

By Senator McClain

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A bill to be entitled
An act relating to community-based care lead agency
and subcontractor liability; amending s. 409.993,
F.S.; defining the term "culpably negligent manner";
providing circumstances under which a community-based
care lead agency is not liable in tort for the acts or
omissions of its officers or employees; providing that
a community-based care lead agency may be held liable
in tort for such acts or omissions under certain
circumstances; providing that a community-based care
lead agency is not liable in tort for the acts or
omissions of its subcontractors; providing
circumstances under which a subcontractor of a
community-based care lead agency is not liable in tort
for the acts or omissions of the subcontractor's
officers, agents, or employees; providing that a
subcontractor of a community-based care lead agency
may be held liable in tort for such acts or omissions
under certain circumstances; deleting a provision
applying a limitation on certain liability to
contracts entered into or renewed after a certain
date; deleting a provision that annually increases
certain conditional limitations on damages by a
specified percentage; providing an effective date.

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

Section 1. Section 409.993, Florida Statutes, is amended,
to read:

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409.993 Lead agencies and subcontractor liability.—

(1) FINDINGS.—

(a) The Legislature finds that the state has traditionally provided foster care services to children who are the responsibility of the state. As such, foster children have not had the right to recover for injuries beyond the limitations specified in s. 768.28. The Legislature has determined that foster care and related services should be outsourced pursuant to this section and that the provision of such services is of paramount importance to the state. The purpose of such outsourcing is to increase the level of safety, security, and stability of children who are or become the responsibility of the state. One of the components necessary to secure a safe and stable environment for such children is the requirement that private providers maintain liability insurance. As such, insurance needs to be available and remain available to nongovernmental foster care and related services providers without the resources of such providers being significantly reduced by the cost of maintaining such insurance.

(b) The Legislature further finds that, by requiring the following minimum levels of insurance, children in outsourced foster care and related services will gain increased protection and rights of recovery in the event of injury than currently provided in s. 768.28.

(2) DEFINITION.—As used in this section, the term “culpably negligent manner” means reckless indifference or grossly careless disregard of human life.

(3)~~(2)~~ LEAD AGENCY LIABILITY.—

(a) Other than an entity to which s. 768.28 applies, an

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59 eligible community-based care lead agency, or its employees or
60 officers, except as otherwise provided in paragraph (e) ~~(b)~~,
61 shall, as a part of its contract, obtain a minimum of \$1 million
62 per occurrence with a policy period aggregate limit of \$3
63 million in general liability insurance coverage. The lead agency
64 shall ~~must~~ also require that staff who transport client children
65 and families in their personal automobiles in order to carry out
66 their job responsibilities obtain minimum bodily injury
67 liability insurance in the amount of \$100,000 per person per any
68 one automobile accident, and, subject to such limits for each
69 person, \$300,000 for all damages resulting from any one
70 automobile accident, on their personal automobiles. In lieu of
71 personal motor vehicle insurance, the lead agency's casualty,
72 liability, or motor vehicle insurance carrier may provide
73 nonowned automobile liability coverage. This insurance provides
74 liability insurance for an automobile that the lead agency uses
75 in connection with the lead agency's business but does not own,
76 lease, rent, or borrow. This coverage includes an automobile
77 owned by an employee of the lead agency or a member of the
78 employee's household but only while the automobile is used in
79 connection with the lead agency's business. The nonowned
80 automobile coverage for the lead agency applies as excess
81 coverage over any other collectible insurance. The personal
82 automobile policy for the employee of the lead agency must ~~shall~~
83 be primary insurance, and the nonowned automobile coverage of
84 the lead agency acts as excess insurance to the primary
85 insurance. The lead agency shall provide a minimum limit of \$1
86 million in nonowned automobile coverage. In a tort action
87 brought against such a lead agency or employee, net economic

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damages are ~~shall be~~ limited to \$2 million per liability claim and \$200,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In any tort action brought against a lead agency, noneconomic damages are ~~shall be~~ limited to \$400,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment must ~~shall~~ be in accordance with s. 768.76.

