

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1262

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Brown-Waite

SUBJECT: Medical Negligence

DATE: March 6, 2002                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	AHS	_____
4.	_____	_____	AP	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill extends immunity from civil liability under the Good Samaritan Act to persons who gratuitously and in good faith render emergency care or treatment in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S. Immunity from civil liability under the Good Samaritan Act is also extended to any licensed hospital, any employee of such hospital working in a clinical area within the facility and providing patient care, and any person licensed to practice medicine who in good faith renders medical care or treatment necessitated by a public health emergency declared pursuant to s. 381.00315, F.S.

This bill amends s. 768.13, Florida Statutes.

**II. Present Situation:**

**Domestic Security/Counter-Terrorism**

After the September 11, 2001 terrorist attack, federal, state and local governments began to review and revise laws relating to domestic security. During the 2001 Special Session "C", the Florida Legislature enacted a number of laws dealing with security, including chapter 2001-365, Laws of Florida, to direct the Department of Law Enforcement to coordinate and direct the law enforcement, initial emergency, and other initial responses to acts of terrorism within or affecting this state. Both houses of the Florida Legislature established Select Committees to review the security needs of the state, including appropriate prevention of and response to acts of bioterrorism. Issues have surfaced during those reviews regarding hospitals' preparedness to respond to bioterrorism acts and the ability of hospitals to provide treatment in situations where their physical plant capacity and usual systems of care are overwhelmed by large numbers of victims.

## **Emergency Management**

Part I of chapter 252, Florida Statutes, is the “State Emergency Management Act.” Under ch. 252, F.S., the Governor may declare, by executive order or proclamation, a state of emergency if he or she finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency must continue until the threat or danger has been dealt with but may continue for no longer than 60 days unless renewed by the Governor. The declaration of a state of emergency may suspend regulatory statutes, orders, or rules of any state agency, if strict compliance with the statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency. The Governor must employ such measures and give such directions to the Department of Health and the Agency for Health Care Administration as may be reasonably necessary by reason of conditions arising from emergencies or threats of emergency.

## **Public Health Emergencies**

The State Health Officer may declare public health emergencies and issue public health advisories in accordance with s. 381.00315, F.S. Before issuing any health advisory, the State Health Officer must consult with any state or local agency regarding areas of responsibility which may be affected by the advisory. After determining that the public health advisory is necessary to protect the public health and safety, and before issuing the advisory, the State Health Officer must notify each county health department within the area which is affected by the advisory of the State Health Officer’s intent to issue the advisory. The State Health Officer may take any action appropriate to enforce any health advisory.

Committee Substitute for Senate Bill 1264 proposes to amend s. 381.00315, F.S., relating to public health advisories, to define “public health advisory” to mean any warning or report giving information to the public about a potential public health threat. A “public health emergency” is defined to mean any occurrence, or threat, thereof, whether natural or man made, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters. The State Health Officer is required to consult with the Governor and to notify the Chief of Domestic Security Initiatives before declaring a public health emergency. A declaration of a public health emergency may only continue for 60 days unless the Governor concurs in the renewal of the declaration.

## **Good Samaritan Act**

Section 768.13, F.S., the “Good Samaritan Act”, provides immunity from civil liability to:

- any persons, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations related to and arising out of a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment;

- any hospital, any employee of such hospital working in a clinical area within the facility and providing patient care, and any person licensed to practice medicine who in good faith renders medical care or treatment necessitated by a sudden, unexpected situation or occurrence resulting in a serious medical condition demanding immediate medical attention, for which the patient enters the hospital through its emergency room or trauma center;
- any person who is licensed to practice medicine, while acting as a staff member or with professional clinical privileges at a nonprofit medical facility, other than a hospital, or while performing health screening services, for care and treatment provided gratuitously in such capacity; or
- any person, including those licensed to practice veterinary medicine, who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway.

Section 768.13, F.S., establishes standards of conduct for each of these categories, in order for the immunity from liability to apply.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 768.13, F.S., to extend immunity from civil liability to persons who gratuitously and in good faith render emergency care or treatment in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S. The emergency care or treatment must be rendered without objection of the injured victim. The immunity from liability would apply if the person providing the emergency care or treatment acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

Immunity from civil liability is also extended to any licensed hospital, any employee of such hospital working in a clinical area within the facility and providing patient care, and any person licensed to practice medicine who in good faith renders medical care or treatment necessitated by a public health emergency declared pursuant to s. 381.00315, F.S. The immunity from liability would apply to the hospital, employee, or person licensed to practice medicine unless damages result from providing, or failing to provide, medical care or treatment under the circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

**Section 2.** The bill will take effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.