

1                                   A bill to be entitled  
 2       An act relating to sovereign immunity; providing  
 3       legislative findings and intent; amending s. 768.28, F.S.;  
 4       providing sovereign immunity to certain health care  
 5       providers affiliated with a medical school while providing  
 6       patient services at a public teaching hospital; providing  
 7       that such health care providers are agents of the state  
 8       and are immune from certain liability for torts; requiring  
 9       a contract to provide for indemnification; providing that  
 10      the portion of the not-for-profit entity deemed an agent  
 11      of the state for purpose of indemnity is also acting on  
 12      behalf of an agency of the state for purpose of public  
 13      records laws; providing definitions; requiring that each  
 14      patient receive written notice regarding the patient's  
 15      exclusive remedy for injury or damage suffered; providing  
 16      that an employee providing patient services is not an  
 17      employee or agent of the state for purposes of workers'  
 18      compensation; providing for application; providing an  
 19      effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1. (1) The Legislature finds that access to  
 24 quality, affordable health care for residents of this state is a  
 25 necessary goal for the state and that public teaching hospitals  
 26 play an essential role in providing access to comprehensive  
 27 health care services.

28           (2) The Legislature finds that this state:

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

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

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

37        (d) Ranks third highest in the nation in the number of  
38 active physicians who are international medical graduates,  
39 creating a dependency on physicians educated and trained in  
40 other states and countries.

41        (e) Has been impacted by medical malpractice, liability,  
42 and reimbursement issues.

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

47        (4) The Legislature finds that graduate medical education  
48 is the process of comprehensive specialty training that a  
49 medical school graduate undertakes to develop and refine skills.  
50 Residents work under the direct supervision of medical faculty,  
51 who provide guidance, training, and oversight, serving as role  
52 models to young physicians. The vast majority of this care takes  
53 place in large teaching hospitals, which serve as "safety nets"  
54 to many indigent and underserved patients who otherwise might  
55 not receive help. Resident training, including the supervision  
56 component, is an important part of ensuring access to care by

57 residents and medical doctors in training who render appropriate  
58 and quality care. Medical faculty provide the vital link between  
59 access to quality care and balancing the demands of educating  
60 and training residents. Physicians who assume this role are  
61 often juggling the demands of patient care, teaching, research,  
62 and policy and budgetary issues related to the programs they  
63 administer.

64 (5) The Legislature finds that access to quality health  
65 care at public teaching hospitals is enhanced when public  
66 teaching hospitals affiliate and coordinate their common  
67 endeavors with medical schools. The existing definition of a  
68 teaching hospital in s. 408.07, Florida Statutes, contemplates  
69 such affiliations between teaching hospitals and accredited  
70 medical schools in this state. These affiliations are an  
71 integral part of the delivery of more efficient and economical  
72 health care services to patients in public teaching hospitals by  
73 offering a single, high quality of care to all patients  
74 regardless of income. These affiliations also provide quality  
75 graduate medical education programs to resident physicians who  
76 provide patient services at public teaching hospitals. These  
77 affiliations ensure continued access to quality, comprehensive  
78 health care services for residents of this state and, therefore,  
79 should be encouraged in order to maintain and expand such  
80 services.

81 (6) (a) The Legislature finds that s. 381.0403, Florida  
82 Statutes, "The Community Hospital Education Act" (CHEP),  
83 established programs "intended to provide additional outpatient  
84 and inpatient services, a continuing supply of highly trained

85 physicians, and graduate medical education." Section  
86 381.0403(9), Florida Statutes, before its amendment by chapter  
87 2010-161, Laws of Florida, required the Executive Office of the  
88 Governor, the Department of Health, and the Agency for Health  
89 Care Administration to collaborate in the establishment of a  
90 committee to produce an annual report on graduate medical  
91 education which addressed the role of residents and medical  
92 faculty in the provision of health care; the relationship of  
93 graduate medical education to the state's physician workforce;  
94 the costs of training medical residents for hospitals, medical  
95 schools, teaching hospitals, including all hospital-medical  
96 affiliations, practice plans at all of the medical schools, and  
97 municipalities; the availability and adequacy of all sources of  
98 revenue to support graduate medical education and recommended  
99 alternative sources of funding for graduate medical education;  
100 and the use of state and federal funds for graduate medical  
101 education by hospitals receiving such funds.

102 (b) The Graduate Medical Education Committee submitted  
103 Reports in 2009 and 2010 and, among other findings, determined  
104 that graduate medical education training has a direct impact on  
105 the quality and adequacy of the state's physician specialty and  
106 subspecialty workforce and the geographic distribution of  
107 physicians; the support and expansion of residency programs in  
108 critical need areas could result in more primary care  
109 practitioners and specialists practicing in this state; medical  
110 residents are more likely to practice in the state where they  
111 completed their graduate medical education training than where  
112 they went to medical school; quality, prestigious programs

CS/CS/HB 1393

2011

113 attract the best students, who stay as practicing physicians;  
114 medical residents act as "safety nets" to care for indigent,  
115 uninsured, and underserved patients in this state; supporting  
116 residency programs helps ensure this state's ability to train  
117 and retain the caliber of medical doctors its citizens and  
118 visitors deserve; and ongoing strategic planning for the  
119 expanded capacity of graduate medical education programs is  
120 crucial in order for the state to meet its health care needs.  
121 However, the January 2010 Annual Report of Graduate Medical  
122 Education in Florida by the Graduate Medical Education Committee  
123 indicated that the Association of American Medical Colleges  
124 ranked Florida 43rd nationally in the number of resident  
125 physicians in training per 100,000 population.

