

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Regulation Committee

BILL: SB 1508

INTRODUCER: Senator Peaden

SUBJECT: Informed Consent

DATE: March 10, 2007

REVISED: 03/14/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HR</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

The bill adds Florida-certified advanced registered nurse practitioners and Florida-licensed physician assistants to the list of health care providers who are granted immunity in actions brought for examining or treating a patient without his or her informed consent if the patient at the time of the examination or treatment is intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent as required by s. 766.103, F.S.; the patient at the time of the examination or treatment is experiencing an emergency medical condition; and the patient would reasonably, under all the surrounding circumstances, undergo such examination, treatment, or procedure if he or she were advised by the advanced registered nurse practitioner or physician assistant in accordance with s. 766.103, F.S.

The bill amends the Florida Medical Consent Law in s. 766.103, F.S., to add advanced registered nurse practitioners and physician assistants to the list of health care providers whose acts of treating, examining, or operating on a patient without the patient's informed consent are covered. The health care providers listed in the Florida Medical Consent Law may reduce their exposure to litigation brought for treating, examining, or operating on a patient without informed consent under specified circumstances.

This bill amends sections 401.445 and 766.103, Florida Statutes.

## **II. Present Situation:**

### **Informed Consent**

Section 766.103, F.S., is the Florida Medical Consent Law. Under s. 766.103, F.S., a duty is imposed on a Florida-licensed medical physician, osteopathic physician, chiropractic physician, podiatric physician, or dentist to obtain the informed consent of a patient for treating, examining, or operating on the patient. Subsection (3) of s. 766.103, F.S., provides that no recovery is allowed in any court in Florida against such health care providers in an action brought for treating, examining, or operating on a patient without informed consent if:

- The action of the health care provider in obtaining informed consent of the patient or another person authorized to give consent for the patient was in accordance with accepted standards of medical practice among the members of the medical profession with similar training and experience in the same or similar medical community; and
- A reasonable individual, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among health care providers in the same or similar community who perform similar treatments or procedures; or
- The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the health care provider.

A written consent, if validly signed by the patient or another authorized person, meets the requirements of s. 766.103(3), F.S., and raises a rebuttable presumption of a valid consent. A valid signature is one, which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.

Under s. 401.445, F.S., no recovery is allowed in any court in Florida against any emergency medical technician, paramedic, or physician or any person acting under the direct medical supervision of a physician, in an action brought for examining or treating a patient without his or her informed consent if: the patient at the time of the examination or treatment is intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent as required by s. 766.103, F.S.; the patient at the time of the examination or treatment is experiencing an emergency medical condition; and the patient would reasonably, under all the surrounding circumstances, undergo such examination, treatment, or procedure if he or she were advised by the emergency medical technician, paramedic, or physician in accordance with s. 766.103, F.S.

### **Nursing**

Part I, ch. 464, F.S., governs the practice of nursing and sets forth requirements for licensure of registered nurses and licensed practical nurses. Advanced registered nurse practitioners may perform all duties of a registered nurse and advanced level nursing in accordance with established protocols, including managing selected medical problems, monitoring and altering drug therapies, initiating appropriate therapies for certain conditions, performing physical

examinations, ordering and evaluating diagnostic tests, ordering physical and occupational therapy, and initiating and monitoring therapies for certain uncomplicated acute illnesses.

Part I, ch. 464, F.S., requires the Board of Nursing to adopt rules authorizing advanced registered nurse practitioners to perform acts of medical diagnosis and treatment, prescription, and operation, which are identified and approved by a joint committee. The joint committee is composed of three members appointed by the Board of Nursing, two of whom must be advanced registered nurse practitioners; three members appointed by the Board of Medicine, two of whom must have had work experience with advanced registered nurse practitioners; and the Secretary of Health or the secretary's designee. The Board of Nursing must adopt rules authorizing the performance of any such acts approved by the joint committee.

