

By Senator Bennett

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1                   A bill to be entitled  
2           An act relating to sovereign immunity; amending s.  
3           768.28, F.S.; providing that certain health care  
4           providers and vendors, and their agents and employees,  
5           who primarily serve clients with specified conditions  
6           may be considered agents and employees of the state or  
7           its subdivisions with respect to such services while  
8           acting within the scope of and pursuant to guidelines  
9           established in a contractual agreement or Medicaid  
10          provider agreement; requiring indemnification;  
11          providing construction of provisions; amending ss.  
12          29.0081, 163.01, 324.022, 456.048, 458.320, 459.0085,  
13          616.242, 624.461, 624.462, and 627.733, F.S.;  
14          conforming cross-references to changes made by the  
15          act; providing an effective date.

16  
17          WHEREAS, providers under state contracts to serve  
18          individuals with disabilities are serving an important state  
19          purpose, and

20          WHEREAS, these private service providers provide an  
21          identical purpose to state providers for individuals with  
22          disabilities, and

23          WHEREAS, these providers are wasting precious resources on  
24          the cost of high insurance premiums, litigation, and attorney's  
25          fees when they should be following the same limits as the state  
26          programs serving the same population, NOW, THEREFORE,

27  
28          Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Subsections (12) through (20) of section 768.28,  
31 Florida Statutes, are renumbered as subsections (13) through  
32 (21), respectively, and a new subsection (12) is added to that  
33 section to read:

34 768.28 Waiver of sovereign immunity in tort actions;  
35 recovery limits; limitation on attorney fees; statute of  
36 limitations; exclusions; indemnification; risk management  
37 programs.—

38 (12) (a) Notwithstanding any other law, a health care  
39 provider or vendor, or any of its employees or agents, at least  
40 75 percent of whose client population consists of individuals  
41 with:

42 1. Disabilities as defined in s. 393.063, including  
43 individuals served under part VIII of chapter 400;

44 2. Disabilities as defined in ss. 413.20 and 413.033(1) and  
45 (2);

46 3. Mental illness as defined in s. 394.455; or

47 4. A combination of conditions listed in subparagraphs 1.  
48 through 3.,

49  
50 and who has contractually agreed to act on behalf of the state  
51 or any of its agencies or subdivisions to provide services to  
52 individuals with disabilities, shall be considered an agent of  
53 the state or of that agency or subdivision for the purposes of  
54 this section solely with respect to such services while acting  
55 within the scope of and pursuant to guidelines established in a  
56 contractual agreement or Medicaid provider agreement. The  
57 contract or agreement must provide for the indemnification of  
58 the state or that agency or subdivision by the agent for any

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59 liabilities incurred up to the limits set out in this chapter  
60 and in accordance with subsection (5).

61 (b) This subsection does not make a person considered an  
62 agent of the state or its agencies and subdivisions under  
63 paragraph (a) an employee or agent of the state for purposes of  
64 chapter 440.

65 Section 2. Paragraph (b) of subsection (2) of section  
66 29.0081, Florida Statutes, is amended to read:

67 29.0081 County funding of additional court personnel.—

68 (2) The agreement shall, at a minimum, provide that:

69 (b) The personnel whose employment is funded under the  
70 agreement are hired, supervised, managed, and fired by personnel  
71 of the judicial circuit. The county shall be considered the  
72 employer for purposes of s. 440.10 and chapter 443. Employees  
73 funded by the county under this section and other county  
74 employees may be aggregated for purposes of a flexible benefits  
75 plan pursuant to s. 125 of the Internal Revenue Code of 1986.  
76 The judicial circuit shall supervise the personnel whose  
77 employment is funded under the agreement; be responsible for  
78 compliance with all requirements of federal and state employment  
79 laws, including, but not limited to, Title VII of the Civil  
80 Rights Act of 1964, Title I of the Americans with Disabilities  
81 Act, 42 U.S.C. s. 1983, the Family Medical Leave Act, the Fair  
82 Labor Standards Act, chapters 447 and 760, and ss. 112.3187,  
83 440.105, and 440.205; and fully indemnify the county from any  
84 liability under such laws, as authorized by s. 768.28 (20) ~~(19)~~,  
85 to the extent such liability is the result of the acts or  
86 omissions of the judicial circuit or its agents or employees.

87 Section 3. Paragraph (h) of subsection (3) of section

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88 163.01, Florida Statutes, is amended to read:

89 163.01 Florida Interlocal Cooperation Act of 1969.—

90 (3) As used in this section:

91 (h) "Local government liability pool" means a reciprocal  
92 insurer as defined in s. 629.021 or any self-insurance program  
93 created pursuant to s. 768.28 (17) ~~(16)~~, formed and controlled by  
94 counties or municipalities of this state to provide liability  
95 insurance coverage for counties, municipalities, or other public  
96 agencies of this state, which pool may contract with other  
97 parties for the purpose of providing claims administration,  
98 processing, accounting, and other administrative facilities.

