

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          that the portion of the not-for-profit entity deemed an  
22          agent of the state for purpose of indemnity is also an  
23          agency of the state for purpose of public records laws;  
24          providing definitions; requiring that each patient, or the  
25          patient's legal representative, receive written notice  
26          regarding the patient's exclusive remedy for injury or  
27          damage suffered; providing that an employee providing  
28          patient services is not an employee or agent of the state

29 | for purposes of workers' compensation; providing for  
 30 | application; providing an effective date.

31 |  
 32 | Be It Enacted by the Legislature of the State of Florida:

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

39 | (2) The Legislature finds that this state:

40 | (a) Has the largest and fastest growing percentage of  
 41 | citizens over the age of 65, who typically have their health  
 42 | care needs increase as their age increases.

43 | (b) Ranks fifth highest in the nation in the number of  
 44 | citizens who are uninsured.

45 | (c) Ranks eighth highest in the nation in active  
 46 | physicians age 60 or older, with 25 percent of this state's  
 47 | physicians over the age of 65.

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

52 | (e) Has been impacted by medical malpractice, liability,  
 53 | and reimbursement issues.

54 | (3) The Legislature finds that the rapidly growing  
 55 | population and changing demographics of this state make it  
 56 | imperative that students continue to choose this state as the

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

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

85 regardless of income. These affiliations also provide quality  
86 graduate medical education programs to resident physicians who  
87 provide patient services at public teaching hospitals. These  
88 affiliations ensure continued access to quality, comprehensive  
89 health care services for residents of this state and, therefore,  
90 should be encouraged in order to maintain and expand such  
91 services.

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

113        (b) The Graduate Medical Education Committee submitted  
114 Reports in 2009 and 2010 and, among other findings, determined  
115 that graduate medical education training has a direct impact on  
116 the quality and adequacy of the state's physician specialty and  
117 subspecialty workforce and the geographic distribution of  
118 physicians; the support and expansion of residency programs in  
119 critical need areas could result in more primary care  
120 practitioners and specialists practicing in this state; medical  
121 residents are more likely to practice in the state where they  
122 completed their graduate medical education training than where  
123 they went to medical school; quality, prestigious programs  
124 attract the best students, who stay as practicing physicians;  
125 medical residents act as "safety nets" to care for indigent,  
126 uninsured, and underserved patients in this state; supporting  
127 residency programs helps ensure this state's ability to train  
128 and retain the caliber of medical doctors its citizens and  
129 visitors deserve; and ongoing strategic planning for the  
130 expanded capacity of graduate medical education programs is  
131 crucial in order for the state to meet its health care needs.  
132 However, the January 2010 Annual Report of Graduate Medical  
133 Education in Florida by the Graduate Medical Education Committee  
134 indicated that the Association of American Medical Colleges  
135 ranked Florida 43rd nationally in the number of resident  
136 physicians in training per 100,000 population.

137        (7) The Legislature finds that ss. 28 and 29, chapter  
138 2010-161, Laws of Florida, which amended ss. 381.0403 and  
139 381.4018, Florida Statutes, respectively, modified the existing  
140 law that established the responsibility of the Department of

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141 Health for physician workforce development and created a  
142 Physician Workforce Advisory Council and a graduate medical  
143 education innovation program. The legislative intent in s.  
144 381.4018, Florida Statutes, recognizes that "physician workforce  
145 planning is an essential component of ensuring that there is an  
146 adequate and appropriate supply of well-trained physicians to  
147 meet this state's future health care service needs as the  
148 general population and elderly population of the state  
149 increase." According to the Council on Graduate Medical  
150 Education's sixteenth report entitled "Physician Workforce  
151 Policy Guidelines for the United States, 2000-2010 (January  
152 2005)," this country could see shortages as high as 85,000  
153 physicians by 2020.

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

169 a medical doctor. As the department concluded, these service  
170 delivery concerns may hinder the recruitment of doctors to this  
171 state based on the real or perceived influence of the severity  
172 of the medical liability climate in this state.

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

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

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

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

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

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

223 (14) It is the intent of the Legislature that medical  
224 schools that provide or permit their employees to provide



225 patient services in public teaching hospitals pursuant to an  
 226 affiliation agreement or other contract be subject to sovereign  
 227 immunity protections under s. 768.28, Florida Statutes, in the  
 228 same manner and to the same extent as the state, its agencies,  
 229 and political subdivisions.

230 (15) It is the intent of the Legislature that employees of  
 231 medical schools who provide patient services in a public  
 232 teaching hospital and the employees of public teaching hospitals  
 233 be immune from lawsuits in the same manner and to the same  
 234 extent as employees and agents of the state, its agencies, and  
 235 political subdivisions and that they not be held personally  
 236 liable in tort or named as a party defendant in an action while  
 237 performing patient services, except as provided in s.  
 238 768.28(9)(a), Florida Statutes.

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

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

244 766.1115 Health care providers; creation of agency  
 245 relationship with governmental contractors.—

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

253 any of its agencies or subdivisions to any benefit currently  
 254 provided under s. 768.28.

255 Section 3. Paragraph (b) of subsection (9) of section  
 256 768.28, Florida Statutes, is amended, and paragraph (f) is added  
 257 to subsection (10) of that section, to read:

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

262 (9)

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

264 1. "Employee" includes any volunteer firefighter.

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

276 (10)

277 (f)1. For purposes of this section, any Florida not-for-  
 278 profit college or university that owns or operates an accredited  
 279 medical school or any of its employees or agents that have  
 280 agreed in an affiliation agreement or other contract to provide

281 patient services as agents of a teaching hospital, as defined in  
282 s. 408.07(45), which is owned or operated by the state, a  
283 county, a municipality, a public health trust, a special taxing  
284 district, any other governmental entity having health care  
285 responsibilities, or a not-for-profit entity that operates such  
286 facilities as an agent of that governmental entity under a lease  
287 or other contract, are agents of the state and are immune from  
288 liability for torts in the same manner and to the same extent as  
289 a teaching hospital and its governmental owner or operator while  
290 acting within the scope of and pursuant to guidelines  
291 established in the contract.

292 2. The contract shall provide, to the extent permitted by  
293 law, for the indemnification of the state by the agent for any  
294 liability incurred up to the limits set forth in this chapter to  
295 the extent caused by the negligence of the college, university,  
296 or medical school or its employees or agents. As used in this  
297 paragraph, the term "patient services" means any comprehensive  
298 health care services, as defined in s. 641.19(4); the training  
299 or supervision of medical students, interns, residents, or  
300 fellows; access to or participation in medical research  
301 protocols; or any related executive, managerial, or  
302 administrative services provided according to an affiliation  
303 agreement or other contract with the teaching hospital or its  
304 governmental owner or operator. The contract must also provide  
305 that those limited portions of the college, university, or  
306 medical school that are directly providing services pursuant to  
307 the contract and that are considered an agency of the state for  
308 purposes of this section are acting on behalf of a public agency

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309 pursuant to s. 119.011(2). As used in this paragraph, the term,  
310 "employee or agent of a college, university, or medical school"  
311 means, but is not limited to, an officer, a member of the  
312 faculty, a health care practitioner or licensee defined in s.  
313 456.001, or any other person who is directly or vicariously  
314 liable. Such employee or agent of a college, university, or its  
315 medical school is not personally liable in tort and may not be  
316 named as a party defendant in any action arising from the  
317 provision of any such patient services, except as provided in  
318 paragraph (9) (a).

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

330 4. This paragraph does not make an employee providing  
331 patient services an employee or agent of the state for purposes  
332 of chapter 440.

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