

By the Committee on Civil Justice & Claims and
Representatives Warner, Clemons, Burroughs, Bradley, Flanagan,
Byrd, Thrasher and Cosgrove

1 A bill to be entitled
2 An act relating to waiver of sovereign immunity
3 in tort actions; amending s. 768.28, F.S.;
4 providing certain governmental subdivisions
5 with the authority to settle certain claims
6 exceeding statutory limits; providing that
7 settlements which exceed the statutory limits
8 shall not waive any defense or immunity;
9 reenacting s. 111.071(1)(a) and (b), F.S.,
10 relating to payment of judgments or settlements
11 against certain public officers or employees,
12 s. 190.043, F.S., relating to suits against
13 community development district, s. 234.03(1),
14 F.S., relating to tort liability of district
15 school board, s. 234.211(2)(b), F.S., relating
16 to use of school buses for public purposes, s.
17 760.11(5), F.S., relating to administrative and
18 civil remedies with respect to complaints filed
19 with the Florida Commission on Human Relations,
20 s. 766.203(1)(b), F.S., relating to presuit
21 investigation of medical negligence claims, s.
22 766.207(1), F.S., relating to voluntary binding
23 arbitration of medical negligence claims, and
24 s. 944.713(2), F.S., relating to insurance
25 against liability of private vendor, to
26 incorporate said amendment in references;
27 providing an effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (5) of section 768.28, Florida
2 Statutes, is amended to read:

3 768.28 Waiver of sovereign immunity in tort actions;
4 recovery limits; limitation on attorney fees; statute of
5 limitations; exclusions; indemnification; risk management
6 programs.--

7 (5) The state and its agencies and subdivisions shall
8 be liable for tort claims in the same manner and to the same
9 extent as a private individual under like circumstances, but
10 liability shall not include punitive damages or interest for
11 the period before judgment. Neither the state nor its
12 agencies or subdivisions shall be liable to pay a claim or a
13 judgment by any one person which exceeds the sum of \$100,000
14 or any claim or judgment, or portions thereof, which, when
15 totaled with all other claims or judgments paid by the state
16 or its agencies or subdivisions arising out of the same
17 incident or occurrence, exceeds the sum of \$200,000. However,
18 a judgment or judgments may be claimed and rendered in excess
19 of these amounts and may be settled and paid pursuant to this
20 act up to \$100,000 or \$200,000, as the case may be; and that
21 portion of the judgment that exceeds these amounts may be
22 reported to the Legislature, but may be paid in part or in
23 whole only by further act of the Legislature. Notwithstanding
24 the limited waiver of sovereign immunity provided herein, the
25 state or an agency or subdivision thereof may agree, within
26 the limits of insurance coverage provided, to settle a claim
27 made or a judgment rendered against it without further action
28 by the Legislature, but the state or agency or subdivision
29 thereof shall not be deemed to have waived any defense of
30 sovereign immunity or to have increased the limits of its
31 liability as a result of its obtaining insurance coverage for

1 tortious acts in excess of the \$100,000 or \$200,000 waiver
2 provided above. Notwithstanding the limited waiver of
3 sovereign immunity provided herein, and irrespective of any
4 limits in insurance coverage, a subdivision, excluding the
5 state, state agencies, the Spaceport Florida Authority, and
6 other corporations primarily acting as instrumentalities or
7 agencies of the state, may agree to settle a judgment or jury
8 verdict rendered against it, in an amount not to exceed the
9 judgment or jury verdict, without further action by the
10 Legislature. By agreeing to such a settlement, the subdivision
11 shall not be deemed to have established any binding precedent,
12 nor shall it be deemed to have increased the limits of its
13 liability, nor shall it be deemed to have waived any defense
14 or immunity. The limitations of liability set forth in this
15 subsection shall apply to the state and its agencies and
16 subdivisions whether or not the state or its agencies or
17 subdivisions possessed sovereign immunity before July 1, 1974.

18 Section 2. For the purpose of incorporating the
19 amendment to section 768.28, Florida Statutes, in references
20 thereto, the sections or subdivisions of Florida Statutes set
21 forth below are reenacted to read:

22 111.071 Payment of judgments or settlements against
23 certain public officers or employees.--

24 (1) Any county, municipality, political subdivision,
25 or agency of the state which has been excluded from
26 participation in the Insurance Risk Management Trust Fund is
27 authorized to expend available funds to pay:

28 (a) Any final judgment, including damages, costs, and
29 attorney's fees, arising from a complaint for damages or
30 injury suffered as a result of any act or omission of action
31 of any officer, employee, or agent in a civil or civil rights

1 lawsuit described in s. 111.07. If the civil action arises
2 under s. 768.28 as a tort claim, the limitations and
3 provisions of s. 768.28 governing payment shall apply. If the
4 action is a civil rights action arising under 42 U.S.C. s.
5 1983, or similar federal statutes, payments for the full
6 amount of the judgment may be made unless the officer,
7 employee, or agent has been determined in the final judgment
8 to have caused the harm intentionally.

