the Legislature that medical
221 schools that provide or permit their employees to provide
222 patient services in public teaching hospitals pursuant to an
223 affiliation agreement or other contract be subject to sovereign
224 immunity protections under s. 768.28, Florida Statutes, in the

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225 same manner and to the same extent as the state, its agencies,
 226 and political subdivisions.

227 (15) It is the intent of the Legislature that employees of
 228 medical schools who provide patient services in a public
 229 teaching hospital and the employees of public teaching hospitals
 230 be immune from lawsuits in the same manner and to the same
 231 extent as employees and agents of the state, its agencies, and
 232 political subdivisions and that they not be held personally
 233 liable in tort or named as a party defendant in an action while
 234 performing patient services, except as provided in s.
 235 768.28(9) (a), Florida Statutes.

236 (16) The Legislature finds that there is an overwhelming
 237 public necessity for this legislative action and that there is
 238 no alternative method of meeting such public necessity.

239 Section 2. Subsection (11) of section 766.1115, Florida
 240 Statutes, is amended to read:

241 766.1115 Health care providers; creation of agency
 242 relationship with governmental contractors.—

243 (11) APPLICABILITY.—This section applies to incidents
 244 occurring on or after April 17, 1992. This section does not
 245 apply to any health care contract entered into by the Department
 246 of Corrections which is subject to s. 768.28(10) (a). This
 247 section does not apply to any affiliation agreement or other
 248 contract which is subject to s. 768.28(10) (f). Nothing in this
 249 section in any way reduces or limits the rights of the state or
 250 any of its agencies or subdivisions to any benefit currently
 251 provided under s. 768.28.

252 Section 3. Paragraph (b) of subsection (9) of section

253 768.28, Florida Statutes, is amended, and paragraph (f) is added
 254 to subsection (10) of that section, to read:

255 768.28 Waiver of sovereign immunity in tort actions;
 256 recovery limits; limitation on attorney fees; statute of
 257 limitations; exclusions; indemnification; risk management
 258 programs.—

259 (9)

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

261 1. "Employee" includes any volunteer firefighter.

262 2. "Officer, employee, or agent" includes, but is not
 263 limited to, any health care provider when providing services
 264 pursuant to s. 766.1115;~~7~~ any member of the Florida Health
 265 Services Corps, as defined in s. 381.0302, who provides
 266 uncompensated care to medically indigent persons referred by the
 267 Department of Health; a Florida not-for-profit college,
 268 university, or medical school and the employees or agents of
 269 such college, university, or medical school pursuant to
 270 paragraph (10) (f);~~7~~ and any public defender or her or his
 271 employee or agent, including, among others, an assistant public
 272 defender and an investigator.

273 (10)

274 (f)1. For purposes of this section, any Florida not-for-
 275 profit college or university that owns or operates an accredited
 276 medical school or any of its employees or agents that have
 277 agreed in an affiliation agreement or other contract to provide
 278 patient services as agents of a teaching hospital, as defined in
 279 s. 408.07(45), which is owned or operated by the state, a
 280 county, a municipality, a public health trust, a special taxing

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281 district, any other governmental entity having health care
282 responsibilities, or a not-for-profit entity that operates such
283 facilities as an agent of that governmental entity under a lease
284 or other contract, are agents of the state and are immune from
285 liability for torts in the same manner and to the same extent as
286 a teaching hospital and its governmental owner or operator while
287 acting within the scope of and pursuant to guidelines
288 established in the contract.

289 2. The contract shall provide, to the extent permitted by
290 law, for the indemnification of the state by the agent for any
291 liability incurred up to the limits set forth in this chapter to
292 the extent caused by the negligence of the college, university,
293 or medical school or its employees or agents. As used in this
294 paragraph, the term "patient services" means any comprehensive
295 health care services, as defined in s. 641.19(4); the training
296 or supervision of medical students, interns, residents, or
297 fellows; access to or participation in medical research
298 protocols; or any related executive, managerial, or
299 administrative services provided according to an affiliation
300 agreement or other contract with the teaching hospital or its
301 governmental owner or operator. As used in this paragraph, the
302 term, "employee or agent of a college, university, or medical
303 school" means, but is not limited to, an officer, a member of
304 the faculty, a health care practitioner or licensee defined in
305 s. 456.001, or any other person who is directly or vicariously
306 liable. Such employee or agent of a college, university, or its
307 medical school is not personally liable in tort and may not be
308 named as a party defendant in any action arising from the

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309 provision of any such patient services, except as provided in
310 paragraph (9) (a).

311 3. The public teaching hospital, the medical school, or
312 its employees or agents must provide written notice to each
313 patient, or the patient's legal representative, the receipt of
314 which must be acknowledged in writing, that the medical school
315 and its employees are agents of the state and that the exclusive
316 remedy for injury or damage suffered as a result of any act or
317 omission of the public teaching hospital, the medical school, or
318 an employee or agent of the medical school while acting within
319 the scope of her or his duties pursuant to the affiliation
320 agreement or other contract is by commencement of an action
321 under this section.

322 4. This paragraph does not make an employee providing
323 patient services an employee or agent of the state for purposes
324 of chapter 440.

325 Section 4. This act shall take effect upon becoming a law,
326 and applies to all claims accruing on or after that date.