

20111676e1

1 A bill to be entitled
2 An act relating to sovereign immunity; providing
3 legislative findings and intent; amending s. 766.1115,
4 F.S.; providing that specified provisions relating to
5 sovereign immunity for health care providers do not
6 apply to certain affiliation agreements or contracts
7 to provide certain comprehensive health care services;
8 amending s. 768.28, F.S.; expanding the definition of
9 the term "officer, employee, or agent" for purposes of
10 provisions expanding sovereign immunity to include
11 certain colleges and universities when providing
12 patient services; providing that certain colleges and
13 universities that own or operate a medical school or
14 any of its employees or agents providing patient
15 services pursuant to a contract with a teaching
16 hospital are agents of the teaching hospital and are
17 immune from certain liability for torts; requiring the
18 contract to provide for indemnification; providing
19 that the portion of the not-for-profit entity which is
20 considered to be an agent of the teaching hospital for
21 purposes of extension of the waiver of sovereign
22 immunity is deemed to be acting on behalf of a public
23 agency for purposes of public-records laws; providing
24 definitions; requiring that each patient, or the
25 patient's legal representative, receive notice
26 regarding the patient's exclusive remedy for injury or
27 damage suffered; providing that an employee providing
28 patient services is not an employee or agent of the
29 state for purposes of workers' compensation; providing

20111676e1

30 for application; providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. (1) The Legislature finds that:

35 (a) Access to high-quality, comprehensive, and affordable
36 health care for all persons in this state is a necessary state
37 goal and teaching hospitals play an essential role in providing
38 that access.

39 (b) Graduate medical education, provided by nonprofit
40 independent colleges and universities located and chartered in
41 this state which own or operate medical schools, helps provide
42 the comprehensive specialty training needed by medical school
43 graduates to develop and refine the skills essential to the
44 provision of high-quality health care for state residents. Much
45 of that education and training is provided in teaching hospitals
46 under the direct supervision of medical faculty who provide
47 guidance, training, and oversight and serve as role models to
48 their students.

49 (c) A large proportion of medical care is provided in
50 teaching hospitals that serve as safety nets for many indigent
51 and underserved patients who otherwise might not receive the
52 medical help they need. Resident physician training that takes
53 place in such hospitals provides much of the care provided to
54 this population. Medical faculty, supervising such training and
55 care, are a vital link between educating and training resident
56 physicians and ensuring the provision of quality care for
57 indigent and underserved residents. Physicians who assume this
58 role are often called upon to juggle the demands of patient

20111676e1

59 care, teaching, health policy, and budgetary issues related to
60 the programs they administer.

61 (d) While teaching hospitals are afforded state sovereign
62 immunity protections under s. 768.28, Florida Statutes, the
63 nonprofit independent colleges and universities located and
64 chartered in this state which own or operate medical schools and
65 which enter into affiliation agreements or contracts with the
66 teaching hospitals to provide patient services are not afforded
67 the same sovereign immunity protections. The employees or agents
68 of such nonprofit independent colleges and universities,
69 therefore, do not have the same level of protection against
70 liability claims as the employees and agents of teaching
71 hospitals providing the same patient services to the same
72 patients.

73 (e) Nonprofit colleges and universities located and
74 chartered in this state which own or operate medical schools and
75 their employees and agents, which are not covered by the state's
76 sovereign immunity protections, are disproportionately affected
77 by claims arising out of alleged medical malpractice and other
78 allegedly negligent acts. Given the recent growth in medical
79 schools and medical education programs and ongoing efforts to
80 support, strengthen, and increase physician residency training
81 positions and medical faculty in both existing and newly
82 designated teaching hospitals, this exposure and the consequent
83 disparity in liability exposure will continue to increase. The
84 vulnerability of these colleges and universities to claims of
85 medical malpractice will only add to the current physician
86 workforce crisis in this state and can be alleviated only
87 through legislative action.

20111676e1

88 (f) Ensuring that the employees and agents of nonprofit
89 independent colleges and universities located and chartered in
90 this state which own or operate medical schools are able to
91 continue to treat patients, provide graduate medical education,
92 supervise medical students, and provide administrative support
93 and services in teaching hospitals is an overwhelming public
94 necessity.

95 (2) The Legislature intends that:

96 (a) Employees and agents of nonprofit independent colleges
97 and universities located and chartered in this state which own
98 or operate medical schools who provide patient services as
99 agents of a teaching hospital be immune from lawsuits in the
100 same manner and to the same extent as employees and agents of
101 teaching hospitals in this state under existing law, and that
102 such colleges and universities and their employees and agents
103 not be held personally liable in tort or named as a party
104 defendant in an action while providing patient services in a
105 teaching hospital, unless such services are provided in bad
106 faith, with malicious purpose, or in a manner exhibiting wanton
107 and willful disregard of human rights, safety, or property.

108 (b) Nonprofit independent private colleges and universities
109 located and chartered in this state which own or operate medical
110 schools and which permit their employees or agents to provide
111 patient services in teaching hospitals pursuant to an
112 affiliation agreement or other contract be afforded sovereign
113 immunity protections under s. 768.28, Florida Statutes.

