



188004

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. (1) The Legislature finds that:

(a) Access to high-quality, comprehensive, and affordable
health care for all persons in this state is a necessary state
goal and teaching hospitals play an essential role in providing
that access.

(b) Graduate medical education, provided by nonprofit
independent colleges and universities located and chartered in
this state which own or operate medical schools, helps provide
the comprehensive specialty training needed by medical school



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14 graduates to develop and refine the skills essential to the
15 provision of high-quality health care for state residents. Much
16 of that education and training is provided in teaching hospitals
17 under the direct supervision of medical faculty who provide
18 guidance, training, and oversight and serve as role models to
19 their students.

20 (c) A large proportion of medical care is provided in
21 teaching hospitals that serve as safety nets for many indigent
22 and underserved patients who otherwise might not receive the
23 medical help they need. Resident physician training that takes
24 place in such hospitals provides much of the care provided to
25 this population. Medical faculty, supervising such training and
26 care, are a vital link between educating and training resident
27 physicians and ensuring the provision of quality care for
28 indigent and underserved residents. Physicians who assume this
29 role are often called upon to juggle the demands of patient
30 care, teaching, research, health policy, and budgetary issues
31 related to the programs they administer.

32 (d) While teaching hospitals are afforded state sovereign
33 immunity protections under s. 768.28, Florida Statutes, the
34 nonprofit independent colleges and universities located and
35 chartered in this state which own or operate medical schools and
36 which enter into affiliation agreements or contracts with the
37 teaching hospitals to provide patient services are not afforded
38 the same sovereign immunity protections. The employees or agents
39 of such nonprofit independent colleges and universities,
40 therefore, do not have the same level of protection against
41 liability claims as the employees and agents of teaching
42 hospitals providing the same patient services to the same



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43 patients.

44 (e) Nonprofit colleges and universities located and
45 chartered in this state which own or operate medical schools and
46 their employees and agents, which are not covered by the state's
47 sovereign immunity protections, are disproportionately affected
48 by claims arising out of alleged medical malpractice and other
49 allegedly negligent acts. Given the recent growth in medical
50 schools and medical education programs and ongoing efforts to
51 support, strengthen, and increase physician residency training
52 positions and medical faculty in both existing and newly
53 designated teaching hospitals, this exposure and the consequent
54 disparity in liability exposure will continue to increase. The
55 vulnerability of these colleges and universities to claims of
56 medical malpractice will only add to the current physician
57 workforce crisis in this state and can be alleviated only
58 through legislative action.

59 (f) Ensuring that the employees and agents of nonprofit
60 independent colleges and universities located and chartered in
61 this state which own or operated medical schools are able to
62 continue to treat patients, provide graduate medical education,
63 supervise medical students, engage in research, and provide
64 administrative support and services in teaching hospitals is an
65 overwhelming public necessity.

66 (2) The Legislature intends that:

67 (a) Employees and agents of nonprofit independent colleges
68 and universities located and chartered in this state which own
69 or operate medical schools who provide patient services as
70 agents of a teaching hospital be immune from lawsuits in the
71 same manner and to the same extent as employees and agents of



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72 teaching hospitals in this state under existing law, and that
73 such colleges and universities and their employees and agents
74 not be held personally liable in tort or named as a party
75 defendant in an action while providing patient services in a
76 teaching hospital, unless such services are provided in bad
77 faith, with malicious purpose, or in a manner exhibiting wanton
78 and willful disregard of human rights, safety, or property.

79 (b) Nonprofit independent private colleges and universities
80 located and chartered in this state which own or operate medical
81 schools and which permit their employees or agents to provide
82 patient services in teaching hospitals pursuant to an
83 affiliation agreement or other contract be afforded sovereign
84 immunity protections under s. 768.28, Florida Statutes.

85 (3) The Legislature declares that there is an overwhelming
86 public necessity for extending the state's sovereign immunity to
87 nonprofit independent colleges and universities located and
88 chartered in this state which own or operate medical schools and
89 provide patient services in teaching hospitals, and to their
90 employees and agents, and that there is no alternative method of
91 meeting such public necessity.

92 (4) The terms "employee or agent," "patient services," and
93 "teaching hospital" as used in this section have the same
94 meaning as defined in s. 768.28, Florida Statutes, as amended by
95 this act.

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

98 766.1115 Health care providers; creation of agency
99 relationship with governmental contractors.-

100 (11) APPLICABILITY.-This section applies to incidents



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101 occurring on or after April 17, 1992. This section does not:
102 (a) Apply to any health care contract entered into by the
103 Department of Corrections which is subject to s. 768.28(10)(a).
104 (b) Apply to any affiliation agreement or other contract
105 that is subject to s. 768.28(10)(f). ~~Nothing in this section in~~
106 ~~any way reduces or limits~~
107 (c) Reduce or limit the rights of the state or any of its
108 agencies or subdivisions to any benefit currently provided under
109 s. 768.28.
110 Section 3. Paragraph (b) of subsection (9) of section
111 768.28, Florida Statutes, is amended, and paragraph (f) is added
112 to subsection (10) of that section, to read:
113 768.28 Waiver of sovereign immunity in tort actions;
114 recovery limits; limitation on attorney fees; statute of
115 limitations; exclusions; indemnification; risk management
116 programs.—
117 (9)
118 (b) As used in this subsection, the term:
119 1. "Employee" includes any volunteer firefighter.
120 2. "Officer, employee, or agent" includes, but is not
121 limited to, any health care provider when providing services
122 pursuant to s. 766.1115; ~~;~~ any member of the Florida Health
123 Services Corps, as defined in s. 381.0302, who provides
124 uncompensated care to medically indigent persons referred by the
125 Department of Health; any nonprofit independent college or
126 university located and chartered in this state which owns or
127 operates an accredited medical school, and its employees or
128 agents, when providing patient services pursuant to paragraph
129 (10)(f); ~~;~~ and any public defender or her or his employee or



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130 agent, including, among others, an assistant public defender and
131 an investigator.

