

## CHAPTER 2011-219

### Committee Substitute for Senate Bill No. 1676

An act relating to sovereign immunity; providing legislative findings and intent; amending s. 766.1115, F.S.; providing that specified provisions relating to sovereign immunity for health care providers do not apply to certain affiliation agreements or contracts to provide certain comprehensive health care services; amending s. 768.28, F.S.; expanding the definition of the term “officer, employee, or agent” for purposes of provisions expanding sovereign immunity to include certain colleges and universities when providing patient services; providing that certain colleges and universities that own or operate a medical school or any of its employees or agents providing patient services pursuant to a contract with a teaching hospital are agents of the teaching hospital and are immune from certain liability for torts; requiring the contract to provide for indemnification; providing that the portion of the not-for-profit entity which is considered to be an agent of the teaching hospital for purposes of extension of the waiver of sovereign immunity is deemed to be acting on behalf of a public agency for purposes of public-records laws; providing definitions; requiring that each patient, or the patient’s legal representative, receive notice regarding the patient’s exclusive remedy for injury or damage suffered; providing that an employee providing patient services is not an employee or agent of the state for purposes of workers’ compensation; providing for application; providing an effective date.

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

Section 1. (1) The Legislature finds that:

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

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

(c) A large proportion of medical care is provided in teaching hospitals that serve as safety nets for many indigent and underserved patients who otherwise might not receive the medical help they need. Resident physician training that takes place in such hospitals provides much of the care provided to this population. Medical faculty, supervising such training and care, are a vital link between educating and training resident physicians and ensuring

the provision of quality care for indigent and underserved residents. Physicians who assume this role are often called upon to juggle the demands of patient care, teaching, health policy, and budgetary issues related to the programs they administer.

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

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

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

(2) The Legislature intends that:

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

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

(3) The Legislature declares that there is an overwhelming public necessity for extending the state’s sovereign immunity to nonprofit independent colleges and universities located and chartered in this state which own or operate medical schools and provide patient services in teaching hospitals, and to their employees and agents, and that there is no alternative method of meeting such public necessity.

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

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

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

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

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

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

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

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

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

(9)

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

1. “Employee” includes any volunteer firefighter.

2. “Officer, employee, or agent” includes, but is not limited to, any health care provider when providing services pursuant to s. 766.1115; any member of the Florida Health Services Corps, as defined in s. 381.0302, who provides

uncompensated care to medically indigent persons referred by the Department of Health; any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f);; and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

(10)

(f) For purposes of this section, any nonprofit independent college or university located and chartered in this state which owns or operates an accredited medical school, or any of its employees or agents, and which has agreed in an affiliation agreement or other contract to provide, or permit its employees or agents to provide, patient services as agents of a teaching hospital, is considered an agent of the teaching hospital while acting within the scope of and pursuant to guidelines established in the affiliation agreement or other contract. To the extent allowed by law, the contract must provide for the indemnification of the teaching hospital, up to the limits set out in this chapter, by the agent for any liability incurred which was caused by the negligence of the college or university or its employees or agents. The contract must also provide that those limited portions of the college, university, or medical school which are directly providing services pursuant to the contract and which are considered an agent of the teaching hospital for purposes of this section are deemed to be acting on behalf of a public agency as defined in s. 119.011(2).

1. For purposes of this paragraph, the term:

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

b. “Patient services” mean:

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

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

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

c. “Teaching hospital” means a teaching hospital as defined in s. 408.07 which is owned or operated by the state, a county or municipality, a public health trust, a special taxing district, a governmental entity having health care responsibilities, or a not-for-profit entity that operates such facility as

an agent of the state, or a political subdivision of the state, under a lease or other contract.

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

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

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

Approved by the Governor June 24, 2011.

Filed in Office Secretary of State June 24, 2011.