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1 A bill to be entitled
2 An act relating to sovereign immunity; amending s. 768.28,
3 F.S.; providing that certain health care providers and
4 vendors, and their agents and employees, who primarily
5 serve clients with specified conditions may be considered
6 agents and employees of the state or its subdivisions with
7 respect to such services while acting within the scope of
8 and pursuant to guidelines established in a contractual
9 agreement or Medicaid provider agreement; requiring
10 indemnification; providing construction of provisions;
11 amending ss. 29.0081, 163.01, 324.022, 456.048, 458.320,
12 459.0085, 616.242, 624.461, 624.462, and 627.733, F.S.;
13 conforming cross-references to changes made by the act;
14 providing an effective date.

15
16 WHEREAS, providers under state contracts to serve
17 individuals with disabilities are serving an important state
18 purpose, and

19 WHEREAS, these private service providers provide an
20 identical purpose to state providers for individuals with
21 disabilities, and

22 WHEREAS, these providers are wasting precious resources on
23 the cost of high insurance premiums, litigation, and attorney's
24 fees when they should be following the same limits as the state
25 programs serving the same population, NOW, THEREFORE,

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Subsections (12) through (20) of section
 30 768.28, Florida Statutes, are renumbered as subsections (13)
 31 through (21), respectively, and a new subsection (12) is added
 32 to that section to read:

33 768.28 Waiver of sovereign immunity in tort actions;
 34 recovery limits; limitation on attorney fees; statute of
 35 limitations; exclusions; indemnification; risk management
 36 programs.—

37 (12) (a) Notwithstanding any other law, a health care
 38 provider or vendor, or any of its employees or agents, at least
 39 75 percent of whose client population consists of individuals
 40 with:

41 1. Developmental disabilities as defined in s. 393.063,
 42 including individuals served under part VIII of chapter 400;

43 2. Disabilities as defined in ss. 413.20 and 413.033(1)
 44 and (2);

45 3. Mental illness as defined in s. 394.455; or

46 4. A combination of conditions listed in subparagraphs 1.
 47 through 3.,

48
 49 and who has contractually agreed to act on behalf of the state
 50 or any of its agencies or subdivisions to provide services to
 51 individuals with developmental disabilities, shall be considered
 52 an agent of the state or of that agency or subdivision for the
 53 purposes of this section solely with respect to such services
 54 while acting within the scope of and pursuant to guidelines
 55 established in a contractual agreement or Medicaid provider
 56 agreement. The contract or agreement must provide for the

57 indemnification of the state or that agency or subdivision by
 58 the agent for any liabilities incurred up to the limits set out
 59 in this chapter and in accordance with subsection (5).

60 (b) This subsection does not make a person considered an
 61 agent of the state or its agencies and subdivisions under
 62 paragraph (a) an employee or agent of the state for purposes of
 63 chapter 440.

64 Section 2. Paragraph (b) of subsection (2) of section
 65 29.0081, Florida Statutes, is amended to read:

66 29.0081 County funding of additional court personnel.—

67 (2) The agreement shall, at a minimum, provide that:

68 (b) The personnel whose employment is funded under the
 69 agreement are hired, supervised, managed, and fired by personnel
 70 of the judicial circuit. The county shall be considered the
 71 employer for purposes of s. 440.10 and chapter 443. Employees
 72 funded by the county under this section and other county
 73 employees may be aggregated for purposes of a flexible benefits
 74 plan pursuant to s. 125 of the Internal Revenue Code of 1986.
 75 The judicial circuit shall supervise the personnel whose
 76 employment is funded under the agreement; be responsible for
 77 compliance with all requirements of federal and state employment
 78 laws, including, but not limited to, Title VII of the Civil
 79 Rights Act of 1964, Title I of the Americans with Disabilities
 80 Act, 42 U.S.C. s. 1983, the Family Medical Leave Act, the Fair
 81 Labor Standards Act, chapters 447 and 760, and ss. 112.3187,
 82 440.105, and 440.205; and fully indemnify the county from any
 83 liability under such laws, as authorized by s. 768.28 (20) ~~(19)~~,
 84 to the extent such liability is the result of the acts or

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85 omissions of the judicial circuit or its agents or employees.

86 Section 3. Paragraph (h) of subsection (3) of section
87 163.01, Florida Statutes, is amended to read:

88 163.01 Florida Interlocal Cooperation Act of 1969.—

89 (3) As used in this section:

90 (h) "Local government liability pool" means a reciprocal
91 insurer as defined in s. 629.021 or any self-insurance program
92 created pursuant to s. 768.28 (17) ~~(16)~~, formed and controlled by
93 counties or municipalities of this state to provide liability
94 insurance coverage for counties, municipalities, or other public
95 agencies of this state, which pool may contract with other
96 parties for the purpose of providing claims administration,
97 processing, accounting, and other administrative facilities.