126 (7) The Legislature finds that ss. 28 and 29, chapter  
127 2010-161, Laws of Florida, which amended ss. 381.0403 and  
128 381.4018, Florida Statutes, respectively, modified the existing  
129 law that established the responsibility of the Department of  
130 Health for physician workforce development and created a  
131 Physician Workforce Advisory Council and a graduate medical  
132 education innovation program. The legislative intent in s.  
133 381.4018, Florida Statutes, recognizes that "physician workforce  
134 planning is an essential component of ensuring that there is an  
135 adequate and appropriate supply of well-trained physicians to  
136 meet this state's future health care service needs as the  
137 general population and elderly population of the state  
138 increase." According to the Council on Graduate Medical  
139 Education's sixteenth report entitled "Physician Workforce  
140 Policy Guidelines for the United States, 2000-2010 (January

CS/CS/HB 1393

2011

141 2005), " this country could see shortages as high as 85,000  
142 physicians by 2020.

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

162 (9) The Legislature finds that when medical schools  
163 affiliate or enter into contracts with public teaching hospitals  
164 to provide patient services, but medical schools and their  
165 employees do not have the same level of protection against  
166 liability claims as public teaching hospitals and their public  
167 employees when providing the same patient services to the same  
168 patients, the exposure of these medical schools and their

169 employees to claims arising out of alleged medical malpractice  
170 and other allegedly negligent acts is increased  
171 disproportionately. With the recent growth in the availability  
172 of state-established medical schools and medical education  
173 programs and ongoing efforts to support, strengthen, and  
174 increase the available residency training positions and medical  
175 faculty in both existing and newly designated teaching  
176 hospitals, this exposure and the consequent disparity will  
177 continue to increase. This will add to the current crisis with  
178 respect to the physician workforce in the state, which will be  
179 alleviated only through legislative relief.

180 (10) The Legislature finds that the high cost of  
181 litigation and unequal liability exposure have adversely  
182 impacted the ability of some medical schools to provide or  
183 permit their employees to provide patient services to patients  
184 in public teaching hospitals. If corrective action is not taken,  
185 this health care crisis will lead to the reduction of patient  
186 services in public teaching hospitals. In addition, it will  
187 reduce the ability of public teaching hospitals to further  
188 support their public mission through the admission of patients  
189 to their teaching services and reduce the ability of public  
190 teaching hospitals to act as teaching sites for medical students  
191 from private and public medical schools. It will also contribute  
192 to a reduction in the high-quality medical care and training  
193 provided through public teaching hospitals that are affiliated  
194 with accredited medical schools as well as a reduction in  
195 essential research, program development, and infrastructure  
196 improvements in public teaching hospitals.

197       (11) The Legislature finds that the public will benefit  
198 from corrective action to address the foregoing concerns.  
199 Designating medical schools and their employees as agents of the  
200 state who are subject to the protections of sovereign immunity  
201 when providing patient services in public teaching hospitals  
202 pursuant to an affiliation agreement or other written contract  
203 will maintain and increase that public benefit.

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

207       (13) The Legislature finds that ensuring that medical  
208 schools and their employees are able continue to practice, treat  
209 patients, supervise medical and graduate education, engage in  
210 research, and provide administrative support and services in  
211 public teaching hospitals is an overwhelming public necessity.

212       (14) It is the intent of the Legislature that medical  
213 schools that provide or permit their employees to provide  
214 patient services in public teaching hospitals pursuant to an  
215 affiliation agreement or other contract be subject to sovereign  
216 immunity protections under s. 768.28, Florida Statutes, in the  
217 same manner and to the same extent as the state, its agencies,  
218 and political subdivisions.

219       (15) It is the intent of the Legislature that employees of  
220 medical schools who provide patient services in a public  
221 teaching hospital and the employees of public teaching hospitals  
222 be immune from lawsuits in the same manner and to the same  
223 extent as employees and agents of the state, its agencies, and  
224 political subdivisions and that they not be held personally



225 liable in tort or named as a party defendant in an action while  
 226 performing patient services, except as provided in s.  
 227 768.28(9) (a), Florida Statutes.

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

231 Section 2. Paragraph (f) is added to subsection (10) of  
 232 section 768.28, Florida Statutes, to read:

233 768.28 Waiver of sovereign immunity in tort actions;  
 234 recovery limits; limitation on attorney fees; statute of  
 235 limitations; exclusions; indemnification; risk management  
 236 programs.—

237 (10)

238 (f) Health care providers who are affiliated with a  
 239 Florida not-for-profit college or university that owns or  
 240 operates an accredited medical school or any of their employees  
 241 or agents that have contractually agreed to act as agents of a  
 242 teaching hospital, as defined in s. 408.07(45), that is owned or  
 243 operated by the state, a county, a municipality, a public health  
 244 trust, a special taxing district, or any other governmental  
 245 entity having health care responsibilities to provide health  
 246 care services in such teaching hospital shall be considered  
 247 agents of the teaching hospital for the purposes of this section  
 248 while acting within the scope of and pursuant to such contract.  
 249 Such contract shall provide for the indemnification of the  
 250 teaching hospital by the agent for any liabilities incurred up  
 251 to the limits set out in this chapter. Those portions of the  
 252 college or university that are directly providing health care

CS/CS/HB 1393

2011

253 services pursuant to the contract are acting on behalf of a  
254 public agency pursuant to s. 119.011(2). Patients must be given  
255 written notice that the medical school and its employees are  
256 agents of the state and that the exclusive remedy for injury or  
257 damage suffered as a result of any act or omission of the public  
258 teaching hospital, the medical school, or an employee or agent  
259 of the medical school while acting within the scope of her or  
260 his duties is by commencement of an action under this section.  
261 This paragraph does not designate persons providing contracted  
262 health care services as employees or agents of the state for the  
263 purposes of chapter 440.

264 Section 3. This act shall take effect upon becoming a law,  
265 and applies to all claims accruing on or after that date.