99 Section 4. Subsection (1) of section 324.022, Florida  
100 Statutes, is amended to read:

101 324.022 Financial responsibility for property damage.—

102 (1) Every owner or operator of a motor vehicle required to  
103 be registered in this state shall establish and maintain the  
104 ability to respond in damages for liability on account of  
105 accidents arising out of the use of the motor vehicle in the  
106 amount of \$10,000 because of damage to, or destruction of,  
107 property of others in any one crash. The requirements of this  
108 section may be met by one of the methods established in s.  
109 324.031; by self-insuring as authorized by s. 768.28 (17) ~~(16)~~; or  
110 by maintaining an insurance policy providing coverage for  
111 property damage liability in the amount of at least \$10,000  
112 because of damage to, or destruction of, property of others in  
113 any one accident arising out of the use of the motor vehicle.  
114 The requirements of this section may also be met by having a  
115 policy which provides coverage in the amount of at least \$30,000  
116 for combined property damage liability and bodily injury

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117 liability for any one crash arising out of the use of the motor  
118 vehicle. The policy, with respect to coverage for property  
119 damage liability, must meet the applicable requirements of s.  
120 324.151, subject to the usual policy exclusions that have been  
121 approved in policy forms by the Office of Insurance Regulation.  
122 No insurer shall have any duty to defend uncovered claims  
123 irrespective of their joinder with covered claims.

124 Section 5. Paragraph (a) of subsection (2) of section  
125 456.048, Florida Statutes, is amended to read:

126 456.048 Financial responsibility requirements for certain  
127 health care practitioners.—

128 (2) The board or department may grant exemptions upon  
129 application by practitioners meeting any of the following  
130 criteria:

131 (a) Any person licensed under chapter 457, s. 458.3475, s.  
132 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or  
133 chapter 467 who practices exclusively as an officer, employee,  
134 or agent of the Federal Government or of the state or its  
135 agencies or its subdivisions. For the purposes of this  
136 subsection, an agent of the state, its agencies, or its  
137 subdivisions is a person who is eligible for coverage under any  
138 self-insurance or insurance program authorized by the provisions  
139 of s. 768.28 (17) ~~(16)~~ or who is a volunteer under s. 110.501(1).

140 Section 6. Paragraph (a) of subsection (5) of section  
141 458.320, Florida Statutes, is amended to read:

142 458.320 Financial responsibility.—

143 (5) The requirements of subsections (1), (2), and (3) do  
144 not apply to:

145 (a) Any person licensed under this chapter who practices

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146 medicine exclusively as an officer, employee, or agent of the  
147 Federal Government or of the state or its agencies or its  
148 subdivisions. For the purposes of this subsection, an agent of  
149 the state, its agencies, or its subdivisions is a person who is  
150 eligible for coverage under any self-insurance or insurance  
151 program authorized by the provisions of s. 768.28 (17) ~~(16)~~.

152 Section 7. Paragraph (a) of subsection (5) of section  
153 459.0085, Florida Statutes, is amended to read:

154 459.0085 Financial responsibility.—

155 (5) The requirements of subsections (1), (2), and (3) do  
156 not apply to:

157 (a) Any person licensed under this chapter who practices  
158 medicine exclusively as an officer, employee, or agent of the  
159 Federal Government or of the state or its agencies or its  
160 subdivisions. For the purposes of this subsection, an agent of  
161 the state, its agencies, or its subdivisions is a person who is  
162 eligible for coverage under any self-insurance or insurance  
163 program authorized by the provisions of s. 768.28 (17) ~~(16)~~.

164 Section 8. Paragraph (c) of subsection (9) of section  
165 616.242, Florida Statutes, is amended to read:

166 616.242 Safety standards for amusement rides.—

167 (9) INSURANCE REQUIREMENTS.—

168 (c) The insurance requirements imposed under this  
169 subsection do not apply to a governmental entity that is covered  
170 by the provisions of s. 768.28 (17) ~~(16)~~.

171 Section 9. Section 624.461, Florida Statutes, is amended to  
172 read:

173 624.461 Definition.—For the purposes of the Florida  
174 Insurance Code, "self-insurance fund" means both commercial

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175 self-insurance funds organized under s. 624.462 and group self-  
176 insurance funds organized under s. 624.4621. The term "self-  
177 insurance fund" does not include a governmental self-insurance  
178 pool created under s. 768.28 (17) ~~(16)~~.

179 Section 10. Subsection (6) of section 624.462, Florida  
180 Statutes, is amended to read:

181 624.462 Commercial self-insurance funds.—

182 (6) A governmental self-insurance pool created pursuant to  
183 s. 768.28 (17) ~~(16)~~ shall not be considered a commercial self-  
184 insurance fund.

185 Section 11. Paragraph (b) of subsection (3) of section  
186 627.733, Florida Statutes, is amended to read:

187 627.733 Required security.—

188 (3) Such security shall be provided:

189 (b) By any other method authorized by s. 324.031(2), (3),  
190 or (4) and approved by the Department of Highway Safety and  
191 Motor Vehicles as affording security equivalent to that afforded  
192 by a policy of insurance or by self-insuring as authorized by s.  
193 768.28 (17) ~~(16)~~. The person filing such security shall have all  
194 of the obligations and rights of an insurer under ss. 627.730-  
195 627.7405.

196 Section 12. This act shall take effect July 1, 2011.