

STORAGE NAME: h1673s1.cjcl

DATE: April 23, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1673

RELATING TO: Teaching Hospitals

SPONSOR(S): Representative Reddick and others

STATUTE(S) AFFECTED: s. 766.1116, F.S.

COMPANION BILL(S): SB 766 by Health Care, SB 1658 by Senator Ostalkiewicz

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CIVIL JUSTICE & CLAIMS YEAS 6 NAYS 4
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 1673 would create s. 766.1116, F.S. This section would provide sovereign immunity to teaching hospitals under certain circumstances.

CS/HB 1673 would protect teaching hospitals from civil actions, arising out of charity health care services or medical education health care services, rendered pursuant to contract with a governmental contractor. "Governmental contractor" is defined as the Department of Health or the Agency for Health Care Administration. The bill would require governmental contractors to enter into nonexclusive contracts with teaching hospitals for the provision of charity health care and medical education health care services. Finally, CS/HB 1673 would require teaching hospitals to provide notice to each patient, or patient's attorney, that the teaching hospital is an agent of the governmental contractor, and that recovery for damages is pursuant to s. 768.28, F.S.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

1. **Access to Health Care Act** - Chapter 766, F.S., sets forth procedures for filing medical malpractice actions. The statute requires pre-suit investigations and notice requirements, and provides for voluntary, binding arbitration to determine monetary damages. The Access to Health Care Act, s. 766.1115, F.S., was designed to shield certain health care providers from suit, in order to encourage these providers to meet the needs of uninsured and indigent residents. The Act provides sovereign immunity to certain health care providers which contract with the state to provide free health care services to uninsured and indigent residents. Presently, the Act limits sovereign immunity protection to providers which serve Medicaid recipients or certain uninsured, low-income persons.
2. **Volunteer Health Care Provider Program** - The Department of Health and Rehabilitative Services (now the Department of Health) promulgated rules to establish the Volunteer Health Care Provider Program. Ch. 10D-122, Florida Administrative Code. The rules detail participation requirements, reporting requirements, and procedures for providing services under the Access to Health Care Act.
3. **Sovereign Immunity** - Sovereign immunity is a doctrine which prohibits suits against the government without the government's consent. The Florida Constitution addresses sovereign immunity at Article X, Section 13. This provision allows the state to waive its immunity through an enactment of general law. Sovereign immunity extends to all subdivisions of the state, including counties and school boards. Municipalities, while not considered subdivisions of the state, have been granted limited immunity by the courts.
 - a. **Waiver of Sovereign Immunity** - In 1973, the Legislature enacted s. 768.28, F.S. This section allows individuals to sue state government, subdivisions of the state, and municipalities. According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of th[e] state" Despite the enactment of s. 768.28, F.S., certain remnants of sovereign immunity remain in effect. Section 768.28, F.S., imposes a \$100,000 limit on the government's liability to a single person and a \$200,000 limit on the government's liability for all claims arising out of a single incident. In addition, the courts have recognized two exceptions to the state's waiver of sovereign immunity. First, where the state is involved in a discretionary or planning-level function, courts have refused to find liability. Second, where the government owes a general duty to all citizens, but no particular duty to the injured party, sovereign immunity remains in effect. This second exception to waiver is known as the "public duty doctrine."
 - b. **The Florida Volunteer Protection Act** - The Florida Volunteer Protection Act, s. 768.1355, F.S., provides limited immunity from civil liability for persons who perform volunteer services. To gain protection under the Act, the action or omission at issue must be unintentional, and the volunteer's actions must be consistent with the actions of an ordinary reasonably prudent person acting

under the same or similar circumstances. The Florida Volunteer Protection Act provides limited protection against negligence actions. Even if the act insulates a volunteer from liability, the organization the volunteer serves may be held liable for the volunteer's acts or omissions.

4. **Status of Uninsured/Indigent Residents** - Florida has approximately 2.7 million uninsured residents comprising about 19 percent of the population. Some health care providers are reluctant to provide services to indigent and uninsured residents. The result is that such persons often seek help in hospital emergency rooms, which is expensive and inefficient.
5. **Teaching Hospitals** - Four teaching hospitals are currently protected from suits for damages by sovereign immunity. However, two of these hospitals, Shands Teaching Hospital in Gainesville and University Hospital in Jacksonville, are operated by not-for-profit corporations which are susceptible to suit. Two other hospitals, the Mt. Sinai Medical Center and the Orlando Regional Medical Center, are not currently protected by sovereign immunity.

B. EFFECT OF PROPOSED CHANGES:

1. **Provides Definitions** - CS/HB 1673 defines "governmental contractor" as the Department of Health or the Agency for Health Care Administration. It defines "charity health care services," as health care services provide to low income persons as defined in s. 766.115(3)(e), F.S. It provides that "teaching hospitals" shall have the same meaning as in s. 408.07, F.S. Finally, CS/HB 1673 broadly defines "medical education health care services" as "all health care services provided to a person at a teaching hospital who is under the care of physicians who are medical residents at the teaching hospital or under the care of physicians on the medical education staff of the teaching hospital."
2. **Provides for Sovereign Immunity** - Under certain circumstances, CS/HB 1673 would provide sovereign immunity to teaching hospitals, as "agents of the state." This legislation would primarily affect Mt. Sinai Medical Center and Orlando Regional Medical Center, teaching hospitals which are not presently included under sovereign immunity. It would protect teaching hospitals from civil actions, arising out of charity health care services or medical education health care services, rendered pursuant to contract with a governmental contractor. The bill would require governmental contractors to enter into nonexclusive contracts with teaching hospitals for the provision of charity health care and medical education health care services. Finally, CS/HB 1673 would require teaching hospitals to provide notice to each patient, or patient's attorney, that the teaching hospital is an agent of the governmental contractor, and that recovery for damages is pursuant to s. 768.28, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

Yes. To some extent, CS/HB 1673 might encourage teaching hospitals to serve indigent and uninsured residents.

(4) Are families required to participate in a program?

No.

(5) Are families penalized for not participating in a program?

No.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA.

(2) service providers?

NA.

(3) government employees/agencies?

NA.

D. SECTION-BY-SECTION RESEARCH:

None.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Uncertain.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Uncertain.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Uncertain.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

CS/HB 1673 would prevent some injured persons from recovering damages which exceed the statutory caps on liability, unless such persons file a claim bill with the Legislature.

2. Direct Private Sector Benefits:

To some degree, CS/HB 1673 would insulate teaching hospitals from civil suit.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, It would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

Question Presented - *Should the state provide sovereign immunity to teaching hospitals due to the charitable and medical educational services they render?*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At the April 15, 1997, meeting of the Committee on Civil Justice and Claims, committee members adopted two amendments to HB 1673. The first amendment was a strike everything. The original bill would have reenacted the Access to Health Care Act, with several modifications. The strike everything amendment placed the bill into its current form. The second amendment, an amendment to the strike everything, removed language which would have prohibited suits in cases where the teaching hospital provided services "to persons who do not pay all bills for health care services." At the sponsor's request, HB 1673 was made into a committee substitute.

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VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

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