98 Section 4. Subsection (1) of section 324.022, Florida
99 Statutes, is amended to read:

100 324.022 Financial responsibility for property damage.—

101 (1) Every owner or operator of a motor vehicle required to
102 be registered in this state shall establish and maintain the
103 ability to respond in damages for liability on account of
104 accidents arising out of the use of the motor vehicle in the
105 amount of \$10,000 because of damage to, or destruction of,
106 property of others in any one crash. The requirements of this
107 section may be met by one of the methods established in s.
108 324.031; by self-insuring as authorized by s. 768.28 (17) ~~(16)~~; or
109 by maintaining an insurance policy providing coverage for
110 property damage liability in the amount of at least \$10,000
111 because of damage to, or destruction of, property of others in
112 any one accident arising out of the use of the motor vehicle.

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113 The requirements of this section may also be met by having a
 114 policy which provides coverage in the amount of at least \$30,000
 115 for combined property damage liability and bodily injury
 116 liability for any one crash arising out of the use of the motor
 117 vehicle. The policy, with respect to coverage for property
 118 damage liability, must meet the applicable requirements of s.
 119 324.151, subject to the usual policy exclusions that have been
 120 approved in policy forms by the Office of Insurance Regulation.
 121 No insurer shall have any duty to defend uncovered claims
 122 irrespective of their joinder with covered claims.

123 Section 5. Paragraph (a) of subsection (2) of section
 124 456.048, Florida Statutes, is amended to read:

125 456.048 Financial responsibility requirements for certain
 126 health care practitioners.—

127 (2) The board or department may grant exemptions upon
 128 application by practitioners meeting any of the following
 129 criteria:

130 (a) Any person licensed under chapter 457, s. 458.3475, s.
 131 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or
 132 chapter 467 who practices exclusively as an officer, employee,
 133 or agent of the Federal Government or of the state or its
 134 agencies or its subdivisions. For the purposes of this
 135 subsection, an agent of the state, its agencies, or its
 136 subdivisions is a person who is eligible for coverage under any
 137 self-insurance or insurance program authorized by the provisions
 138 of s. 768.28 (17) ~~(16)~~ or who is a volunteer under s. 110.501(1).

139 Section 6. Paragraph (a) of subsection (5) of section
 140 458.320, Florida Statutes, is amended to read:

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141 458.320 Financial responsibility.—

142 (5) The requirements of subsections (1), (2), and (3) do
143 not apply to:

144 (a) Any person licensed under this chapter who practices
145 medicine exclusively as an officer, employee, or agent of the
146 Federal Government or of the state or its agencies or its
147 subdivisions. For the purposes of this subsection, an agent of
148 the state, its agencies, or its subdivisions is a person who is
149 eligible for coverage under any self-insurance or insurance
150 program authorized by the provisions of s. 768.28 (17) ~~(16)~~.

151 Section 7. Paragraph (a) of subsection (5) of section
152 459.0085, Florida Statutes, is amended to read:

153 459.0085 Financial responsibility.—

154 (5) The requirements of subsections (1), (2), and (3) do
155 not apply to:

156 (a) Any person licensed under this chapter who practices
157 medicine exclusively as an officer, employee, or agent of the
158 Federal Government or of the state or its agencies or its
159 subdivisions. For the purposes of this subsection, an agent of
160 the state, its agencies, or its subdivisions is a person who is
161 eligible for coverage under any self-insurance or insurance
162 program authorized by the provisions of s. 768.28 (17) ~~(16)~~.

163 Section 8. Paragraph (c) of subsection (9) of section
164 616.242, Florida Statutes, is amended to read:

165 616.242 Safety standards for amusement rides.—

166 (9) INSURANCE REQUIREMENTS.—

167 (c) The insurance requirements imposed under this
168 subsection do not apply to a governmental entity that is covered

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169 by the provisions of s. 768.28 (17) ~~(16)~~.

170 Section 9. Section 624.461, Florida Statutes, is amended
171 to read:

172 624.461 Definition.—For the purposes of the Florida
173 Insurance Code, "self-insurance fund" means both commercial
174 self-insurance funds organized under s. 624.462 and group self-
175 insurance funds organized under s. 624.4621. The term "self-
176 insurance fund" does not include a governmental self-insurance
177 pool created under s. 768.28 (17) ~~(16)~~.

178 Section 10. Subsection (6) of section 624.462, Florida
179 Statutes, is amended to read:

180 624.462 Commercial self-insurance funds.—

181 (6) A governmental self-insurance pool created pursuant to
182 s. 768.28 (17) ~~(16)~~ shall not be considered a commercial self-
183 insurance fund.

184 Section 11. Paragraph (b) of subsection (3) of section
185 627.733, Florida Statutes, is amended to read:

186 627.733 Required security.—

187 (3) Such security shall be provided:

188 (b) By any other method authorized by s. 324.031(2), (3),
189 or (4) and approved by the Department of Highway Safety and
190 Motor Vehicles as affording security equivalent to that afforded
191 by a policy of insurance or by self-insuring as authorized by s.
192 768.28 (17) ~~(16)~~. The person filing such security shall have all
193 of the obligations and rights of an insurer under ss. 627.730-
194 627.7405.

195 Section 12. This act shall take effect July 1, 2011.