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LEGISLATIVE ACTION

Senate

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House

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Senator Thrasher moved 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, health policy, and budgetary issues related to  
31 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 operate medical schools are able to  
62 continue to treat patients, provide graduate medical education,  
63 supervise medical students, and provide administrative support  
64 and services in teaching hospitals is an overwhelming public  
65 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 affiliation agreement or other contract. To  
142 the extent allowed by law, the contract must provide for the  
143 indemnification of the teaching hospital, up to the limits set  
144 out in this chapter, by the agent for any liability incurred  
145 which was caused by the negligence of the college or university  
146 or its employees or agents. The contract must also provide that  
147 those limited portions of the college, university, or medical  
148 school which are directly providing services pursuant to the  
149 contract and which are considered an agent of the teaching  
150 hospital for purposes of this section are deemed to be acting on  
151 behalf of a public agency as defined in 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;

165 (II) Training and supervision of interns, residents, and  
166 fellows providing patient services in a teaching hospital; or

167 (III) Training and supervision of medical students in a  
168 teaching hospital.

169 c. "Teaching hospital" means a teaching hospital as defined  
170 in s. 408.07 which is owned or operated by the state, a county  
171 or municipality, a public health trust, a special taxing  
172 district, a governmental entity having health care  
173 responsibilities, or a not-for-profit entity that operates such  
174 facility as an agent of the state, or a political subdivision of  
175 the state, under a lease or other contract.

176 2. The teaching hospital or the medical school, or its  
177 employees or agents, must provide notice to each patient, or the  
178 patient's legal representative, that the college or university  
179 that owns or operates the medical school and the employees or  
180 agents of that college or university are acting as agents of the  
181 teaching hospital and that the exclusive remedy for injury or  
182 damage suffered as the result of any act or omission of the  
183 teaching hospital, the college or university that owns or  
184 operates the medical school, or the employees or agents of the  
185 college or university, while acting within the scope of duties  
186 pursuant to the affiliation agreement or other contract with a  
187 teaching hospital, is by commencement of an action pursuant to



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188 the provisions of this section. This notice requirement may be  
189 met by posting the notice in a place conspicuous to all persons.

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

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

195  
196 ===== T I T L E A M E N D M E N T =====

197 And the title is amended as follows:

198 Delete everything before the enacting clause  
199 and insert:

200 A bill to be entitled  
201 An act relating to sovereign immunity; providing  
202 legislative findings and intent; amending s. 766.1115,  
203 F.S.; providing that specified provisions relating to  
204 sovereign immunity for health care providers do not  
205 apply to certain affiliation agreements or contracts  
206 to provide certain comprehensive health care services;  
207 amending s. 768.28, F.S.; expanding the definition of  
208 the term "officer, employee, or agent" for purposes of  
209 provisions expanding sovereign immunity to include  
210 certain colleges and universities when providing  
211 patient services; providing that certain colleges and  
212 universities that own or operate a medical school or  
213 any of its employees or agents providing patient  
214 services pursuant to a contract with a teaching  
215 hospital are agents of the teaching hospital and are  
216 immune from certain liability for torts; requiring the





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217 contract to provide for indemnification; providing  
218 that the portion of the not-for-profit entity which is  
219 considered to be an agent of the teaching hospital for  
220 purposes of extension of the waiver of sovereign  
221 immunity is deemed to be acting on behalf of a public  
222 agency for purposes of public-records laws; providing  
223 definitions; requiring that each patient, or the  
224 patient's legal representative, receive notice  
225 regarding the patient's exclusive remedy for injury or  
226 damage suffered; providing that an employee providing  
227 patient services is not an employee or agent of the  
228 state for purposes of workers' compensation; providing  
229 for application; providing an effective date.