

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 1760

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

SUBJECT: Health Care Providers

DATE: March 16, 2004 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|-----------------|------------|---------------------|
| 1. | <u>Munroe</u> | <u>Wilson</u> | <u>HC</u> | <u>Favorable/CS</u> |
| 2. | <u>Keating</u> | <u>Johansen</u> | <u>FT</u> | <u>Favorable</u> |
| 3. | _____ | _____ | <u>AHS</u> | _____ |
| 4. | _____ | _____ | <u>AP</u> | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill extends a waiver of biennial license renewal fees and fulfillment of a portion of continuing education hours to certain health care practitioners who participate as a health care provider under the Access to Health Care Act. “Health care practitioner” is defined to mean a Florida-licensed medical physician, osteopathic physician, physician assistant, chiropractic physician, podiatric physician, advanced registered nurse practitioner, registered nurse, licensed practical nurse, dentist, dental hygienist, or midwife who participates as a health care provider under the Access to Health Care Act.

This bill creates an undesignated section of law.

II. Present Situation:

Sovereign Immunity

Article X, s. 13, of the State Constitution, authorized the Florida Legislature in 1868 to waive sovereign immunity by stating that, “Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.” The doctrine of sovereign immunity prohibits lawsuits in state court against a state government, and its agencies and subdivisions without the government’s consent. Section 768.28, F.S., provides that sovereign immunity for tort liability is waived for the state, and its agencies and subdivisions. Section 768.28(5), F.S., imposes a \$100,000 limit on the government’s liability to a single person and for claims arising out of a single incident, the limit is \$200,000. Section 768.28, F.S., outlines requirements for claimants alleging an injury by the state or its agencies. Section 11.066, F.S., requires a claimant to petition the Legislature in accordance with its rules, to seek an appropriation to enforce a judgment against the state or state agency. The exclusive remedy to

enforce damage awards that exceed the recovery cap is by an act of the Legislature through the claims bill process. A claim bill is a bill that compensates an individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.

The second form of sovereign immunity potentially available to private entities under contract with the government is set forth in s. 768.28(9), F.S. It states that agents of the state or its subdivisions are not personally liable in tort; instead, the government entity is held liable for its agent's torts. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.¹ The existence of an agency relationship is generally a question of fact to be resolved by the fact-finder based on the facts and circumstances of a particular case. In the event, however, that the evidence of agency is susceptible of only one interpretation the court may decide the issue as a matter of law.²

Section 768.28(9), F.S., defines "officer, employee, or agent" to include, but not be limited to, any health care provider when providing services pursuant to s. 766.1115, F.S. (the Access to Health Care Act), any member of the Florida Health Services Corps, as defined in s. 381.0302, F.S., who provides uncompensated care to indigent persons referred by the Department of Health, and any public defender or her or his employee or agent, including among others, an assistant public defender and an investigator.

Access to Health Care Act

The Access to Health Care Act, codified at s. 766.1115, F.S., was enacted in 1992 to encourage health care providers to provide care to low-income persons. Section 766.1115, F.S., extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. "Health care provider" is defined under s. 766.1115, F.S., to expressly include the following health care practitioners: a Florida-licensed medical or osteopathic physician, physician assistant, chiropractic physician, podiatric physician, advanced registered nurse practitioner, registered nurse, licensed practical nurse, dentist, dental hygienist, or midwife.³ Such health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under s. 766.1115, F.S. Under s. 766.1115, F.S., low-income persons are those who are Medicaid-eligible, who are without health insurance and whose family income does not exceed 150 percent of the federal poverty level, or who are clients of the Department of Health who voluntarily choose to participate in a program offered or approved by the department and who meet the eligibility guidelines of the department.

¹ *Goldschmidt v. Holman*, 571 So.2d 422 (Fla. 1990).

² *Campbell v. Osmond*, 917 F. Supp. 1574, 1583 (M.D. Fla. 1996). See also *Stoll v. Noel*, 694 So.2d 701 (Fla. 1997).

³ Section 766.1115, F.S., also includes in the definition of "health care provider" any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as an medical or osteopathic physician, physician assistant, chiropractic physician, podiatric physician, advanced registered nurse practitioner, registered nurse, licensed practical nurse, dentist, dental hygienist, or midwife.

Section 766.1115, F.S., defines “contract” to mean an agreement executed between a health care provider and a governmental contractor that allows the health care provider to deliver services to low-income recipients as an agent of the governmental contractor. The contract must be for uncompensated services. “Governmental contractor” means the Department of Health, county health departments, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity. Governmental contractors other than the Department of Health are responsible for their own costs and attorney’s fees for malpractice litigation arising out of health care services delivered under s. 766.1115, F.S.