132 (10)

133 (f) For purposes of this section, any nonprofit independent
134 college or university located and chartered in this state which
135 owns or operates an accredited medical school, or any of its
136 employees or agents, and which has agreed in an affiliation
137 agreement or other contract to provide, or permit its employees
138 or agents to provide, patient services as agents of a teaching
139 hospital, is considered an agent of the teaching hospital while
140 acting within the scope of and pursuant to guidelines
141 established in the contract. To the extent allowed by law, the
142 contract must provide for the indemnification of the state, up
143 to the limits set out in this chapter, by the agent for any
144 liability incurred which was caused by the negligence of the
145 college or university or its employees or agents. The contract
146 must also provide that those limited portions of the college,
147 university, or medical school which are directly providing
148 services pursuant to the contract and which are considered an
149 agent of the teaching hospital for purposes of this section are
150 deemed to be acting on behalf of a public agency as defined in
151 s. 119.011(2).

152 1. For purposes of this paragraph, the term:

153 a. "Employee or agent" means an officer, employee, agent,
154 or servant of a nonprofit independent college or university
155 located and chartered in this state which owns or operates an
156 accredited medical school, including, but not limited to, the
157 faculty of the medical school, any health care practitioner or
158 licensee as defined in s. 456.001 for which the college or



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159 university is vicariously liable, and the staff or
160 administrators of the medical school.

161 b. "Patient services" mean:

162 (I) Comprehensive health care services as defined in s.
163 641.19, including any related administrative service, provided
164 to patients in a teaching hospital or in a health care facility
165 that is a part of a nonprofit independent college or university
166 located and chartered in this state which owns or operates an
167 accredited medical school pursuant to an affiliation agreement
168 or other contract with a teaching hospital;

169 (II) Training and supervision of interns, residents, and
170 fellows providing patient services in a teaching hospital or in
171 a health care facility that is a part of a nonprofit independent
172 college or university located and chartered in this state which
173 owns or operates an accredited medical school pursuant to an
174 affiliation agreement or other contract with a teaching
175 hospital;

176 (III) Participation in medical research protocols; or

177 (IV) Training and supervision of medical students in a
178 teaching hospital or in a health care facility owned by a
179 nonprofit college or university that owns or operates an
180 accredited medical school pursuant to an affiliation agreement
181 or other contract with a teaching hospital.

182 c. "Teaching hospital" means a teaching hospital as defined
183 in s. 408.07 which is owned or operated by the state, a county
184 or municipality, a public health trust, a special taxing
185 district, a governmental entity having health care
186 responsibilities, or a not-for-profit entity that operates such
187 facility as an agent of the state, or a political subdivision of



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188 the state, under a lease or other contract.

189 2. The teaching hospital or the medical school, or its
190 employees or agents, must provide notice to each patient, or the
191 patient's legal representative, that the college or university
192 that owns or operates the medical school and the employees or
193 agents of that college or university are acting as agents of the
194 teaching hospital and that the exclusive remedy for injury or
195 damage suffered as the result of any act or omission of the
196 teaching hospital, the college or university that owns or
197 operates the medical school, or the employees or agents of the
198 college or university, while acting within the scope of duties
199 pursuant to the affiliation agreement or other contract with a
200 teaching hospital, is by commencement of an action pursuant to
201 the provisions of this section. This notice requirement may be
202 met by posting the notice in a place conspicuous to all persons.

203 3. This paragraph does not designate any employee providing
204 contracted patient services in a teaching hospital as an
205 employee or agent of the state for purposes of chapter 440.

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

208
209 ===== T I T L E A M E N D M E N T =====

210 And the title is amended as follows:

211 Delete everything before the enacting clause
212 and insert:

213 A bill to be entitled
214 An act relating to sovereign immunity; providing
215 legislative findings and intent; amending s. 766.1115,
216 F.S.; providing that specified provisions relating to



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217 sovereign immunity for health care providers do not
218 apply to certain affiliation agreements or contracts
219 to provide certain comprehensive health care services;
220 amending s. 768.28, F.S.; expanding the definition of
221 the term "officer, employee, or agent" for purposes of
222 provisions expanding sovereign immunity to include
223 certain colleges and universities when providing
224 patient services; providing that certain colleges and
225 universities that own or operate a medical school or
226 any of its employees or agents providing patient
227 services pursuant to a contract with a teaching
228 hospital are agents of the state and are immune from
229 certain liability for torts; requiring the contract to
230 provide for indemnification; providing that the
231 portion of the not-for-profit entity deemed to be an
232 agent of the state for purpose of indemnity is also an
233 agency of the state for purpose of public-records
234 laws; providing definitions; requiring that each
235 patient, or the patient's legal representative,
236 receive notice regarding the patient's exclusive
237 remedy for injury or damage suffered; providing that
238 an employee providing patient services is not an
239 employee or agent of the state for purposes of
240 workers' compensation; providing for application;
241 providing an effective date.