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2007 Legislature

CS for SB 1508

1 2 An act relating to informed consent; amending 3 s. 401.445, F.S.; adding additional medical personnel to provisions allowing immunity for 4 5 certain emergency examination and treatment of б incapacitated persons done without consent if 7 informed consent would have reasonably been 8 given under the medical consent law; conforming 9 provisions; amending s. 766.103, F.S.; adding additional medical personnel to the medical 10 consent law; providing an effective date. 11 12 13 Be It Enacted by the Legislature of the State of Florida: 14 Section 1. Subsections (1) and (2) of section 401.445, 15 Florida Statutes, are amended to read: 16 401.445 Emergency examination and treatment of 17 18 incapacitated persons. --(1) No recovery shall be allowed in any court in this 19 state against any emergency medical technician, paramedic, or 20 physician as defined in this chapter, any advanced registered 21 22 nurse practitioner certified under s. 464.012, or any physician assistant licensed under s. 458.347 or s. 459.022, 23 24 or any person acting under the direct medical supervision of a physician, in an action brought for examining or treating a 25 patient without his or her informed consent if: 26 27 (a) The patient at the time of examination or 28 treatment is intoxicated, under the influence of drugs, or 29 otherwise incapable of providing informed consent as provided in s. 766.103; 30 31

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CODING: Words stricken are deletions; words underlined are additions.