Sovereign immunity is extended to a health care provider if the contract complies with the requirements of s. 766.1115, F.S., regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of care or treatment provided under contracts entered into under s. 766.1115, F.S. The contract must provide for specified elements which include: the right of dismissal or termination of any health care provider delivering services under the contract; access to patient records of any health care provider delivering services under the contract by the governmental contractor; and adverse incidents and information on treatment outcomes to be reported by the health care provider delivering services under contract to the governmental contractor.

The governmental contractor must provide written notice to each patient, or the patient’s legal representative, stating that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damages suffered as a result of any act or omission of the provider or of any employee or agent acting within the scope of duties under the contract is an action against a state agency under the provisions of s. 768.28, F.S. The receipt of the notice must be acknowledged in writing. The governmental contractor must submit incident reports involving a licensed professional or facility to the appropriate department or agency. Patient selection and referral must be made solely by the governmental contractor, and the provider must accept all referred patients. However, the number of patients that may be accepted may be limited by the contract, and patients may not be transferred to the provider based on a violation of federal antidumping laws.

A governmental contractor that is also a health care provider is not required to enter into a contract under s. 766.1115, F.S., with respect to the health care services delivered by its employees. The governmental contractor must establish a quality assurance program to monitor services delivered under any contract between an agency and a health care provider. The Department of Health must adopt rules to administer s. 766.1115, F.S., and such rules may include services to be provided and authorized procedures.

Public School Volunteer Health Care Practitioner Act

Section 381.00593, F.S., provides the requirements for the Public School Volunteer Health Care Practitioner Act. The act provides incentives for health care practitioners to provide their services in the public schools without receiving compensation. The practitioner must be a Florida-licensed medical or osteopathic physician, physician assistant, chiropractic physician, podiatric physician, nurse, pharmacist, optometrist, dentist, dental hygienist, midwife, speech pathologist or physical therapist who has submitted fingerprints, passed a background check, and completed

all forms and procedures in order to participate in the volunteer program under the act. A participating health care practitioner will receive a waiver for his or her biennial license renewal fee and 25 hours of continuing education credits. A health care practitioner must volunteer at least 80 hours per school year and, if retired, a health care practitioner must volunteer 400 hours per school year to receive the waiver and education credits.

III. Effect of Proposed Changes:

The bill extends a waiver of biennial license renewal fees and fulfillment of a portion of continuing education hours to certain health care practitioners who participate as a health care provider under the Access to Health Care Act by providing services to low-income recipients as an agent of a governmental contractor. "Health care practitioner" is defined to mean a Florida-licensed medical physician or physician assistant licensed under chapter 458, F.S., osteopathic physician or physician assistant licensed under chapter 459, F.S., chiropractic physician licensed under chapter 460, F.S., podiatric physician licensed under chapter 461, F.S., advanced registered nurse practitioner, registered nurse or licensed practical nurse licensed under Part I of chapter 464, F.S., dentist or dental hygienist licensed under chapter 466, F.S., or midwife licensed under chapter 467, F.S., who participates as a health care provider under the Access to Health Care Act. A participating health care practitioner will receive a waiver of his or her biennial license renewal fee and 25 hours of continuing education credits. A health care practitioner must volunteer at least 80 hours per year and, if retired, a health care practitioner must volunteer 400 hours per year to receive the waiver and education credits.

The effective date of the bill is 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 Article 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 Article 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 Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill authorizes the Department of Health to waive biennial license renewal fees for health care practitioners who volunteer the required hours providing services to low-

income persons as an agent of a governmental contractor. The license renewal fee is \$424, for medical physicians; \$400, for osteopathic physicians; \$200 for physician assistants and \$400 for physician assistants who prescribe medications; \$500, for chiropractic physicians; \$350 for podiatric physicians; \$105, for advanced registered nurse practitioners; \$55, for registered nurses and licensed practical nurses; \$300, for dentists; \$135 for dental hygienists; and \$500, for midwives.

It is unknown how many health care providers will perform the required volunteer service each year to qualify for the biennial license fee waiver. If 1% of renewal fees are waived, the Department of Health estimates the loss of \$475,000 in license fee revenues annually.

B. Private Sector Impact:

Licensed health care practitioners who volunteer the required hours providing services to low-income persons as an agent of a governmental contractor will enjoy a waiver of biennial license renewal fees.

C. Government Sector Impact:

The Department of Health reports that it will experience a decrease in license renewal fee revenue for medical physicians, osteopathic physicians, physician assistants, chiropractic physicians, podiatric physicians, advanced registered nurse practitioners, registered nurses, licensed practical nurses, dentists, dental hygienists, and midwives who complete the required volunteer hours of service.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.