A bill to be entitled

An act relating to medical negligence; amending s. 395.0191, F.S.; expanding a hospital's authority to discipline members of the medical staff of the hospital; providing a presumption of reasonable action under certain circumstances; specifying absence of monetary liability of a licensed facility for certain disciplinary actions; amending s. 415.1111, F.S.; requiring medical negligence claims against certain health care providers to be brought under medical malpractice provisions; amending s. 458.320, F.S.; specifying that such section does not create any duty or legal obligation for hospitals or ambulatory surgical centers; creating ss. 458.3175, 459.0066, and 466.0115, F.S.; authorizing licensed physicians, osteopathic physicians, and dentists to apply for an expert medical testimony certificate for medical negligence actions; providing for denial or revocation of the certificates; providing construction; requiring the board to adopt rules setting expert witness certificate fees; providing for renewal of certificates; amending s. 627.4147, F.S.; deleting the requirement that medical malpractice policies authorize the insurer to admit liability or settle without the consent of the insured; expanding application of a policy requirement relating to a clause stating whether an insured has the exclusive right to veto any offer of admission of liability, arbitration, or settlement; amending s. 766.102, F.S.; limiting expert testimony regarding the prevailing professional standard of care by physicians or dentists to
licensed or certified medical experts; prohibiting
admissibility of certain testimony under certain
circumstances; amending s. 766.202, F.S.; revising the
definition of the term "periodic payment"; providing
requirements and procedures for periodic payments;
including application to future noneconomic damages;
revising bond or security requirements; amending s.
768.78, F.S.; including future noneconomic damages under
alternative methods of payment of damage awards;
authorizing defendants to elect to make lump-sum payments
rather than periodic payments for future economic or
future noneconomic damages; authorizing the payment of
certain losses for a shorter period of time under certain
circumstances; authorizing a defendant to contractually
obligate certain companies to make payments on behalf of
the defendant; authorizing claimants to petition the court
to include attorney's fees in such periodic payment
provisions; providing for modification of periodic
payments or for requiring additional security by order of
the court under certain circumstances; providing
requirements and procedures for making periodic payments;
providing legislative findings and intent relating to
providers of emergency services and care and public
hospitals and affiliations with not-for-profit colleges
and universities with medical schools and other health
care practitioner educational programs; amending s.
766.1115, F.S.; specifying nonapplicability to certain
affiliation agreements or contracts to provide certain
comprehensive health care services protected by sovereign
Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (7)-(10) of section 395.0191, Florida Statutes, are renumbered as subsections (8)-(11), respectively, a new subsection (7) is added to said section and present subsection (7) is amended, to read:

immunity; amending s. 768.28, F.S.; expanding a definition of the term "employee" to include certain health care providers; providing sovereign immunity protection to certain colleges, universities, and medical schools providing comprehensive health care services to patients at public hospitals under certain circumstances; including employees of medical schools under such immunity; providing definitions; providing an exception; providing that persons or entities providing emergency services and care shall be agents of the state for purposes of establishing personal immunity in certain situations; requiring reimbursement of the state for certain costs and payments under certain circumstances; providing sanctions; creating s. 877.025, F.S.; prohibiting the solicitation of specified legal business for a profit; providing criminal penalties; prohibiting attorneys from advertising services for business for a profit unless permitted by law; providing a definition; prohibiting attorneys from initiating contact for the purpose of soliciting legal business for a profit; providing civil penalties; providing for equitable relief; providing construction; providing an effective date.
395.0191 Staff membership and clinical privileges.--

(7) A licensed facility shall establish internal protocols for the revocation or suspension of staff privileges or other disciplinary actions against a member of the medical staff, relating to staff membership or clinical privileges. A licensed facility acting in accordance with its internal protocols is presumed to have acted reasonably under the circumstances absent clear and convincing evidence to the contrary.

(8) There shall be no monetary liability on the part of, and no cause of action for injunctive relief or damages shall arise against, any licensed facility, its governing board or governing board members, medical staff, or disciplinary board or against its agents, investigators, witnesses, or employees, or against any other person, for any action arising out of or related to carrying out the provisions of this section including the revocation or suspension of staff privileges or other disciplinary action, absent intentional fraud.

