A bill to be entitled
An act relating to sovereign immunity; providing legislative findings and intent; amending s. 768.28, F.S.; providing sovereign immunity to certain health care providers affiliated with a medical school while providing patient services at a public teaching hospital; providing that such health care providers are agents of the state and are immune from certain liability for torts; requiring a contract to provide for indemnification; providing that the portion of the not-for-profit entity deemed an agent of the state for purpose of indemnity is also acting on behalf of an agency of the state for purpose of public records laws; providing definitions; requiring that each patient receive written notice regarding the patient's exclusive remedy for injury or damage suffered; providing that an employee providing patient services is not an employee or agent of the state for purposes of workers' compensation; providing for application; providing an effective date.

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

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

(2) The Legislature finds that this state:
(a) Has the largest and fastest growing percentage of citizens over the age of 65, who typically have their health care needs increase as their age increases.

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

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

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

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

(3) The Legislature finds that the rapidly growing population and changing demographics of this state make it imperative that students continue to choose this state as the place to receive their medical education and practice medicine.

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

(5) The Legislature finds that access to quality health care at public teaching hospitals is enhanced when public
teaching hospitals affiliate and coordinate their common
endeavors with medical schools. The existing definition of a
teaching hospital in s. 408.07, Florida Statutes, contemplates
such affiliations between teaching hospitals and accredited
medical schools in this state. These affiliations are an
integral part of the delivery of more efficient and economical
health care services to patients in public teaching hospitals by
offering a single, high quality of care to all patients
regardless of income. These affiliations also provide quality
graduate medical education programs to resident physicians who
provide patient services at public teaching hospitals. These
affiliations ensure continued access to quality, comprehensive
health care services for residents of this state and, therefore,
should be encouraged in order to maintain and expand such
services.

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

(b) The Graduate Medical Education Committee submitted Reports in 2009 and 2010 and, among other findings, determined that graduate medical education training has a direct impact on the quality and adequacy of the state's physician specialty and subspecialty workforce and the geographic distribution of physicians; the support and expansion of residency programs in critical need areas could result in more primary care practitioners and specialists practicing in this state; medical residents are more likely to practice in the state where they completed their graduate medical education training than where they went to medical school; quality, prestigious programs
attract the best students, who stay as practicing physicians; medical residents act as "safety nets" to care for indigent, uninsured, and underserved patients in this state; supporting residency programs helps ensure this state's ability to train and retain the caliber of medical doctors its citizens and visitors deserve; and ongoing strategic planning for the expanded capacity of graduate medical education programs is crucial in order for the state to meet its health care needs. However, the January 2010 Annual Report of Graduate Medical Education in Florida by the Graduate Medical Education Committee indicated that the Association of American Medical Colleges ranked Florida 43rd nationally in the number of resident physicians in training per 100,000 population.

(7) The Legislature finds that ss. 28 and 29, chapter 2010-161, Laws of Florida, which amended ss. 381.0403 and 381.4018, Florida Statutes, respectively, modified the existing law that established the responsibility of the Department of Health for physician workforce development and created a Physician Workforce Advisory Council and a graduate medical education innovation program. The legislative intent in s. 381.4018, Florida Statutes, recognizes that "physician workforce planning is an essential component of ensuring that there is an adequate and appropriate supply of well-trained physicians to meet this state's future health care service needs as the general population and elderly population of the state increase." According to the Council on Graduate Medical Education's sixteenth report entitled "Physician Workforce Policy Guidelines for the United States, 2000-2010 (January
2005), this country could see shortages as high as 85,000 physicians by 2020.

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

(9) The Legislature finds that when medical schools affiliate or enter into contracts with public teaching hospitals to provide patient services, but medical schools and their employees do not have the same level of protection against liability claims as public teaching hospitals and their public employees when providing the same patient services to the same patients, the exposure of these medical schools and their
employees to claims arising out of alleged medical malpractice and other allegedly negligent acts is increased disproportionately. With the recent growth in the availability of state-established medical schools and medical education programs and ongoing efforts to support, strengthen, and increase the available residency training positions and medical faculty in both existing and newly designated teaching hospitals, this exposure and the consequent disparity will continue to increase. This will add to the current crisis with respect to the physician workforce in the state, which will be alleviated only through legislative relief.

(10) The Legislature finds that the high cost of litigation and unequal liability exposure have adversely impacted the ability of some medical schools to provide or permit their employees to provide patient services to patients in public teaching hospitals. If corrective action is not taken, this health care crisis will lead to the reduction of patient services in public teaching hospitals. In addition, it will reduce the ability of public teaching hospitals to further support their public mission through the admission of patients to their teaching services and reduce the ability of public teaching hospitals to act as teaching sites for medical students from private and public medical schools. It will also contribute to a reduction in the high-quality medical care and training provided through public teaching hospitals that are affiliated with accredited medical schools as well as a reduction in essential research, program development, and infrastructure improvements in public teaching hospitals.
(11) The Legislature finds that the public will benefit from corrective action to address the foregoing concerns. Designating medical schools and their employees as agents of the state who are subject to the protections of sovereign immunity when providing patient services in public teaching hospitals pursuant to an affiliation agreement or other written contract will maintain and increase that public benefit.

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

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

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

(15) It is the intent of the Legislature that employees of medical schools who provide patient services in a public teaching hospital and the employees of public teaching hospitals be immune from lawsuits in the same manner and to the same extent as employees and agents of the state, its agencies, and political subdivisions and that they not be held personally responsible.
liable in tort or named as a party defendant in an action while performing patient services, except as provided in s. 768.28(9)(a), Florida Statutes.

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

Section 2. Paragraph (f) is added to subsection (10) of section 768.28, Florida Statutes, to read:

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

(10)

(f) Health care providers who are affiliated with a Florida not-for-profit college or university that owns or operates an accredited medical school or any of their employees or agents that have contractually agreed to act as agents of a teaching hospital, as defined in s. 408.07(45), that is owned or operated by the state, a county, a municipality, a public health trust, a special taxing district, or any other governmental entity having health care responsibilities to provide health care services in such teaching hospital shall be considered agents of the teaching hospital for the purposes of this section while acting within the scope of and pursuant to such contract. Such contract shall provide for the indemnification of the teaching hospital by the agent for any liabilities incurred up to the limits set out in this chapter. Those portions of the college or university that are directly providing health care
services pursuant to the contract are acting on behalf of a public agency pursuant to s. 119.011(2). Patients must be given written notice that the medical school and its employees are agents of the state and that the exclusive remedy for injury or damage suffered as a result of any act or omission of the public teaching hospital, the medical school, or an employee or agent of the medical school while acting within the scope of her or his duties is by commencement of an action under this section. This paragraph does not designate persons providing contracted health care services as employees or agents of the state for the purposes of chapter 440.

Section 3. This act shall take effect upon becoming a law, and applies to all claims accruing on or after that date.