Florida House of Representatives - 1997 By Representative Bitner

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	prescribing time for submitting notice of a
5	claim to the Department of Insurance;
6	prohibiting actions against the state or its
7	agencies or subdivisions by persons who are
8	operating a motor vehicle while under the
9	influence of drugs or alcohol, by passengers in
10	a motor vehicle that is operated by a person
11	who is under the influence of drugs or alcohol,
12	and by persons using property without
13	permission or in an unintended manner;
14	providing an effective date.
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16	Be It Enacted by the Legislature of the State of Florida:
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18	Section 1. Paragraph (a) of subsection (6) of section
19	768.28, Florida Statutes, 1996 Supplement, is amended and
20	subsections (20) and (21) are added to that section to read:
21	768.28 Waiver of sovereign immunity in tort actions;
22	recovery limits; limitation on attorney fees; statute of
23	limitations; exclusions; indemnification; risk management
24	programs
25	(6)(a) An action may not be instituted on a claim
26	against the state or one of its agencies or subdivisions
27	unless the claimant presents the claim in writing to the
28	appropriate agency, and also, except as to any claim against a
29	municipality or the Spaceport Florida Authority, presents such
30	claim in writing to the Department of Insurance, within $\underline{180}$
31	\underline{days} 3 years after such claim accrues and the Department of
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Insurance or the appropriate agency denies the claim in 1 writing; except that, if such claim is for contribution 2 pursuant to s. 768.31, it must be so presented within 6 months 3 after the judgment against the tortfeasor seeking contribution 4 has become final by lapse of time for appeal or after 5 6 appellate review or, if there is no such judgment, within 6 7 months after the tortfeasor seeking contribution has either 8 discharged the common liability by payment or agreed, while 9 the action is pending against him, to discharge the common 10 liability. (20)(a) An action may not be brought against the state 11 or any of its agencies or subdivisions for civil damages for 12 13 wrongful death, personal injury, or injury to property by a person who is driving or is in the actual physical control of 14 15 a motor vehicle on any street, road, highway, or other property used or intended to be used by motor vehicles and 16 17 who: 18 1. Is under the influence of an alcoholic beverage, 19 any chemical substance specified in s. 877.111, or any 20 substance controlled under chapter 893 to the extent that such person's normal faculties are impaired; or 21 2. Has a blood or breath alcohol level of 0.08 percent 22 23 or higher. 24 (b) An action may not be brought against the state or any of its agencies or subdivisions for civil damages for 25 26 wrongful death, personal injury, or injury to property by a 27 passenger in a motor vehicle that is being operated by a 28 person who is driving or is in the actual physical control of a motor vehicle on any street, road, highway, or other 29 property used or intended to be used by motor vehicles and 30 31 who:

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1. Is under the influence of an alcoholic beverage, any chemical substance specified in s. 877.111, or any substance controlled under chapter 893 to the extent that such person's normal faculties are impaired; or 2. Has a blood or breath alcohol level of 0.08 percent or higher. (21) A person may not bring an action against the state or any of its agencies or subdivisions for civil damages for wrongful death, personal injury, or injury to property occurring on its property unless that person is intended and permitted by the state, the agency, or the subdivision to use that property, and that person was exercising ordinary care and using the property in a manner that was forseeable by the state, the agency, or the subdivision. Section 2. This act shall take effect upon becoming a SENATE SUMMARY Requires a claimant in an action against the state or its agencies or subdivisions to present the claim in writing to the Department of Insurance within 180 days after such claim accrues. Prohibits actions against the state or

claim accrues. Prohibits actions against the state or its agencies or subdivisions for civil damages for wrongful death, personal injury, or injury to property by a person driving a motor vehicle or in actual physical control of a motor vehicle while under the influence of alcohol or drugs. Prohibits such actions by passengers in a motor vehicle driven or in the actual physical control of a person under the influence of alcohol or drugs. Prohibits actions against the state, its agencies, or subdivisions by persons using the property of the state, its agencies or subdivisions without permission or in an unintended manner. 23 24 25 2.6 27 in an unintended manner. 28 29 30 31 3 CODING: Words stricken are deletions; words underlined are additions.