(b) A ~~The~~ lead agency is not liable in tort for the acts or omissions of its ~~subcontractors or the~~ officers, ~~agents,~~ or employees if, at the time of the act or omission giving rise to the claim, the lead agency has done all of the following:

1. Ensured that any criminal background checks required by law have occurred in a timely manner for its officers and employees of its subcontractors.

2. Before hiring its officers and employees, and at least once every 5 years thereafter, confirmed that its officers and employees are not listed in a state registry or database that indicates that any of the officers or employees are ineligible to supervise or provide treatment to children.

3. Reported any known allegation of misconduct by its officers and employees, as required by law.

4. Required its officers and employees to complete all of the following training:

a. At least once every 5 years, child sexual abuse prevention training.

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117 b. Child abuse and neglect reporting training.

118 (c) A lead agency may be held liable in tort for the acts
119 or omissions of its officers and employees if the claimant shows
120 all of the following:

121 1. The lead agency was not in substantial compliance with a
122 requirement provided in paragraph (b) at the time of the act or
123 omission giving rise to the claim.

124 2. The requirement was designed to prevent the specific
125 type of harm alleged to have occurred.

126 3. The lead agency's failure to be in substantial
127 compliance with the requirement was a contributing factor in
128 bringing about the harm.

129 (d) A lead agency is not liable in tort for the acts or
130 omissions of its subcontractors or the officers, agents, or
131 employees of its subcontractors.

132 (e)-(b) The liability of a lead agency described in this
133 section ~~is shall be~~ exclusive and in place of all other
134 liability of such lead agency. The same immunities from
135 liability enjoyed by such lead agencies ~~shall~~ extend to each
136 employee of the lead agency if he or she is acting in
137 furtherance of the lead agency's business, including the
138 transportation of clients served, as described in this
139 subsection, in privately owned vehicles. Such immunities are not
140 applicable to a lead agency or an employee of the lead agency
141 who acts in a culpably negligent manner or with willful and
142 wanton disregard or unprovoked physical aggression if such acts
143 result in injury or death or such acts proximately cause such
144 injury or death. Such immunities are not applicable to employees
145 of the same lead agency when each is operating in the

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146 furtherance of the agency's business, but they are assigned
147 primarily to unrelated work within private or public employment.
148 The same immunities from liability ~~immunity provisions~~ enjoyed
149 by a lead agency also apply to any sole proprietor, partner,
150 corporate officer or director, supervisor, or other person who,
151 in the course and scope of his or her duties, acts in a
152 managerial or policymaking capacity if ~~and~~ the conduct that
153 caused the alleged injury arose within the course and scope of
154 those managerial or policymaking duties. ~~As used in this~~
155 ~~subsection and subsection (3), the term "culpably negligent~~
156 ~~manner" means reckless indifference or grossly careless~~
157 ~~disregard of human life.~~

158 (4) ~~(3)~~ SUBCONTRACTOR LIABILITY.—

159 (a) A subcontractor of an eligible community-based care
160 lead agency that is a direct provider of foster care and related
161 services to children and families, and its employees or
162 officers, except as otherwise provided in paragraph (e) ~~(e)~~,
163 must, as a part of its contract, obtain a minimum of \$1 million
164 per occurrence with a policy period aggregate limit of \$3
165 million in general liability insurance coverage. The
166 subcontractor of a lead agency shall ~~must~~ also require that
167 staff who transport client children and families in their
168 personal automobiles in order to carry out their job
169 responsibilities obtain minimum bodily injury liability
170 insurance in the amount of \$100,000 per person in any one
171 automobile accident, and, subject to such limits for each
172 person, \$300,000 for all damages resulting from any one
173 automobile accident, on their personal automobiles. In lieu of
174 personal motor vehicle insurance, the subcontractor's casualty,

