

1 A bill to be entitled
 2 An act relating to sovereign immunity; amending s. 768.28,
 3 F.S.; providing that a subdivision of the state may pay a
 4 judgment in excess of statutory limits on the waiver of
 5 sovereign immunity without an act of the Legislature if it
 6 so chooses; providing that such payment in excess of the
 7 limits does not waive the subdivision's defense of
 8 sovereign immunity or increase the limits of its
 9 liability; providing for an additional attorney fee in
 10 certain circumstances; amending s. 768.28, F.S., effective
 11 July 1, 2011; increasing the statutory limits on liability
 12 and providing for annual indexing of the limits for
 13 inflation; providing applicability; providing effective
 14 dates.

15
 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Effective July 1, 2010, and applicable to
 19 claims arising on or after that date, subsections (5) and (8) of
 20 section 768.28, Florida Statutes, are amended 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 (5) (a) The state and its agencies ~~and subdivisions~~ shall
 26 be liable for tort claims in the same manner and to the same
 27 extent as a private individual under like circumstances, but
 28 liability shall not include punitive damages or interest for the

29 | period before judgment. Neither the state nor its agencies ~~or~~
 30 | ~~subdivisions~~ shall be liable to pay a claim or a judgment by any
 31 | one person which exceeds the sum of \$100,000 or any claim or
 32 | judgment, or portions thereof, which, when totaled with all
 33 | other claims or judgments paid by the state or its agencies ~~or~~
 34 | ~~subdivisions~~ arising out of the same incident or occurrence,
 35 | exceeds the sum of \$200,000. However, a judgment or judgments
 36 | may be claimed and rendered in excess of these amounts and may
 37 | be settled and paid pursuant to this act up to \$100,000 or
 38 | \$200,000, as the case may be; and that portion of the judgment
 39 | that exceeds these amounts may be reported to the Legislature,
 40 | but may be paid in part or in whole only by further act of the
 41 | Legislature. Notwithstanding the limited waiver of sovereign
 42 | immunity provided in this paragraph ~~herein~~, the state or an
 43 | agency ~~or subdivision thereof~~ may agree, within the limits of
 44 | insurance coverage provided, to settle a claim made or a
 45 | judgment rendered against it without further action by the
 46 | Legislature, but the state or agency ~~or subdivision thereof~~
 47 | shall not be deemed to have waived any defense of sovereign
 48 | immunity or to have increased the limits of its liability as a
 49 | result of its obtaining insurance coverage for tortious acts in
 50 | excess of the \$100,000 or \$200,000 waiver provided above. The
 51 | limitations of liability set forth in this paragraph ~~subsection~~
 52 | shall apply to the state and its agencies ~~and subdivisions~~
 53 | whether or not the state or its agencies ~~or subdivisions~~
 54 | possessed sovereign immunity before July 1, 1974.

55 | (b) A subdivision of the state shall be liable for tort
 56 | claims in the same manner and to the same extent as a private

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57 individual under like circumstances, but liability shall not
58 include punitive damages or interest for the period before
59 judgment. A subdivision of the state shall not be liable to pay
60 a claim or a judgment by any one person which exceeds the sum of
61 \$100,000 or any claim or judgment, or portions thereof, which,
62 when totaled with all other claims or judgments paid by the
63 subdivision of the state arising out of the same incident or
64 occurrence, exceeds the sum of \$200,000. Notwithstanding the
65 limited waiver of sovereign immunity provided in this paragraph,
66 a subdivision of the state may agree, within the limits of
67 insurance coverage provided or other available funds, to settle
68 a claim made or a judgment rendered against it without further
69 action by the Legislature. However, if the subdivision does not
70 agree to pay that portion of a settlement or a judgment rendered
71 against it which is in excess of the limits of liability
72 specified in this paragraph, in part or in whole, that portion
73 of the settlement or judgment which exceeds those amounts and is
74 not agreed to by the subdivision may be reported to the
75 Legislature, but may be paid by the subdivision in part or in
76 whole only by further act of the Legislature. The subdivision
77 shall not be deemed to have waived any defense of sovereign
78 immunity or to have increased the limits of its liability as a
79 result of its obtaining insurance coverage for tortious acts in
80 excess of the \$100,000 or \$200,000 waiver provided above or as a
81 result of its having agreed to a settlement or to pay a judgment
82 in an amount exceeding the limits of liability set forth in this
83 paragraph. The limitations of liability set forth in this
84 paragraph shall apply to subdivisions whether or not the

85 subdivision possessed sovereign immunity before July 1, 1974.