Section 2. Section 415.1111, Florida Statutes, is amended to read:

415.1111 Civil actions.--A vulnerable adult who has been abused, neglected, or exploited as specified in this chapter has a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, or exploitation. The action may be brought by the vulnerable adult, or that person's guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of that person or that person's guardian, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. The
action may be brought in any court of competent jurisdiction to 
enforce such action and to recover actual and punitive damages 
for any deprivation of or infringement on the rights of a 
vulnerable adult. A party who.prevails in any such action may be 
entitled to recover reasonable attorney's fees, costs of the 
action, and damages. The remedies provided in this section are 
in addition to and cumulative with other legal and 
administrative remedies available to a vulnerable adult. 
Notwithstanding the foregoing, any civil action for damages 
against any licensee or entity who establishes, controls, 
conducts, manages, or operates a facility licensed under part II 
of chapter 400 relating to its operation of the licensed 
facility shall be brought pursuant to s. 400.023, or against any 
licensee or entity who establishes, controls, conducts, manages, 
or operates a facility licensed under part III of chapter 400 
relating to its operation of the licensed facility shall be 
brought pursuant to s. 400.429. Such licensee or entity shall 
not be vicariously liable for the acts or omissions of its 
employees or agents or any other third party in an action 
brought under this section. Notwithstanding the provisions of 
this section, any claim against a health care provider as 
defined in s. 766.202(4) that qualifies as a claim for medical 
negligence as defined in s. 766.106(1)(a) shall be brought 
pursuant to chapter 766.

Section 3. Subsection (9) of section 458.320, Florida 
Statutes, is renumbered as subsection (10), and a new subsection 
(9) is added to said section, to read:

458.320  Financial responsibility.--
(9) Nothing in this section creates any duty or legal obligation on the part of any entity licensed pursuant to chapter 395.

Section 4. Section 458.3175, Florida Statutes, is created to read:

458.3175 Expert witness certificate.--

(1) Any physician who holds a valid, active license to practice medicine in any other state, who pays an application fee in an amount set by the board, and who has not had a previous expert witness certificate revoked by the board may apply for a certificate to provide expert medical testimony in connection with any medical negligence litigation pending in this state.

(2) The board shall approve an expert witness certificate for any physician who holds a valid, active license to practice medicine in another state, but may deny an expert witness certificate for an applicant if the board determines the applicant has been disciplined in another state by the medical licensing entity for fraud, dishonesty, deception, coercion, intimidation, undue influence, incompetence, or substance abuse. Once an expert medical certificate is granted, the board may revoke the expert witness certificate if the board finds the certificateholder has been disciplined in another state by the medical licensing entity for fraud, dishonesty, deception, coercion, intimidation, undue influence, incompetence, or substance abuse or if the board finds the certificateholder has committed these acts while testifying in a medical negligence proceeding in this state.
(3) Nothing in this section may be construed to authorize a physician who is not licensed to practice medicine in this state to qualify for or otherwise engage in the practice of medicine in this state.

(4) The board shall adopt rules to implement this section, including rules setting the amount of the expert witness certificate application fee. The application fees for expert witness certificates may not exceed the cost to administer the certification program. An expert witness certificate is subject to renewal, upon payment of applicable fees, every 2 years.

Section 5. Section 459.0066, Florida Statutes, is created to read:

459.0066 Expert witness certificate.--

(1) Any osteopathic physician who holds a valid, active license to practice osteopathic medicine in any other state, who pays an application fee in an amount set by the board, and who has not had a previous expert witness certificate revoked by the board may apply for a certificate to provide expert medical testimony in connection with any medical negligence litigation pending in this state.

(2) The board shall approve an expert witness certificate for any osteopathic physician who holds a valid, active license to practice medicine in another state, but may deny an expert witness certificate for an applicant if the board determines the applicant has been disciplined in another state by the medical licensing entity for fraud, dishonesty, deception, coercion, intimidation, undue influence, incompetence, or substance abuse. Once an expert medical certificate is granted, the board may revoke the expert witness certificate if the board finds the
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(3) Nothing in this section may be construed to authorize an osteopathic physician who is not licensed to practice osteopathic medicine in this state to qualify for or otherwise engage in the practice of osteopathic medicine in this state.