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treatment is experiencing an emergency medical condition; and (c) The patient would reasonably, under all the surrounding circumstances, undergo such examination, treatment, or procedure if he or she were advised by the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant in accordance with s. 766.103(3). Examination and treatment provided under this subsection shall be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient. (2) In examining and treating a person who is apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law	1	(b) The patient at the time of examination or
<pre>4 surrounding circumstances, undergo such examination, 5 treatment, or procedure if he or she were advised by the 6 emergency medical technician, paramedic, or physician_ 7 advanced registered nurse practitioner, or physician assistant 8 in accordance with s. 766.103(3). 9 10 Examination and treatment provided under this subsection shall 11 be limited to reasonable examination of the patient to 12 determine the medical condition of the patient and treatment 13 reasonably necessary to alleviate the emergency medical 14 condition or to stabilize the patient. 15 (2) In examining and treating a person who is 16 apparently intoxicated, under the influence of drugs, or 17 otherwise incapable of providing informed consent, the 18 emergency medical technician, paramedic, or physician, 19 advanced registered nurse practitioner, or physician 20 assistant_ or any person acting under the direct medical 21 supervision of a physician, shall proceed wherever possible 22 with the consent of the person. If the person reasonably 23 appears to be incapacitated and refuses his or her consent, 24 the person may be examined, treated, or taken to a hospital or 25 other appropriate treatment resource if he or she is in need 26 of emergency attention, without his or her consent, but 21 unreasonable force shall not be used. 22 Section 2. Subsection (3) of section 766.103, Florida 23 Statutes, is amended to read: 30 766.103 Florida Medical Consent Law</pre>	2	treatment is experiencing an emergency medical condition; and
treatment, or procedure if he or she were advised by the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant in accordance with s. 766.103(3). Examination and treatment provided under this subsection shall be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient. (2) In examining and treating a person who is apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law	3	(c) The patient would reasonably, under all the
 emergency medical technician, paramedic, er physician_ advanced registered nurse practitioner, or physician assistant in accordance with s. 766.103(3). Examination and treatment provided under this subsection shall be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient. (2) In examining and treating a person who is apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, er physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law 	4	surrounding circumstances, undergo such examination,
7advanced registered nurse practitioner, or physician assistant8in accordance with s. 766.103(3).9910Examination and treatment provided under this subsection shall11be limited to reasonable examination of the patient to12determine the medical condition of the patient and treatment13reasonably necessary to alleviate the emergency medical14condition or to stabilize the patient.15(2) In examining and treating a person who is16apparently intoxicated, under the influence of drugs, or17otherwise incapable of providing informed consent, the18emergency medical technician, paramedic, or physician,19advanced registered nurse practitioner, or physician20assistant, or any person acting under the direct medical21supervision of a physician, shall proceed wherever possible22with the consent of the person. If the person reasonably23appears to be incapacitated and refuses his or her consent,24the person may be examined, treated, or taken to a hospital or25other appropriate treatment resource if he or she is in need26of emergency attention, without his or her consent, but21unreasonable force shall not be used.23Section 2. Subsection (3) of section 766.103, Florida24766.103 Florida Medical Consent Law	5	treatment, or procedure if he or she were advised by the
in accordance with s. 766.103(3). Examination and treatment provided under this subsection shall be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient. (2) In examining and treating a person who is apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law	б	emergency medical technician, paramedic, or physician <u>,</u>
910Examination and treatment provided under this subsection shall11be limited to reasonable examination of the patient to12determine the medical condition of the patient and treatment13reasonably necessary to alleviate the emergency medical14condition or to stabilize the patient.15(2) In examining and treating a person who is16apparently intoxicated, under the influence of drugs, or17otherwise incapable of providing informed consent, the18emergency medical technician, paramedic, or physician,19advanced registered nurse practitioner, or physician10assistant, or any person acting under the direct medical12supervision of a physician, shall proceed wherever possible14with the consent of the person. If the person reasonably15appears to be incapacitated and refuses his or her consent,16the person may be examined, treated, or taken to a hospital or17other appropriate treatment resource if he or she is in need18of emergency attention, without his or her consent, but19unreasonable force shall not be used.18Section 2. Subsection (3) of section 766.103, Florida19Statutes, is amended to read:10766.103 Florida Medical Consent Law	7	advanced registered nurse practitioner, or physician assistant
 Examination and treatment provided under this subsection shall be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient. (2) In examining and treating a person who is apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law 	8	in accordance with s. 766.103(3).
be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient. (2) In examining and treating a person who is apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law	9	
12determine the medical condition of the patient and treatment13reasonably necessary to alleviate the emergency medical14condition or to stabilize the patient.15(2) In examining and treating a person who is16apparently intoxicated, under the influence of drugs, or17otherwise incapable of providing informed consent, the18emergency medical technician, paramedic, or physician,19advanced registered nurse practitioner, or physician20assistant, or any person acting under the direct medical21supervision of a physician, shall proceed wherever possible22with the consent of the person. If the person reasonably23appears to be incapacitated and refuses his or her consent,24the person may be examined, treated, or taken to a hospital or25other appropriate treatment resource if he or she is in need26of emergency attention, without his or her consent, but27unreasonable force shall not be used.28Section 2. Subsection (3) of section 766.103, Florida29Tatutes, is amended to read:30766.103 Florida Medical Consent Law	10	Examination and treatment provided under this subsection shall
reasonably necessary to alleviate the emergency medical condition or to stabilize the patient. (2) In examining and treating a person who is apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law	11	be limited to reasonable examination of the patient to
<pre>14 condition or to stabilize the patient. 15 (2) In examining and treating a person who is 16 apparently intoxicated, under the influence of drugs, or 17 otherwise incapable of providing informed consent, the 18 emergency medical technician, paramedic, or physician, 19 advanced registered nurse practitioner, or physician 20 assistant, or any person acting under the direct medical 21 supervision of a physician, shall proceed wherever possible 22 with the consent of the person. If the person reasonably 23 appears to be incapacitated and refuses his or her consent, 24 the person may be examined, treated, or taken to a hospital or 25 other appropriate treatment resource if he or she is in need 26 of emergency attention, without his or her consent, but 27 unreasonable force shall not be used. 28 Section 2. Subsection (3) of section 766.103, Florida 29 Statutes, is amended to read: 30 766.103 Florida Medical Consent Law</pre>	12	determine the medical condition of the patient and treatment
 (2) In examining and treating a person who is apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law 	13	reasonably necessary to alleviate the emergency medical
apparently intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent, the emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law	14	condition or to stabilize the patient.
17otherwise incapable of providing informed consent, the18emergency medical technician, paramedic, or physician,19advanced registered nurse practitioner, or physician20assistant, or any person acting under the direct medical21supervision of a physician, shall proceed wherever possible22with the consent of the person. If the person reasonably23appears to be incapacitated and refuses his or her consent,24the person may be examined, treated, or taken to a hospital or25other appropriate treatment resource if he or she is in need26of emergency attention, without his or her consent, but27unreasonable force shall not be used.28Section 2. Subsection (3) of section 766.103, Florida29Statutes, is amended to read:30766.103 Florida Medical Consent Law	15	(2) In examining and treating a person who is
 emergency medical technician, paramedic, or physician, advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law 	16	apparently intoxicated, under the influence of drugs, or
 advanced registered nurse practitioner, or physician assistant, or any person acting under the direct medical supervision of a physician, shall proceed wherever possible with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law 	17	otherwise incapable of providing informed consent, the
20 assistant, or any person acting under the direct medical 21 supervision of a physician, shall proceed wherever possible 22 with the consent of the person. If the person reasonably 23 appears to be incapacitated and refuses his or her consent, 24 the person may be examined, treated, or taken to a hospital or 25 other appropriate treatment resource if he or she is in need 26 of emergency attention, without his or her consent, but 27 unreasonable force shall not be used. 28 Section 2. Subsection (3) of section 766.103, Florida 29 Statutes, is amended to read: 30 T66.103 Florida Medical Consent Law	18	emergency medical technician, paramedic, or physician,
21 supervision of a physician, shall proceed wherever possible 22 with the consent of the person. If the person reasonably 23 appears to be incapacitated and refuses his or her consent, 24 the person may be examined, treated, or taken to a hospital or 25 other appropriate treatment resource if he or she is in need 26 of emergency attention, without his or her consent, but 27 unreasonable force shall not be used. 28 Section 2. Subsection (3) of section 766.103, Florida 29 Statutes, is amended to read: 30 766.103 Florida Medical Consent Law	19	advanced registered nurse practitioner, or physician
with the consent of the person. If the person reasonably appears to be incapacitated and refuses his or her consent, the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law	20	assistant, or any person acting under the direct medical
23 appears to be incapacitated and refuses his or her consent, 24 the person may be examined, treated, or taken to a hospital or 25 other appropriate treatment resource if he or she is in need 26 of emergency attention, without his or her consent, but 27 unreasonable force shall not be used. 28 Section 2. Subsection (3) of section 766.103, Florida 29 Statutes, is amended to read: 30 766.103 Florida Medical Consent Law	21	supervision of a physician, shall proceed wherever possible
the person may be examined, treated, or taken to a hospital or other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law	22	with the consent of the person. If the person reasonably
other appropriate treatment resource if he or she is in need of emergency attention, without his or her consent, but unreasonable force shall not be used. Section 2. Subsection (3) of section 766.103, Florida Statutes, is amended to read: 766.103 Florida Medical Consent Law	23	appears to be incapacitated and refuses his or her consent,
<pre>26 of emergency attention, without his or her consent, but 27 unreasonable force shall not be used. 28 Section 2. Subsection (3) of section 766.103, Florida 29 Statutes, is amended to read: 30 766.103 Florida Medical Consent Law</pre>	24	the person may be examined, treated, or taken to a hospital or
<pre>27 unreasonable force shall not be used. 28 Section 2. Subsection (3) of section 766.103, Florida 29 Statutes, is amended to read: 30 766.103 Florida Medical Consent Law</pre>	25	other appropriate treatment resource if he or she is in need
28 Section 2. Subsection (3) of section 766.103, Florida 29 Statutes, is amended to read: 30 766.103 Florida Medical Consent Law	26	of emergency attention, without his or her consent, but
29 Statutes, is amended to read: 30 766.103 Florida Medical Consent Law	27	unreasonable force shall not be used.
30 766.103 Florida Medical Consent Law	28	Section 2. Subsection (3) of section 766.103, Florida
	29	Statutes, is amended to read:
31	30	766.103 Florida Medical Consent Law
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CODING: Words stricken are deletions; words <u>underlined</u> are additions.