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liability, or motor vehicle insurance carrier may provide nonowned automobile liability coverage. This insurance provides liability insurance for automobiles that the subcontractor uses in connection with the subcontractor's business but does not own, lease, rent, or borrow. This coverage includes automobiles owned by the employees of the subcontractor or a member of the employee's household but only while the automobiles are used in connection with the subcontractor's business. The nonowned automobile coverage for the subcontractor applies as excess coverage over any other collectible insurance. The personal automobile policy for the employee of the subcontractor must ~~shall~~ be primary insurance, and the nonowned automobile coverage of the subcontractor acts as excess insurance to the primary insurance. The subcontractor shall provide a minimum limit of \$1 million in nonowned automobile coverage. In a tort action brought against such subcontractor or employee, net economic damages are ~~shall be~~ limited to \$2 million per liability claim and \$200,000 per automobile claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by any collateral source payment paid or payable. In a tort action brought against such subcontractor, noneconomic damages are ~~shall be~~ limited to \$400,000 per claim. A claims bill may be brought on behalf of a claimant pursuant to s. 768.28 for any amount exceeding the limits specified in this paragraph. Any offset of collateral source payments made as of the date of the settlement or judgment must ~~shall~~ be in accordance with s. 768.76.

(b) A subcontractor of a lead agency is not liable in tort for the acts or omissions of the subcontractor's officers,

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agents, or employees if, at the time of the act or omission giving rise to the claim, the subcontractor has done all of the following:

1. Ensured that any criminal background checks required by law have occurred in a timely manner for its officers, agents, or employees.

2. Before hiring, contracting with, or otherwise enlisting the services of its officers, agents, or employees, and at least once every 5 years thereafter, confirmed its officers, agents, and employees are not listed in a state registry or database that indicates that any of the officers, agents, or employees are ineligible to supervise or provide treatment to children.

3. Reported any known allegation of misconduct by its officers, agents, or employees, as required by law.

4. Required its officers, agents, and employees to complete all of the following training:

a. At least once every 5 years, child sexual abuse prevention training.

b. Child abuse and neglect reporting training.

(c) A subcontractor of a lead agency may be held liable in tort for the acts or omissions its officers, agents, or employees if the claimant shows all of the following:

1. The subcontractor was not in substantial compliance with a requirement provided in paragraph (b) at the time of the act or omission giving rise to the claim.

2. The requirement was designed to prevent the specific type of harm alleged to have occurred.

3. The subcontractor's failure to be in substantial compliance with the requirement was a contributing factor in

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233 bringing about the harm.

234 (d)~~(b)~~ A subcontractor of a lead agency that is a direct
235 provider of foster care and related services is not liable for
236 the acts or omissions of the lead agency; the department; or the
237 officers, agents, or employees thereof. ~~The limitation on~~
238 ~~liability established in this paragraph applies to contracts~~
239 ~~entered into or renewed after July 1, 2025.~~

240 (e)~~(e)~~ The liability of a subcontractor of a lead agency
241 that is a direct provider of foster care and related services as
242 described in this section is exclusive and in place of all other
243 liability of such provider. The same immunities from liability
244 enjoyed by such subcontractor provider extend to each employee
245 of the subcontractor when such employee is acting in furtherance
246 of the subcontractor's business, including the transportation of
247 clients served, as described in this subsection, in privately
248 owned vehicles. Such immunities are not applicable to a
249 subcontractor or an employee who acts in a culpably negligent
250 manner or with willful and wanton disregard or unprovoked
251 physical aggression if such acts result in injury or death or if
252 such acts proximately cause such injury or death. Such
253 immunities are not applicable to employees of the same
254 subcontractor who are operating in the furtherance of the
255 subcontractor's business but are assigned primarily to unrelated
256 works within private or public employment. The same immunity
257 provisions enjoyed by a subcontractor also apply to any sole
258 proprietor, partner, corporate officer or director, supervisor,
259 or other person who, in the course and scope of his or her
260 duties, acts in a managerial or policymaking capacity and the
261 conduct that caused the alleged injury arose within the course

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and scope of those managerial or policymaking duties.

~~(4) LIMITATIONS ON DAMAGES. The Legislature is cognizant of the increasing costs of goods and services each year and recognizes that fixing a set amount of compensation has the effect of a reduction in compensation each year. Accordingly, the conditional limitations on damages in this section shall be increased at the rate of 5 percent each year, prorated from July 1, 2014, to the date at which damages subject to such limitations are awarded by final judgment or settlement.~~

Section 2. This act shall take effect July 1, 2026.