(4) The board shall adopt rules to implement this section, including rules setting the amount of the expert witness certificate application fee. The application fees for expert witness certificates may not exceed the cost to administer the certification program. An expert witness certificate is subject to renewal, upon payment of applicable fees, every 2 years.

Section 6. Section 466.0115, Florida Statutes, is created to read:

466.0115 Expert witness certificate --

(1) Any dentist who holds a valid, active license to practice dentistry in any other state, who pays an application fee in an amount set by the board, and who has not had a previous expert witness certificate revoked by the board may apply for a certificate to provide expert dental testimony in connection with any medical negligence litigation pending in this state.

(2) The board shall approve an expert witness certificate for any dentist who holds a valid, active license to practice dentistry in another state, but may deny an expert witness
certificate for an applicant if the board determines the applicant has been disciplined in another state by the dentistry licensing entity for fraud, dishonesty, deception, coercion, intimidation, undue influence, incompetence, or substance abuse.

Once an expert medical certificate is granted, the board may revoke the expert witness certificate if the board finds the certificateholder has been disciplined in another state by the dentistry licensing entity for fraud, dishonesty, deception, coercion, intimidation, undue influence, incompetence, or substance abuse or if the board finds the certificateholder has committed these acts while testifying in a medical negligence proceeding in this state.

(3) Nothing in this section may be construed to authorize a dentist who is not licensed to practice dentistry in this state to qualify for or otherwise engage in the practice of dentistry in this state.

(4) The board shall adopt rules to implement this section, including rules setting the amount of the expert witness certificate application fee.

Section 7. Subsection (1) of section 627.4147, Florida Statutes, is amended to read:

627.4147 Medical malpractice insurance contracts.--

(1) In addition to any other requirements imposed by law, each self-insurance policy as authorized under s. 627.357 or s. 624.462 or insurance policy providing coverage for claims arising out of the rendering of, or the failure to render, medical care or services, including those of the Florida Medical Malpractice Joint Underwriting Association, shall include:
(a) A clause requiring the insured to cooperate fully in the review process prescribed under s. 766.106 if a notice of intent to file a claim for medical malpractice is made against the insured.

(b)1. Except as provided in subparagraph 2., a clause authorizing the insurer or self-insurer to determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if the offer is within the policy limits. It is against public policy for any insurance or self-insurance policy to contain a clause giving the insured the exclusive right to veto any offer for admission of liability and for arbitration made pursuant to s. 766.106, settlement offer, or offer of judgment, when such offer is within the policy limits. However, any offer of admission of liability, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interests of the insured.

2.a. With respect to dentists licensed under chapter 466, A clause clearly stating whether or not the insured has the exclusive right to veto any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment if the offer is within policy limits. An insurer or self-insurer shall not make or conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if such offer is outside the policy limits. However, any offer for admission of liability and for arbitration made under s. 766.106, settlement offer, or offer of
judgment made by an insurer or self-insurer shall be made in good faith and in the best interest of the insured.

2. If the policy contains a clause stating the insured does not have the exclusive right to veto any offer or admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment, the insurer or self-insurer shall provide to the insured or the insured's legal representative by certified mail, return receipt requested, a copy of the final offer of admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment and at the same time such offer is provided to the claimant. A copy of any final agreement reached between the insurer and claimant shall also be provided to the insurer or his or her legal representative by certified mail, return receipt requested not more than 10 days after affecting such agreement.

(c) A clause requiring the insurer or self-insurer to notify the insured no less than 90 days prior to the effective date of cancellation of the policy or contract and, in the event of a determination by the insurer or self-insurer not to renew the policy or contract, to notify the insured no less than 90 days prior to the end of the policy or contract period. If cancellation or nonrenewal is due to nonpayment or loss of license, 10 days' notice is required.

