A bill to be entitled
An act relating to emergency health care providers;
providing legislative findings and intent; amending s.
768.28, F.S.; providing that certain emergency health
providers are agents of the state for purposes of
sovereign immunity when acting pursuant to specified
statutory obligations; requiring certain indemnity for
the state from providers; providing penalties;
providing definitions; providing applicability;
providing an effective date.

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

Section 1. Legislative findings and intent.—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. The Legislature finds that providers of emergency
services and care are critical elements in responding to
disaster and emergency situations that may affect local
communities, the state, and the country. The Legislature
recognizes the importance of maintaining a viable system of
providing for the emergency medical needs of the state's
residents and visitors. 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.
The Legislature has further mandated that emergency medical
treatment may not be denied by emergency medical services
providers to persons who have or are likely to have an emergency medical condition. Such governmental requirements have imposed a unilateral obligation for providers of emergency services and care to provide services to all persons seeking emergency care without ensuring payment or other consideration for provision of such care. The Legislature also recognizes that providers of emergency services and care provide a significant amount of uncompensated emergency medical care in furtherance of such governmental interest. 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 on an elective basis because health care providers fear the increased risk of medical malpractice liability. 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. The Legislature finds that providers of emergency medical services and care in this state have reported significant problems with respect to the affordability of professional liability insurance, which is more expensive in this state than the national average. The Legislature further finds that a significant number of specialist physicians have resigned from serving on hospital staffs or have otherwise declined to provide on-call coverage to hospital emergency departments due to the increased exposure to medical malpractice liability created by treating such emergency department patients, thereby creating a void that has an adverse effect on emergency patient care. It is the intent of the Legislature that hospitals, emergency medical services providers, and physicians be able to ensure that patients who...
may need emergency medical services treatment and who present
themselves to hospitals for emergency medical services and care
have access to such needed services.

Section 2. Subsection (9) of section 768.28, Florida
Statutes, is amended 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) (a) No officer, employee, or agent of the state or of
any of its subdivisions shall be held personally liable in tort
or named as a party defendant in any action for any injury or
damage suffered as a result of any act, event, or omission of
action in the scope of her or his employment or function, unless
such officer, employee, or agent acted in bad faith or with
malicious purpose or in a manner exhibiting wanton and willful
disregard of human rights, safety, or property. However, such
officer, employee, or agent shall be considered an adverse
witness in a tort action for any injury or damage suffered as a
result of any act, event, or omission of action in the scope of
her or his employment or function. The exclusive remedy for
injury or damage suffered as a result of an act, event, or
omission of an officer, employee, or agent of the state or any
of its subdivisions or constitutional officers shall be by
action against the governmental entity, or the head of such
entity in her or his official capacity, or the constitutional
officer of which the officer, employee, or agent is an employee,
unless such act or omission was committed in bad faith or with
malicious purpose or in a manner exhibiting wanton and willful
disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(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, 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, and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.
   b. Any emergency health care provider acting pursuant to obligations imposed by s. 395.1041 or s. 401.45, except for persons or entities that are otherwise covered under this section.
   c. 1. Emergency health care providers are agents of the state and shall indemnify the state for any judgments, settlement costs, or other liabilities incurred, only up to the liability limits in subsection (5).
2. Any emergency health care provider who is licensed by the state and who fails to indemnify the state after reasonable notice and written demand to do so is subject to an emergency
suspension order of the regulating authority having jurisdiction over the licensee.

3. The Department of Health shall issue an emergency order suspending the license of any licensee under its jurisdiction or any licensee of a regulatory board within the Department of Health who fails to comply within 30 days following receipt by the department of a notice from the Division of Risk Management of the Department of Financial Services that the licensee has failed to satisfy his or her obligation to indemnify the state or enter into a repayment agreement with the state for costs under this subsection. The terms of such agreement must provide assurance of repayment of the obligation which is satisfactory to the state. For licensees within the Division of Medical Quality Assurance of the Department of Health, failure to comply with this paragraph constitutes grounds for disciplinary action under each respective practice act and under s. 456.072(1)(k).

4. If the emergency health care provider is licensed under chapter 395 and fails to indemnify the state after reasonable notice and written demand to do so, any state funds payable to the licensed facility shall be withheld until the facility satisfies its obligation to indemnify the state or enters into a repayment agreement. The terms of such agreement must provide assurance of repayment of the obligation which is satisfactory to the state. In addition, the Agency for Health Care Administration shall impose an administrative fine, not to exceed $10,000 per violation of this paragraph.

5. As used in this subsection, the term:

a. “Emergency health care providers” includes all persons and entities providing services pursuant to obligations imposed
b. “Emergency medical services” means all screening, examination, and evaluation by a physician, hospital, or other person or entity acting pursuant to obligations imposed by s. 395.1041 or s. 401.45, and the care, treatment, surgery, or other medical services provided to relieve or eliminate the emergency medical condition, including all medical services to eliminate the likelihood that the emergency medical condition will deteriorate or recur without further medical attention within a reasonable period of time.

(d) For purposes of the waiver of sovereign immunity only, a member of the Florida National Guard is not acting within the scope of state employment when performing duty under the provisions of Title 10 or Title 32 of the United States Code or other applicable federal law; and neither the state nor any individual may be named in any action under this chapter arising from the performance of such federal duty.

(e) The employing agency of a law enforcement officer as defined in s. 943.10 is not liable for injury, death, or property damage effected or caused by a person fleeing from a law enforcement officer in a motor vehicle if:

1. The pursuit is conducted in a manner that does not involve conduct by the officer which is so reckless or wanton in care as to constitute disregard of human life, human rights, safety, or the property of another;

2. At the time the law enforcement officer initiates the pursuit, the officer reasonably believes that the person fleeing has committed a forcible felony as defined in s. 776.08; and
3. The pursuit is conducted by the officer pursuant to a written policy governing high-speed pursuit adopted by the employing agency. The policy must contain specific procedures concerning the proper method to initiate and terminate high-speed pursuit. The law enforcement officer must have received instructional training from the employing agency on the written policy governing high-speed pursuit.

Section 3. This act shall take effect upon becoming a law, and applies to any cause of action accruing on or after that date.