114 (3) The Legislature declares that there is an overwhelming
115 public necessity for extending the state's sovereign immunity to
116 nonprofit independent colleges and universities located and

20111676e1

117 chartered in this state which own or operate medical schools and
118 provide patient services in teaching hospitals, and to their
119 employees and agents, and that there is no alternative method of
120 meeting such public necessity.

121 (4) The terms "employee or agent," "patient services," and
122 "teaching hospital" as used in this section have the same
123 meaning as defined in s. 768.28, Florida Statutes, as amended by
124 this act.

125 Section 2. Subsection (11) of section 766.1115, Florida
126 Statutes, is amended to read:

127 766.1115 Health care providers; creation of agency
128 relationship with governmental contractors.—

129 (11) APPLICABILITY.—This section applies to incidents
130 occurring on or after April 17, 1992. This section does not:

131 (a) Apply to any health care contract entered into by the
132 Department of Corrections which is subject to s. 768.28(10) (a).

133 (b) Apply to any affiliation agreement or other contract
134 that is subject to s. 768.28(10) (f). ~~Nothing in this section in~~
135 any way reduces or limits

136 (c) Reduce or limit the rights of the state or any of its
137 agencies or subdivisions to any benefit currently provided under
138 s. 768.28.

139 Section 3. Paragraph (b) of subsection (9) of section
140 768.28, Florida Statutes, is amended, and paragraph (f) is added
141 to subsection (10) of that section, to read:

142 768.28 Waiver of sovereign immunity in tort actions;
143 recovery limits; limitation on attorney fees; statute of
144 limitations; exclusions; indemnification; risk management
145 programs.—

20111676e1

146 (9)

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

148 1. "Employee" includes any volunteer firefighter.

149 2. "Officer, employee, or agent" includes, but is not
150 limited to, any health care provider when providing services
151 pursuant to s. 766.1115;~~7~~ any member of the Florida Health
152 Services Corps, as defined in s. 381.0302, who provides
153 uncompensated care to medically indigent persons referred by the
154 Department of Health; any nonprofit independent college or
155 university located and chartered in this state which owns or
156 operates an accredited medical school, and its employees or
157 agents, when providing patient services pursuant to paragraph
158 (10) (f);~~7~~ and any public defender or her or his employee or
159 agent, including, among others, an assistant public defender and
160 an investigator.

161 (10)

162 (f) For purposes of this section, any nonprofit independent
163 college or university located and chartered in this state which
164 owns or operates an accredited medical school, or any of its
165 employees or agents, and which has agreed in an affiliation
166 agreement or other contract to provide, or permit its employees
167 or agents to provide, patient services as agents of a teaching
168 hospital, is considered an agent of the teaching hospital while
169 acting within the scope of and pursuant to guidelines
170 established in the affiliation agreement or other contract. To
171 the extent allowed by law, the contract must provide for the
172 indemnification of the teaching hospital, up to the limits set
173 out in this chapter, by the agent for any liability incurred
174 which was caused by the negligence of the college or university

20111676e1

175 or its employees or agents. The contract must also provide that
176 those limited portions of the college, university, or medical
177 school which are directly providing services pursuant to the
178 contract and which are considered an agent of the teaching
179 hospital for purposes of this section are deemed to be acting on
180 behalf of a public agency as defined in s. 119.011(2).

181 1. For purposes of this paragraph, the term:

182 a. "Employee or agent" means an officer, employee, agent,
183 or servant of a nonprofit independent college or university
184 located and chartered in this state which owns or operates an
185 accredited medical school, including, but not limited to, the
186 faculty of the medical school, any health care practitioner or
187 licensee as defined in s. 456.001 for which the college or
188 university is vicariously liable, and the staff or
189 administrators of the medical school.

190 b. "Patient services" mean:

191 (I) Comprehensive health care services as defined in s.
192 641.19, including any related administrative service, provided
193 to patients in a teaching hospital;

194 (II) Training and supervision of interns, residents, and
195 fellows providing patient services in a teaching hospital; or

196 (III) Training and supervision of medical students in a
197 teaching hospital.

198 c. "Teaching hospital" means a teaching hospital as defined
199 in s. 408.07 which is owned or operated by the state, a county
200 or municipality, a public health trust, a special taxing
201 district, a governmental entity having health care
202 responsibilities, or a not-for-profit entity that operates such
203 facility as an agent of the state, or a political subdivision of

20111676e1

204 the state, under a lease or other contract.

205 2. The teaching hospital or the medical school, or its
206 employees or agents, must provide notice to each patient, or the
207 patient's legal representative, that the college or university
208 that owns or operates the medical school and the employees or
209 agents of that college or university are acting as agents of the
210 teaching hospital and that the exclusive remedy for injury or
211 damage suffered as the result of any act or omission of the
212 teaching hospital, the college or university that owns or
213 operates the medical school, or the employees or agents of the
214 college or university, while acting within the scope of duties
215 pursuant to the affiliation agreement or other contract with a
216 teaching hospital, is by commencement of an action pursuant to
217 the provisions of this section. This notice requirement may be
218 met by posting the notice in a place conspicuous to all persons.

219 3. This paragraph does not designate any employee providing
220 contracted patient services in a teaching hospital as an
221 employee or agent of the state for purposes of chapter 440.

222 Section 4. This act shall take effect upon becoming a law,
223 and applies to all claims accruing on or after that date.