(d) A clause requiring the insurer or self-insurer to notify the insured no less than 60 days prior to the effective date of a rate increase. The provisions of s. 627.4133 shall apply to such notice and to the failure of the insurer to
provide such notice to the extent not in conflict with this section.

Section 8. Subsection (12) of section 766.102, Florida Statutes, is renumbered as subsection (13), and a new subsection (12) is added to said section to read:

766.102 Medical negligence; standards of recovery; expert witness.--

(12) If the party against whom or on whose behalf the expert testimony concerning the prevailing professional standard of care is offered is a physician licensed under chapter 458 or chapter 459 or is a dentist licensed under chapter 466, the expert witness must be licensed in this state under chapter 458, chapter 459, or chapter 466 or hold an expert witness certificate as provided in s. 458.3175, s. 459.0066, or s. 466.0115. Expert testimony shall not be admissible unless the expert providing such testimony holds a license issued by this state or an expert witness certificate.

Section 9. Subsection (9) of section 766.202, Florida Statutes, is amended to read:

766.202 Definitions; ss. 766.201-766.212.--As used in ss. 766.201-766.212, the term:

(9) "Periodic payment" means provision for the structuring of future economic and future noneconomic damages payments, in whole or in part, over a period of time, as follows:

(a) A specific finding must be made of the dollar amount of periodic payments which will compensate for these future damages and future noneconomic damages after offset for collateral sources and after having been reduced to present value shall be made. A periodic payment must be structured to
last as long as the claimant lives or the condition of the claimant for which the award was made persists, whichever may be shorter, but without regard for the number of years awarded. The total dollar amount of the periodic payments shall equal the dollar amount of all such future damages before any reduction to present value.

(b) A defendant that elects to make periodic payments of either or both future economic damages or future noneconomic damages may contractually obligate a company authorized to do business in this state and rated "A+" or higher by A.M. Best Company to make those periodic payments on behalf of the defendant. Upon a joint petition by the defendant and the company that is contractually obligated to make the periodic payments, the court shall discharge the defendant from any further obligations to the claimant for those future economic and future noneconomic damages that are to be paid by such company by periodic payments. The defendant shall be required to post a bond or security or otherwise to assure full payment of these damages awarded. A bond is not adequate unless it is written by a company authorized to do business in this state and is rated A+ by Best's. If the defendant is unable to adequately assure full payment of the damages, all damages, reduced to present value, shall be paid to the claimant in a lump sum. No bond may be canceled or be subject to cancellation unless at least 60 days' advance written notice is filed with the court and the claimant. Upon termination of periodic payments, the security, or so much as remains, shall be returned to the defendant.
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(c) A bond or security may not be required of any defendant or company that is obligated to make periodic payments pursuant to this section. However, if, upon petition by a claimant who is receiving periodic payments pursuant to this section, the court finds there is competent, substantial evidence that the defendant responsible for the periodic payments cannot adequately ensure full and continuous payments thereof or the company that is obligated to make the payments has been rated "B+" or lower by A.M. Best Company and that doing so is in the best interest of the claimant, the court may require the defendant or the company that is obligated to make the periodic payments to provide such additional financial security as the court determines to be reasonable under the circumstances. The provision for payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amounts of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

(d) The provision for the periodic payments must specify the recipient or recipients of the payments, the address to which the payments are to be delivered, and the dollar amount and intervals of the payments. However, in any one year, any payment or payments may not exceed the dollar amount intended by the trier of fact to be awarded each year, after offset for collateral sources. A periodic payment may not be accelerated, deferred, increased, or decreased except by court order based upon the mutual consent and agreement of the claimant, the defendant, whether or not discharged, and the company that is obligated to make the periodic payments, if any, nor may the
claimant sell, mortgage, encumber, or anticipate the periodic payments or any part thereof, by assignment or otherwise.

