

By 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 definitions; requiring that each patient, or  
23          the patient's legal representative, receive written  
24          notice regarding the patient's exclusive remedy for  
25          injury or damage suffered; providing that an employee  
26          providing patient services is not an employee or agent  
27          of the state for purposes of workers' compensation;  
28          providing for application; providing an effective  
29          date.

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30  
31 Be It Enacted by the Legislature of the State of Florida:

32  
33 Section 1. (1) The Legislature finds that access to  
34 quality, affordable health care for residents of this state is a  
35 necessary goal for the state and that public teaching hospitals  
36 play an essential role in providing access to comprehensive  
37 health care services.

38 (2) The Legislature finds that this state:

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

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

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

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

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

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

57 (4) The Legislature finds that graduate medical education  
58 is the process of comprehensive specialty training that a

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

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

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88 health care services for residents of this state and, therefore,  
89 should be encouraged in order to maintain and expand such  
90 services.

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

112 (b) The Graduate Medical Education Committee submitted  
113 Reports in 2009 and 2010 and, among other findings, determined  
114 that graduate medical education training has a direct impact on  
115 the quality and adequacy of the state's physician specialty and  
116 subspecialty workforce and the geographic distribution of

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

136 (7) The Legislature finds that ss. 28 and 29, chapter 2010-  
137 161, Laws of Florida, which amended ss. 381.0403 and 381.4018,  
138 Florida Statutes, respectively, modified the existing law that  
139 established the responsibility of the Department of Health for  
140 physician workforce development and created a Physician  
141 Workforce Advisory Council and a graduate medical education  
142 innovation program. The legislative intent in s. 381.4018,  
143 Florida Statutes, recognizes that "physician workforce planning  
144 is an essential component of ensuring that there is an adequate  
145 and appropriate supply of well-trained physicians to meet this

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146 state's future health care service needs as the general  
147 population and elderly population of the state increase."  
148 According to the Council on Graduate Medical Education's  
149 sixteenth report entitled "Physician Workforce Policy Guidelines  
150 for the United States, 2000-2010 (January 2005)," this country  
151 could see shortages as high as 85,000 physicians by 2020.

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

171 (9) The Legislature finds that when medical schools  
172 affiliate or enter into contracts with public teaching hospitals  
173 to provide patient services, but medical schools and their  
174 employees do not have the same level of protection against

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175 liability claims as public teaching hospitals and their public  
176 employees when providing the same patient services to the same  
177 patients, the exposure of these medical schools and their  
178 employees to claims arising out of alleged medical malpractice  
179 and other allegedly negligent acts is increased  
180 disproportionately. With the recent growth in the availability  
181 of state-established medical schools and medical education  
182 programs and ongoing efforts to support, strengthen, and  
183 increase the available residency training positions and medical  
184 faculty in both existing and newly designated teaching  
185 hospitals, this exposure and the consequent disparity will  
186 continue to increase. This will add to the current crisis with  
187 respect to the physician workforce in the state, which will be  
188 alleviated only through legislative relief.

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

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204 essential research, program development, and infrastructure  
205 improvements in public teaching hospitals.

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

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

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

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

228 (15) It is the intent of the Legislature that employees of  
229 medical schools who provide patient services in a public  
230 teaching hospital and the employees of public teaching hospitals  
231 be immune from lawsuits in the same manner and to the same  
232 extent as employees and agents of the state, its agencies, and



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233 political subdivisions and that they not be held personally  
234 liable in tort or named as a party defendant in an action while  
235 performing patient services, except as provided in s.  
236 768.28(9) (a), Florida Statutes.

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

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

242 766.1115 Health care providers; creation of agency  
243 relationship with governmental contractors.—

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

253 Section 3. Paragraph (b) of subsection (9) of section  
254 768.28, Florida Statutes, is amended, and paragraph (f) is added  
255 to subsection (10) of that section, to read:

256 768.28 Waiver of sovereign immunity in tort actions;  
257 recovery limits; limitation on attorney fees; statute of  
258 limitations; exclusions; indemnification; risk management  
259 programs.—

260 (9)

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

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

274 (10)

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

290 2. The contract shall provide, to the extent permitted by

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291 law, for the indemnification of the state by the agent for any  
292 liability incurred up to the limits set forth in this chapter to  
293 the extent caused by the negligence of the college, university,  
294 or medical school or its employees or agents. As used in this  
295 paragraph, the term "patient services" means any comprehensive  
296 health care services, as defined in s. 641.19(4); the training  
297 or supervision of medical students, interns, residents, or  
298 fellows; access to or participation in medical research  
299 protocols; or any related executive, managerial, or  
300 administrative services provided according to an affiliation  
301 agreement or other contract with the teaching hospital or its  
302 governmental owner or operator. As used in this paragraph, the  
303 term, "employee or agent of a college, university, or medical  
304 school" means, but is not limited to, an officer, a member of  
305 the faculty, a health care practitioner or licensee defined in  
306 s. 456.001, or any other person who is directly or vicariously  
307 liable. Such employee or agent of a college, university, or its  
308 medical school is not personally liable in tort and may not be  
309 named as a party defendant in any action arising from the  
310 provision of any such patient services, except as provided in  
311 paragraph (9) (a).

312 3. The public teaching hospital, the medical school, or its  
313 employees or agents must provide written notice to each patient,  
314 or the patient's legal representative, the receipt of which must  
315 be acknowledged in writing, that the medical school and its  
316 employees are agents of the state and that the exclusive remedy  
317 for injury or damage suffered as a result of any act or omission  
318 of the public teaching hospital, the medical school, or an  
319 employee or agent of the medical school while acting within the

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320 scope of her or his duties pursuant to the affiliation agreement  
321 or other contract is by commencement of an action under this  
322 section.

323 4. This paragraph does not make an employee providing  
324 patient services an employee or agent of the state for purposes  
325 of chapter 440.

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