

By the Committee on Judiciary; and Senator Thrasher

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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
6 apply to certain affiliation agreements or contracts
7 to provide certain comprehensive health care services;
8 amending s. 768.28, F.S.; expanding the definition of
9 the term "officer, employee, or agent" for purposes of
10 sovereign immunity to include certain health care
11 providers; providing that certain colleges and
12 universities that own or operate a medical school or
13 any of its employees or agents that have agreed in an
14 affiliation agreement to provide patient services as
15 agents of a teaching hospital that is owned or
16 operated by a governmental entity having health care
17 responsibilities, or a not-for-profit entity that
18 operates such facilities as an agent of that
19 governmental entity under a lease, are agents of the
20 state and are immune from certain liability for torts;
21 requiring the contract to provide for indemnification;
22 providing that the portion of the not-for-profit
23 entity deemed to be an agent of the state for purpose
24 of indemnity is also an agency of the state for
25 purpose of public-records laws; providing definitions;
26 requiring that each patient, or the patient's legal
27 representative, receive written notice regarding the
28 patient's exclusive remedy for injury or damage
29 suffered; providing that an employee providing patient

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30 services is not an employee or agent of the state for
31 purposes of workers' compensation; providing for
32 application; providing an effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

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

41 (2) The Legislature finds that this state:

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

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

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

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

54 (e) Has been impacted by medical malpractice, liability,
55 and reimbursement issues.

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

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59 place to receive their medical education and practice medicine.

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

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

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

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

115 (b) The Graduate Medical Education Committee submitted
116 Reports in 2009 and 2010 and, among other findings, determined

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

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

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

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

174 (9) The Legislature finds that when medical schools

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

192 (10) The Legislature finds that the high cost of litigation
193 and unequal liability exposure have adversely impacted the
194 ability of some medical schools to provide or permit their
195 employees to provide patient services to patients in public
196 teaching hospitals. If corrective action is not taken, this
197 health care crisis will lead to the reduction of patient
198 services in public teaching hospitals. In addition, it will
199 reduce the ability of public teaching hospitals to further
200 support their public mission through the admission of patients
201 to their teaching services and reduce the ability of public
202 teaching hospitals to act as teaching sites for medical students
203 from private and public medical schools. It will also contribute

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204 to a reduction in the high-quality medical care and training
205 provided through public teaching hospitals that are affiliated
206 with accredited medical schools as well as a reduction in
207 essential research, program development, and infrastructure
208 improvements in public teaching hospitals.

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

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

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

224 (14) It is the intent of the Legislature that medical
225 schools that provide or permit their employees to provide
226 patient services in public teaching hospitals pursuant to an
227 affiliation agreement or other contract be subject to sovereign
228 immunity protections under s. 768.28, Florida Statutes, in the
229 same manner and to the same extent as the state, its agencies,
230 and political subdivisions.

231 (15) It is the intent of the Legislature that employees of
232 medical schools who provide patient services in a public

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233 teaching hospital and the employees of public teaching hospitals
234 be immune from lawsuits in the same manner and to the same
235 extent as employees and agents of the state, its agencies, and
236 political subdivisions and that they not be held personally
237 liable in tort or named as a party defendant in an action while
238 performing patient services, except as provided in s.
239 768.28(9)(a), Florida Statutes.

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

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

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

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

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

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

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262 programs.—

263 (9)

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

265 1. "Employee" includes any volunteer firefighter.

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

277 (10)

278 (f)1. For purposes of this section, any Florida not-for-
279 profit college or university that owns or operates an accredited
280 medical school or any of its employees or agents that have
281 agreed in an affiliation agreement or other contract to provide
282 patient services as agents of a teaching hospital, as defined in
283 s. 408.07(45), which is owned or operated by the state, a
284 county, a municipality, a public health trust, a special taxing
285 district, any other governmental entity having health care
286 responsibilities, or a not-for-profit entity that operates such
287 facilities as an agent of that governmental entity under a lease
288 or other contract, are agents of the state and are immune from
289 liability for torts in the same manner and to the same extent as
290 a teaching hospital and its governmental owner or operator while

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291 acting within the scope of and pursuant to guidelines
292 established in the contract.

293 2. The contract shall provide, to the extent permitted by
294 law, for the indemnification of the state by the agent for any
295 liability incurred up to the limits set forth in this chapter to
296 the extent caused by the negligence of the college, university,
297 or medical school or its employees or agents. As used in this
298 paragraph, the term "patient services" means any comprehensive
299 health care services, as defined in s. 641.19(4); the training
300 or supervision of medical students, interns, residents, or
301 fellows; access to or participation in medical research
302 protocols; or any related executive, managerial, or
303 administrative services provided according to an affiliation
304 agreement or other contract with the teaching hospital or its
305 governmental owner or operator. The contract must also provide
306 that those limited portions of the college, university, or
307 medical school which are directly providing services pursuant to
308 the contract and which are considered an agency of the state for
309 purposes of this section are acting on behalf of a public agency
310 as defined in s. 119.011(2). As used in this paragraph, the
311 term, "employee or agent of a college, university, or medical
312 school" means, but is not limited to, an officer, a member of
313 the faculty, a health care practitioner or licensee defined in
314 s. 456.001, or any other person who is directly or vicariously
315 liable. Such employee or agent of a college, university, or its
316 medical school is not personally liable in tort and may not be
317 named as a party defendant in any action arising from the
318 provision of any such patient services, except as provided in
319 paragraph (9) (a).

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

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

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