Section 10. Subsection (2) of section 768.78, Florida Statutes, is amended to read:

768.78 Alternative methods of payment of damage awards.--

(2)(a) In any action for damages based on personal injury or wrongful death arising out of medical malpractice, whether in tort or contract, in which the trier of fact makes an award to compensate the claimant for future economic or future noneconomic losses, payment of amounts intended to compensate the claimant for these future losses shall be made by one of the following means:

1. The defendant may elect to make a lump-sum payment for either or both of the all damages so assessed, with future economic or future noneconomic losses after offset for collateral sources and after having been reduced to present value by the court based upon competent, substantial evidence presented to the court by both parties; or

2. The defendant, if determined by the court to be financially capable or adequately insured, may elect to use periodic payments to satisfy in whole or in part the assessed future economic and future noneconomic losses awarded by the trier of fact after offset for collateral sources for as long as the claimant lives or the condition for which the award was made persists, whichever period may be shorter, but without regard for the number of years awarded by the trier of fact. The court shall review and, unless clearly unresponsive to the future needs of the claimant, approve the amounts and schedule of the periodic payments proposed by the defendant. Upon motion of the
defendant, whether or not discharged from any obligation to make
the payments pursuant to paragraph (b), and the establishment by
competent, substantial evidence that the claimant has died or
that the condition for which the award was made no longer
persists, the court shall enter an order terminating the
periodic payments effective the date of the death of the
claimant or the date the condition for which the award was made
no longer persisted The court shall, at the request of either
party, enter a judgment ordering future economic damages, as
itemized pursuant to s. 768.77, to be paid by periodic payments
rather than lump sum.

(b) A defendant electing to make periodic payments of
either or both future economic or future noneconomic damages may
contractually obligate a company authorized to do business in
this state and rated "A+" or higher by A.M. Best Company to make
those periodic payments on behalf of the defendant. Upon a joint
petition by the defendant and the company contractually
obligated to make the periodic payments, the court shall
discharge the defendant from any further obligations to the
claimant for those future economic and future noneconomic
damages that are to be paid by such company by periodic
payments.

(c) Upon notice of a defendant's election to make periodic
payments pursuant this subsection, the claimant may request the
court modify the periodic payments to reasonably provide for
attorney's fees. However, no such modification may be made by
the court that would increase the amount the defendant would
have been obligated to pay had no such adjustment been made.
(d) A bond or security may not be required of any defendant or company obligated to make periodic payments pursuant to this subsection. However, if, upon petition by a claimant receiving periodic payments pursuant to this subsection, the court finds there is competent, substantial evidence that the defendant responsible for the periodic payments cannot adequately ensure full and continuous payments thereof or the company obligated to make the payments has been rated "B+" or lower by A.M. Best Company and that doing so is in the best interest of the claimant, the court may require the defendant or the company obligated to make the periodic payments to provide such additional financial security as the court may determine reasonable under the circumstances.

(e) The provision for the periodic payments shall specify the recipient or recipients of the payments, the address to which the payments are to be delivered, and the dollar amount and intervals of the payments. However, in no year shall any payment or payments exceed the dollar amount intended by the trier of fact to be awarded each year, after offset for collateral sources. No periodic payment may be accelerated, deferred, increased, or decreased except by court order based upon the mutual consent and agreement of the claimant, the defendant, whether or not discharged, and the company obligated to make the periodic payments, if any, nor shall the claimant have the power to sell, mortgage, encumber, or anticipate the periodic payments or any part thereof, by assignment or otherwise.

(f) For purposes of this subsection, "periodic payment" means the payment of money or delivery of other property to the
claimant at regular intervals provision for the spreading of future economic damage payments, in whole or in part, over a period of time, as follows:

1. A specific finding of the dollar amount of periodic payments which will compensate for these future damages after offset for collateral sources shall be made. The total dollar amount of the periodic payments shall equal the dollar amount of all such future damages before any reduction to present value.

2. The defendant shall be required to post a bond or security or otherwise to assure full payment of these damages awarded. A bond is not adequate unless it is written by a company authorized to do business in this state and is rated A+ by Best's. If the defendant is unable to adequately assure full payment of the damages, all damages, reduced to present value, shall be paid to the claimant in a lump sum. No bond may be canceled or be subject to cancellation unless at least 60 days' advance written notice is filed with the court and the claimant. Upon termination of periodic payments, the security, or so much as remains, shall be returned to the defendant.

