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1  
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

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30 for application; providing an effective date.

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

33  
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

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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.

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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

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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.—

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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; ~~and~~ 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); ~~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

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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

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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.