9 (b) Any compromise or settlement of any claim or
10 litigation as described in paragraph (a), subject to the
11 limitations set forth in that paragraph.

12 190.043 Suits against the district.--Any suit or
13 action brought or maintained against the district for damages
14 arising out of tort, including, without limitation, any claim
15 arising upon account of an act causing an injury or loss of
16 property, personal injury, or death, shall be subject to the
17 limitations provided in s. 768.28.

18 234.03 Tort liability; liability insurance.--

19 (1) Each district school board shall be liable for
20 tort claims arising out of any incident or occurrence
21 involving a school bus or other motor vehicle owned,
22 maintained, operated, or used by such school board to
23 transport persons, to the same extent and in the same manner
24 as the state or any of its agencies or subdivisions is liable
25 for tort claims under s. 768.28, except that the total
26 liability to persons being transported for all claims or
27 judgments of such persons arising out of the same incident or
28 occurrence shall not exceed an amount equal to \$5,000
29 multiplied by the rated seating capacity of the bus or other
30 vehicle, as determined by rules of the State Board of
31 Education, or \$100,000, whichever is greater. The provisions

1 of s. 768.28 shall apply to all claims or actions brought
2 against school boards, as authorized in this subsection.
3 234.211 Use of school buses for public purposes.--
4 (2)
5 (b) For purposes of liability for negligence, state
6 agencies or subdivisions as defined in s. 768.28(2) shall be
7 covered by s. 768.28. Every other corporation or organization
8 shall provide liability insurance coverage in the minimum
9 amounts of \$100,000 on any claim or judgment and \$200,000 on
10 all claims and judgments arising from the same incident or
11 occurrence.

12 760.11 Administrative and civil remedies;
13 construction.--

14 (5) In any civil action brought under this section,
15 the court may issue an order prohibiting the discriminatory
16 practice and providing affirmative relief from the effects of
17 the practice, including back pay. The court may also award
18 compensatory damages, including, but not limited to, damages
19 for mental anguish, loss of dignity, and any other intangible
20 injuries, and punitive damages. The provisions of ss. 768.72
21 and 768.73 do not apply to this section. The judgment for the
22 total amount of punitive damages awarded under this section to
23 an aggrieved person shall not exceed \$100,000. In any action
24 or proceeding under this subsection, the court, in its
25 discretion, may allow the prevailing party a reasonable
26 attorney's fee as part of the costs. It is the intent of the
27 Legislature that this provision for attorney's fees be
28 interpreted in a manner consistent with federal case law
29 involving a Title VII action. The right to trial by jury is
30 preserved in any such private right of action in which the
31 aggrieved person is seeking compensatory or punitive damages,

1 and any party may demand a trial by jury. The commission's
2 determination of reasonable cause is not admissible into
3 evidence in any civil proceeding, including any hearing or
4 trial, except to establish for the court the right to maintain
5 the private right of action. A civil action brought under this
6 section shall be commenced no later than 1 year after the date
7 of determination of reasonable cause by the commission. The
8 commencement of such action shall divest the commission of
9 jurisdiction of the complaint, except that the commission may
10 intervene in the civil action as a matter of right.

11 Notwithstanding the above, the state and its agencies and
12 subdivisions shall not be liable for punitive damages. The
13 total amount of recovery against the state and its agencies
14 and subdivisions shall not exceed the limitation as set forth
15 in s. 768.28(5).

16 766.203 Presuit investigation of medical negligence
17 claims and defenses by prospective parties.--

18 (1) Presuit investigation of medical negligence claims
19 and defenses pursuant to this section and ss. 766.204-766.206
20 shall apply to all medical negligence, including dental
21 negligence, claims and defenses. This shall include:

22 (b) Rights of action involving the state or its
23 agencies or subdivisions, or the officers, employees, or
24 agents thereof, pursuant to s. 768.28 and defenses thereto.

25 766.207 Voluntary binding arbitration of medical
26 negligence claims.--

27 (1) Voluntary binding arbitration pursuant to this
28 section and ss. 766.208-766.212 shall not apply to rights of
29 action involving the state or its agencies or subdivisions, or
30 the officers, employees, or agents thereof, pursuant to s.
31 768.28.

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944.713 Insurance against liability.--

(2) The contract shall provide for indemnification of the state by the private vendor for any liabilities incurred up to the limits provided under s. 768.28(5). The contract shall provide that the private vendor, or the insurer of the private vendor, is liable to pay any claim or judgment for any one person which does not exceed the sum of \$100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments arising out of the same incident or occurrence, does not exceed the sum of \$200,000. In addition, the contractor must agree to defend, hold harmless, and indemnify the department against any and all actions, claims, damages and losses, including costs and attorney's fees.

Section 3. This act shall take effect upon becoming a law.

HOUSE SUMMARY

Revises provisions relating to waiver of sovereign immunity in tort actions. Provides certain governmental subdivisions with the authority to settle certain claims exceeding statutory limits. Provides that settlements which exceed the statutory limits shall not waive any defense or immunity.