3. The provision for payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amounts of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

(g) It is the intent of the Legislature to authorize and encourage the payment of awards for future economic and noneconomic losses by periodic payments to meet the continuing needs of the patient while eliminating the misdirection of such funds for purposes not intended by the trier of fact.
Section 11. Legislative findings and intent.--

(1) EMERGENCY SERVICES AND CARE.--

(a) The Legislature finds and declares it to be of vital importance that emergency services and care be provided by hospitals, physicians, and emergency medical services providers to every person in need of such care.

(b) The Legislature finds that emergency services and care providers are critical elements in responding to disaster and emergency situations that might affect our local communities, state, and country.

(c) The Legislature recognizes the importance of maintaining a viable system of providing for the emergency medical needs of the state's residents and visitors.

(d) The Legislature and the Federal Government have required such providers of emergency medical services and care to provide emergency services and care to all persons who present themselves to hospitals seeking such care.

(e) The Legislature finds that the Legislature has further mandated that prehospital emergency medical treatment or transport may not be denied by emergency medical services providers to persons who have or are likely to have an emergency medical condition.

(f) Such governmental requirements have imposed a unilateral obligation for emergency services and care providers to provide services to all persons seeking emergency care without ensuring payment or other consideration for provision of such care.

(g) The Legislature also recognizes that emergency services and care providers provide a significant amount of
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uncompensated emergency medical care in furtherance of such governmental interest.

(h) The Legislature finds that a significant proportion of the residents of this state who are uninsured or are Medicaid or Medicare recipients are unable to access needed health care because health care providers fear the increased risk of medical malpractice liability.

(i) The Legislature finds that such patients, in order to obtain medical care, are frequently forced to seek care through providers of emergency medical services and care.

(j) The Legislature finds that providers of emergency medical services and care in this state have reported significant problems with both the availability and affordability of professional liability coverage.

(k) The Legislature finds that medical malpractice liability insurance premiums have increased dramatically and a number of insurers have ceased providing medical malpractice insurance coverage for emergency medical services and care in this state. This has resulted in a functional unavailability of medical malpractice insurance coverage for some providers of emergency medical services and care.

(l) The Legislature further finds that certain specialist physicians have resigned from serving on hospital staffs or have otherwise declined to provide on-call coverage to hospital emergency departments due to increased medical malpractice liability exposure created by treating such emergency department patients.

(m) It is the intent of the Legislature that hospitals, emergency medical services providers, and physicians be able to
ensure that patients who might need emergency medical services
treatment or transportation or who present themselves to
hospitals for emergency medical services and care have access to
such needed services.

(2) PUBLIC HOSPITALS AND AFFILIATIONS WITH NOT-FOR-PROFIT
COLLEGES AND UNIVERSITIES WITH MEDICAL SCHOOLS AND OTHER HEALTH
CARE PRACTITIONER EDUCATIONAL PROGRAMS.--

(a) The Legislature finds that access to quality,
affordable health care for all residents of this state is a
necessary goal for the state and that public hospitals play an
essential role in providing access to comprehensive health care
services.

(b) The Legislature further finds that access to quality
health care at public hospitals is enhanced when public hospitals
affiliate and coordinate their common endeavors with medical
schools. These affiliations have proven to be an integral part of
the delivery of more efficient and economical health care
services to patients of public hospitals by offering quality
graduate medical education programs to resident physicians who
provide patient services at public hospitals. These affiliations
ensure continued access to quality comprehensive health care
services for residents of this state and therefore should be
encouraged in order to maintain and expand such services.

(c) The Legislature finds that when medical schools
affiliate or enter into contracts with public hospitals to
provide comprehensive health care services to patients of public
hospitals, they greatly increase their exposure to claims arising
out of alleged medical malpractice and other allegedly negligent
acts because some colleges and universities and their medical
schools and employees do not have the same level of protection against liability claims as governmental entities and their public employees providing the same patient services to the same public hospital patients.

