

By Senator Bennett

21-00689-12

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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. 768.28,  
4           F.S.; providing sovereign immunity to emergency health  
5           care providers acting pursuant to obligations imposed  
6           by specified statutes; providing an exception;  
7           providing that emergency health care providers are  
8           agents of the state and requiring them to indemnify  
9           the state up to the specified liability limits;  
10          providing for sanctions against emergency health care  
11          providers who fail to comply with indemnification  
12          obligations; providing definitions; providing  
13          applicability; providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

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17           Section 1. Legislative findings and intent.—

18           (1) The Legislature finds and declares it to be of vital  
19 importance that emergency services and care be provided by  
20 hospitals, physicians, and emergency medical services providers  
21 to every person in need of such care. The Legislature finds that  
22 providers of emergency services and care are critical elements  
23 in responding to disaster and emergency situations that may  
24 affect local communities, the state, and the country. The  
25 Legislature recognizes the importance of maintaining a viable  
26 system of providing for the emergency medical needs of the  
27 state's residents and visitors. The Legislature and the Federal  
28 Government have required such providers of emergency medical  
29 services and care to provide emergency services and care to all

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30 persons who present themselves to hospitals seeking such care.

31 (2) The Legislature has further mandated that emergency  
32 medical treatment may not be denied by emergency medical  
33 services providers to persons who have or are likely to have an  
34 emergency medical condition. Such governmental requirements have  
35 imposed a unilateral obligation for providers of emergency  
36 services and care to provide services to all persons seeking  
37 emergency care without ensuring payment or other consideration  
38 for provision of such care. The Legislature also recognizes that  
39 providers of emergency services and care provide a significant  
40 amount of uncompensated emergency medical care in furtherance of  
41 such governmental interest.

42 (3) The Legislature finds that a significant proportion of  
43 the residents of this state who are uninsured or are Medicaid or  
44 Medicare recipients are unable to access needed health care on  
45 an elective basis because health care providers fear the  
46 increased risk of medical malpractice liability. The Legislature  
47 finds that such patients, in order to obtain medical care, are  
48 frequently forced to seek care through providers of emergency  
49 medical services and care.

50 (4) The Legislature finds that providers of emergency  
51 medical services and care in this state have reported  
52 significant problems with respect to the affordability of  
53 professional liability insurance, which is more expensive in  
54 this state than the national average. The Legislature further  
55 finds that a significant number of specialist physicians have  
56 resigned from serving on hospital staffs or have otherwise  
57 declined to provide on-call coverage to hospital emergency  
58 departments due to the increased exposure to medical malpractice

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59 liability created by treating such emergency department  
60 patients, thereby creating a void that has an adverse effect on  
61 emergency patient care.

62 (5) It is the intent of the Legislature that hospitals,  
63 emergency medical services providers, and physicians be able to  
64 ensure that patients who may need emergency medical treatment  
65 and who present themselves to hospitals for emergency medical  
66 services and care have access to such needed services.

67 Section 2. Subsection (9) of section 768.28, Florida  
68 Statutes, is amended to read:

69 768.28 Waiver of sovereign immunity in tort actions;  
70 recovery limits; limitation on attorney fees; statute of  
71 limitations; exclusions; indemnification; risk management  
72 programs.—

73 (9) (a) No officer, employee, or agent of the state or of  
74 any of its subdivisions shall be held personally liable in tort  
75 or named as a party defendant in any action for any injury or  
76 damage suffered as a result of any act, event, or omission of  
77 action in the scope of her or his employment or function, unless  
78 such officer, employee, or agent acted in bad faith or with  
79 malicious purpose or in a manner exhibiting wanton and willful  
80 disregard of human rights, safety, or property. However, such  
81 officer, employee, or agent shall be considered an adverse  
82 witness in a tort action for any injury or damage suffered as a  
83 result of any act, event, or omission of action in the scope of  
84 her or his employment or function. The exclusive remedy for  
85 injury or damage suffered as a result of an act, event, or  
86 omission of an officer, employee, or agent of the state or any  
87 of its subdivisions or constitutional officers shall be by

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88 action against the governmental entity, or the head of such  
89 entity in her or his official capacity, or the constitutional  
90 officer of which the officer, employee, or agent is an employee,  
91 unless such act or omission was committed in bad faith or with  
92 malicious purpose or in a manner exhibiting wanton and willful  
93 disregard of human rights, safety, or property. The state or its  
94 subdivisions shall not be liable in tort for the acts or  
95 omissions of an officer, employee, or agent committed while  
96 acting outside the course and scope of her or his employment or  
97 committed in bad faith or with malicious purpose or in a manner  
98 exhibiting wanton and willful disregard of human rights, safety,  
99 or property.