Advanced registered nurse practitioners may perform medical acts under the general supervision of a medical physician, osteopathic physician, or dentist within the framework of standing protocols, which identify the medical acts to be performed, and the conditions for their performance. The Board of Nursing and the Board of Medicine have filed identical administrative rules setting forth standards for the protocols<sup>1</sup>, which establish obligations on medical physicians, osteopathic physicians, and dentists who enter into protocol relationships with advanced registered nurse practitioners. The Board of Osteopathic Medicine and the Board of Dentistry, which have regulatory jurisdiction over osteopathic physicians and dentists, respectively, are not required to adopt administrative rules regarding the standards for advanced registered nurse practitioner protocols. Although advanced registered nurse practitioners may prescribe medications in accordance with a protocol, they cannot prescribe controlled substances.

### **Physician Assistants**

Physician assistants licensed under ch. 458 or ch. 459, F.S.,<sup>2</sup> are authorized to provide health care services under the supervision of a medical physician or osteopathic physician. Sections 458.347 and 459.022, F.S., authorize a supervising physician to delegate to a physician assistant that he or she supervises the authority to perform medical acts of diagnosis, treatment, and prescription. Each physician or group of physicians supervising a licensed physician assistant must be qualified in the medical areas in which the physician assistant is to perform and must be individually or collectively responsible and liable for the performance and the acts and omissions of the physician assistant. A physician may not supervise more than four currently licensed physician assistants at any one time.

### **III. Effect of Proposed Changes:**

The bill adds Florida-certified advanced registered nurse practitioners and Florida-licensed physician assistants to the list of health care providers who are granted immunity in actions brought for examining or treating a patient without his or her informed consent if the patient at the time of the examination or treatment is intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent as required by s. 766.103, F.S.; the patient at the time of the examination or treatment is experiencing an emergency medical condition; and the patient would reasonably, under all the surrounding circumstances, undergo such examination,

---

<sup>1</sup> See Rules 64B-4.010 and 64B-35.002, Florida Administrative Code.

<sup>2</sup> See sections 458.347 and 459.022, F.S.

treatment, or procedure if he or she were advised by the advanced registered nurse practitioner or physician assistant in accordance with s. 766.103, F.S.

The bill amends the Florida Medical Consent Law in s. 766.103, F.S., to add advanced registered nurse practitioners and physician assistants to the list of health care providers whose acts of treating, examining, or operating on a patient without the patient's informed consent are covered. The health care providers listed in the Florida Medical Consent Law may reduce their exposure to litigation brought for treating, examining, or operating on a patient without informed consent under specified circumstances.

The effective date of the bill is July 1, 2007.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

##### **D. Other Constitutional Issues:**

To the extent, the bill reduces an individual's recovery in an action brought for treating, examining, or operating on a patient without informed consent under specified circumstances it implicates a potential infringement on the individual's constitutional right of access to courts under the State Constitution. It is unclear what commensurate benefit is extended to individuals whose rights of access to the courts are possibly infringed. Section 21, Art. I of the State Constitution provides that the courts shall be open to all for redress for an injury. To impose a barrier or limitation on litigant's right to file certain actions it would have to meet the test announced by the Florida Supreme Court in *Kluger v. White*<sup>3</sup>. Under the constitutional test established by the Florida Supreme Court in *Kluger v. White*, the Legislature would have to: (1) provide a reasonable alternative remedy or commensurate benefit, or (2) make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.

---

<sup>3</sup> See *Kluger v. White*, 281 So.2d 1 (Fla. 1973).

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Advanced registered nurse practitioners and physician assistants may limit their exposure to litigation relating to failure to obtain informed consent under specified circumstances.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



---

## VIII. Summary of Amendments:

### **Barcode 675510 by Health Regulation:**

Provides that the applicable standard of care for purposes of the immunity granted in actions brought for treating, examining, or operating on a patient without his or her informed consent is that of the person who is responsible for such treatment, examination, or operation.

---

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---