(d) The Legislature finds that the high cost of litigation, unequal liability exposure, and increased medical malpractice insurance premiums have adversely impacted the ability of some medical schools to permit their employees to provide patient services to patients of public hospitals. This finding is consistent with the report issued in April 2002 by the American Medical Association declaring this state to be one of 12 states in the midst of a medical liability insurance crisis. The crisis in the availability and affordability of medical malpractice insurance is a contributing factor in the reduction of access to quality health care in this state. In the past 15 years, the number of public hospitals in this state has declined significantly. In 1988, 33 hospitals were owned or operated by the state and local governments or established as taxing districts. In 1991, that number dropped to 28. In 2001, only 18 remained, 7 of these concentrated in 1 county. Thus, 11 public hospitals serve the other 66 counties of this state. If no corrective action is taken, this health care crisis will lead to a continued reduction of patient services in public hospitals.

(e) The Legislature finds that the public is better served and will benefit from corrective action to address the foregoing concerns. It is imperative that the Legislature further the public benefit by conferring sovereign immunity upon colleges and universities, their medical schools, and their employees when, pursuant to an affiliation agreement or a contract to provide
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633 comprehensive health care services, they provide patient services to patients of public hospitals.

634

(f) It is the intent of the Legislature that colleges and universities that affiliate with public hospitals be granted sovereign immunity protection under s. 768.28, Florida Statutes, in the same manner and to the same extent as the state and its agencies and political subdivisions. It is also the intent of the Legislature that employees of colleges and universities who provide patient services to patients of a public hospital be immune from lawsuits in the same manner and to the same extent as employees and agents of the state and its agencies and political subdivisions and, further, that they not be held personally liable in tort or named as a party defendant in an action while performing patient services except as provided in s. 768.28(9)(a), Florida Statutes.

647 Section 12. 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 apply to any health care contract entered into by the Department of Corrections which is subject to s. 768.28(10)(a). This section does not apply to any affiliation agreement or contract entered into by a medical school to provide comprehensive health care services to patients at public hospitals which affiliation agreement or contract is subject to s. 768.28(10)(f). Nothing in this section in any way reduces or limits the rights of the
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state or any of its agencies or subdivisions to any benefit

currently provided under s. 768.28.

Section 13. Paragraph (b) of subsection (9) of section

768.28, Florida Statutes, is amended, and paragraphs (f) and (g)

are added to subsection (10) of said 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:

a. Any health care provider when providing services

pursuant to s. 766.1115.

b. 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.

c. Any public defender or her or his employee or agent,

including, among others, an assistant public defender and an

investigator.

d. (I) Any college or university or its medical school that

takes into an affiliation agreement or a contract to allow its

employees to provide comprehensive health care services to

patients treated at public statutory teaching hospitals, any

other health care facilities owned or used by a governmental

entity, or any other locations under contract with the

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CODING: Words stricken are deletions; words underlined are additions.
governmental entity to provide comprehensive health care services to public hospital patients pursuant to paragraph (10)(f).

(II) Any faculty member or other health care professional, practitioner, or ancillary caregiver or employee of a college or university or its medical school that enters into an affiliation agreement or a contract to provide comprehensive health care services with a public hospital or its governmental owner and who provides such services to patients of public hospitals pursuant to paragraph (10)(f).

(10) (f)1. Any medical school that has entered into an affiliation agreement or contract to allow employees of the medical school to provide patient services to patients treated at a public hospital, together with such employees, shall be deemed agents of the governmental entity for purposes of this section and shall be immune from liability for torts in the same manner and to the same extent as the state and its agencies and subdivisions while providing patient services.

2. For purposes of this paragraph, the term:
   a. "Employees" means faculty, health care professionals, practitioners, and ancillary caregivers and employees of a medical school.
   b. "Medical school" means any not-for-profit college or university with a medical, dental, or nursing school, or any other academic programs of medical education accredited by any association, agency, council, commission, or accrediting body recognized by this state as a condition for licensure of its graduates.
   c. "Patient services" means:
(I) Any comprehensive health care services, as defined in s. 641.19(4), including related administrative services to patients of a public hospital.

(II) Supervision of interns, residents, and fellows providing any patient services to patients of a public hospital.