2007 Legislature

1	(3) No recovery shall be allowed in any court in this
2	state against any physician licensed under chapter 458,
3	osteopathic physician licensed under chapter 459, chiropractic
4	physician licensed under chapter 460, podiatric physician
5	licensed under chapter 461, or dentist licensed under chapter
6	466, advanced registered nurse practitioner certified under s.
7	464.012, or physician assistant licensed under s. 458.347 or
8	<u>s. 459.022</u> in an action brought for treating, examining, or
9	operating on a patient without his or her informed consent
10	when:
11	(a)1. The action of the physician, osteopathic
12	physician, chiropractic physician, podiatric physician, or
13	dentist, advanced registered nurse practitioner, or physician
14	assistant in obtaining the consent of the patient or another
15	person authorized to give consent for the patient was in
16	accordance with an accepted standard of medical practice among
17	members of the medical profession with similar training and
18	experience in the same or similar medical community <u>as that of</u>
19	the person treating, examining, or operating on the patient
20	for whom the consent is obtained; and
21	2. A reasonable individual, from the information
22	provided by the physician, osteopathic physician, chiropractic
23	physician, podiatric physician, or dentist, <u>advanced</u>
24	registered nurse practitioner, or physician assistant, under
25	the circumstances, would have a general understanding of the
26	procedure, the medically acceptable alternative procedures or
27	treatments, and the substantial risks and hazards inherent in
28	the proposed treatment or procedures, which are recognized
29	among other physicians, osteopathic physicians, chiropractic
30	physicians, podiatric physicians, or dentists in the same or
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3 CODING: Words stricken are deletions; words <u>underlined</u> are additions.

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1	similar community who perform similar treatments or
2	procedures; or
3	(b) The patient would reasonably, under all the
4	surrounding circumstances, have undergone such treatment or
5	procedure had he or she been advised by the physician,
6	osteopathic physician, chiropractic physician, podiatric
7	physician, or dentist <u>, advanced registered nurse practitioner,</u>
8	or physician assistant in accordance with the provisions of
9	paragraph (a).
10	Section 3. This act shall take effect July 1, 2007.
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