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

101 1. "Employee" includes any volunteer firefighter.

102 2. "Officer, employee, or agent" includes, but is not  
103 limited to:7

104 a. Any health care provider when providing services  
105 pursuant to s. 766.1115; any member of the Florida Health  
106 Services Corps, as defined in s. 381.0302, who provides  
107 uncompensated care to medically indigent persons referred by the  
108 Department of Health; any nonprofit independent college or  
109 university located and chartered in this state which owns or  
110 operates an accredited medical school, and its employees or  
111 agents, when providing patient services pursuant to paragraph  
112 (10) (f); and any public defender or her or his employee or  
113 agent, including, among others, an assistant public defender and  
114 an investigator.

115 b. Any emergency health care provider acting pursuant to  
116 obligations imposed by s. 395.1041 or s. 401.45, except for

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117 persons or entities that are otherwise covered under this  
118 section.

119 (c)1. Emergency health care providers are agents of the  
120 state and shall indemnify the state for any judgments,  
121 settlement costs, or other liabilities incurred, only up to the  
122 liability limits in subsection (5).

123 2. Any emergency health care provider who is licensed by  
124 the state and who fails to indemnify the state after reasonable  
125 notice and written demand to do so is subject to an emergency  
126 suspension order of the regulating authority having jurisdiction  
127 over the licensee.

128 3. The Department of Health shall issue an emergency order  
129 suspending the license of any licensee under its jurisdiction or  
130 any licensee of a regulatory board within the Department of  
131 Health who fails to comply within 30 days after receipt by the  
132 department of a notice from the Division of Risk Management of  
133 the Department of Financial Services that the licensee has  
134 failed to satisfy her or his obligation to indemnify the state  
135 or enter into a repayment agreement with the state for costs  
136 under this subsection. The terms of such agreement must provide  
137 assurance of repayment of the obligation which is satisfactory  
138 to the state. For licensees within the Division of Medical  
139 Quality Assurance of the Department of Health, failure to comply  
140 with this paragraph constitutes grounds for disciplinary action  
141 under each respective practice act and under s. 456.072(1)(k).

142 4. As used in this subsection, the term:

143 a. "Emergency health care provider" means a physician  
144 licensed under chapter 458 or chapter 459.

145 b. "Emergency medical services" means all screenings,

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146 examinations, and evaluations by a physician, hospital, or other  
147 person or entity acting pursuant to obligations imposed by s.  
148 395.1041 or s. 401.45, and the care, treatment, surgery, or  
149 other medical services provided to relieve or eliminate the  
150 emergency medical condition, including all medical services to  
151 eliminate the likelihood that the emergency medical condition  
152 will deteriorate or recur without further medical attention  
153 within a reasonable period of time.

154 (d)~~(e)~~ For purposes of the waiver of sovereign immunity  
155 only, a member of the Florida National Guard is not acting  
156 within the scope of state employment when performing duty under  
157 the provisions of Title 10 or Title 32 of the United States Code  
158 or other applicable federal law; and neither the state nor any  
159 individual may be named in any action under this chapter arising  
160 from the performance of such federal duty.

161 (e)~~(d)~~ The employing agency of a law enforcement officer as  
162 defined in s. 943.10 is not liable for injury, death, or  
163 property damage effected or caused by a person fleeing from a  
164 law enforcement officer in a motor vehicle if:

165 1. The pursuit is conducted in a manner that does not  
166 involve conduct by the officer which is so reckless or wanting  
167 in care as to constitute disregard of human life, human rights,  
168 safety, or the property of another;

169 2. At the time the law enforcement officer initiates the  
170 pursuit, the officer reasonably believes that the person fleeing  
171 has committed a forcible felony as defined in s. 776.08; and

172 3. The pursuit is conducted by the officer pursuant to a  
173 written policy governing high-speed pursuit adopted by the  
174 employing agency. The policy must contain specific procedures

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175 concerning the proper method to initiate and terminate high-  
176 speed pursuit. The law enforcement officer must have received  
177 instructional training from the employing agency on the written  
178 policy governing high-speed pursuit.

179 Section 3. This act shall take effect upon becoming a law,  
180 and apply to any cause of action accruing on or after that date.