(III) Access to participation in medical research protocols.

d. "Public hospital" means a statutory teaching hospital and any other health care facility owned or used by the state, a county, a municipality, a public authority, a special taxing district with health care responsibilities, or any other local governmental entity, or at any location under contract with the governmental entity.

3. No such employee or agent of such colleges or universities or their medical schools shall be personally liable in tort or named as a party defendant in any action arising from the provision of any patient services to patients of a public hospital, except as provided in paragraph (9)(a).

(g) Except for persons or entities that are otherwise covered under this section, any emergency medical technician, paramedic, or licensee as defined in 401.23, or any health care provider as defined in s. 766.202(4) providing emergency services and care pursuant to s. 395.1041, s. 395.401, or s. 401.45 shall be considered agents of the state and the Department of Health, and shall reimburse the state for the actual costs of defending any claim and for any amounts paid by the state in payment of a settlement or judgment arising out of the claim up to the liability limits set forth in this section.

Any person or entity who fails to reimburse the state as
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required shall be subject to license revocation and shall be responsible for all subsequent payments by the state in resolving the underlying cause of action, including any amounts paid pursuant to a claims bill, and for all costs and attorney fees incurred by the state in recovering the original reimbursement amount due and the subsequent payments owed.

Section 14. Section 877.025, Florida Statutes, is created to read:

877.025  Solicitation of for-profit legal services relating to medical negligence or retainers therefor; penalty.--

(1) The Legislature has determined that legal advertising that solicits business by inciting a person to file a suit alleging medical negligence destroys the personal responsibility of individuals, fosters frivolous litigation, and demeans the practice of law. This form of solicitation has created a crisis in the state's judicial system, thus creating a compelling state interest in the limited regulation of advertising as set forth in this section.

(2) It is unlawful for any person or her or his agent, employee, or any person acting on her or his behalf to solicit or procure through solicitation, directly or indirectly, legal business for a profit, relating to the filing of a claim of medical negligence, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal service for a profit, or to make it a business to solicit or procure such business, retainers, or agreements.

(3) It is unlawful for any person in the employ of or in any capacity attached to any hospital, sanitarium, police
persons authorized to furnish bail bonds, investigators, photographers, or insurance or public adjusters, to communicate directly or indirectly with any attorney or person acting on such attorney's behalf for the purpose of aiding, assisting, or abetting such attorney in the solicitation of legal business for a profit or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services for a profit relating to allegations of medical negligence.

(4) It is unlawful to advertise, using any form of electronic or other media, in a manner that solicits legal business for a profit by urging a person to consider bringing legal action relating to medical negligence.

(5) The term "solicit" means to entreat, request, or incite another to use the services of an attorney or a law firm. In any advertisement subject to this section, the term "solicit" does not mean, include, or prohibit a statement by the attorney, or an appearance, picture, or voice of the attorney who states in such advertisement only the following information:

(a) The name of an attorney or a law firm;
(b) The field of practice of such attorney or law firm, including the prices charged, so long as expressly permitted by rule 4-7.2 of the rules regulating The Florida Bar;
(c) The right of an injured or aggrieved person to seek redress if such person's rights have been violated;
(d) A public service type announcement, so long as it does not entreat, request, or urge another to use the services of an
attorney or law firm for the purpose of bringing legal action against another; or

(e) Those matters expressly permitted by rule 4-7.2(c)(11) of the rules regulating the Florida Bar.

(6)(a) Except for violations of subsection (2), any person violating any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person violating subsection (2) shall be liable for a civil penalty of $1,000 for the first offense and $10,000 for each subsequent offense and shall be subject to imposition of injunctive relief based on a presumption that there is no adequate remedy at law available to the public. For purposes of this paragraph, an offense is a single advertisement published in a single print publication or through a single electronic media outlet, regardless of the number of times or in how many issues the advertisement is republished in the same publication or through the same media outlet. The Florida Bar and the Attorney General shall have standing to enforce such penalties and, upon prevailing in such action, shall recover costs and reasonable attorney's fees.

(7) This section shall be taken to be cumulative and shall not be construed to amend or repeal any other valid law, code, ordinance, rule, or penalty now in effect.

Section 15. This act shall take effect upon becoming a law.