86 (8) No attorney may charge, demand, receive, or collect,
 87 for services rendered, fees in excess of 25 percent of any
 88 judgment or settlement plus an additional 5 percent of any
 89 recovery after the institution of any appellate proceeding is
 90 filed or postjudgment or postsettlement relief or action is
 91 required for recovery on the judgment or settlement.

92 Section 2. Effective July 1, 2011, and applicable to
 93 claims arising on or after that date, subsection (5) of section
 94 768.28, Florida Statutes, as amended by this act, is amended to
 95 read:

96 768.28 Waiver of sovereign immunity in tort actions;
 97 recovery limits; limitation on attorney fees; statute of
 98 limitations; exclusions; indemnification; risk management
 99 programs.—

100 (5) (a) The state and its agencies shall be liable for tort
 101 claims in the same manner and to the same extent as a private
 102 individual under like circumstances, but liability shall not
 103 include punitive damages or interest for the period before
 104 judgment. Neither the state nor its agencies shall be liable to
 105 pay a claim or a judgment by any one person which exceeds the
 106 sum specified in paragraph (c) ~~of \$100,000 or any claim or~~
 107 ~~judgment, or portions thereof, which, when totaled with all~~
 108 ~~other claims or judgments paid by the state or its agencies~~
 109 ~~arising out of the same incident or occurrence, exceeds the sum~~
 110 ~~of \$200,000.~~ However, a judgment or judgments may be claimed and
 111 rendered in excess of that amount ~~these amounts~~ and may be
 112 settled and paid pursuant to this act up to the amount specified

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113 in paragraph (c) \$100,000 or \$200,000, as the case may be; and
114 that portion of the judgment that exceeds that amount ~~these~~
115 ~~amounts~~ may be reported to the Legislature, but may be paid in
116 part or in whole only by further act of the Legislature.
117 Notwithstanding the limited waiver of sovereign immunity
118 provided in this paragraph, the state or an agency may agree,
119 within the limits of insurance coverage provided, to settle a
120 claim made or a judgment rendered against it without further
121 action by the Legislature, but the state or agency shall not be
122 deemed to have waived any defense of sovereign immunity or to
123 have increased the limits of its liability as a result of its
124 obtaining insurance coverage for tortious acts in excess of the
125 amount set forth in paragraph (c) \$100,000 or \$200,000 waiver
126 ~~provided above~~. The limitations of liability set forth in this
127 paragraph shall apply to the state and its agencies whether or
128 not the state or its agencies possessed sovereign immunity
129 before July 1, 1974.

130 (b) A subdivision of the state shall be liable for tort
131 claims in the same manner and to the same extent as a private
132 individual under like circumstances, but liability shall not
133 include punitive damages or interest for the period before
134 judgment. A subdivision of the state shall not be liable to pay
135 a claim or a judgment by any one person which exceeds the sum
136 specified in paragraph (c) of \$100,000 or any claim or judgment,
137 ~~or portions thereof, which, when totaled with all other claims~~
138 ~~or judgments paid by the subdivision of the state arising out of~~
139 ~~the same incident or occurrence, exceeds the sum of \$200,000.~~
140 Notwithstanding the limited waiver of sovereign immunity

141 provided in this paragraph, a subdivision of the state may
 142 agree, within the limits of insurance coverage provided or other
 143 available funds, to settle a claim made or a judgment rendered
 144 against it without further action by the Legislature. However,
 145 if the subdivision does not agree to pay that portion of a
 146 settlement or a judgment rendered against it which is in excess
 147 of the amount ~~limits of liability~~ specified in ~~this~~ paragraph
 148 (c), in part or in whole, that portion of the settlement or
 149 judgment which exceeds that amount ~~those amounts~~ and is not
 150 agreed to by the subdivision may be reported to the Legislature,
 151 but may be paid by the subdivision in part or in whole only by
 152 further act of the Legislature. The subdivision shall not be
 153 deemed to have waived any defense of sovereign immunity or to
 154 have increased the limits of its liability as a result of its
 155 obtaining insurance coverage for tortious acts in excess of the
 156 amount set forth in paragraph (c) \$100,000 or \$200,000 waiver
 157 provided above or as a result of its having agreed to a
 158 settlement or to pay a judgment in an amount exceeding the
 159 amount ~~limits of liability~~ set forth in ~~this~~ paragraph (c). The
 160 limitations of liability set forth in this paragraph shall apply
 161 to subdivisions whether or not the subdivision possessed
 162 sovereign immunity before July 1, 1974.

163 (c)1. Effective July 1, 2011, and applicable to claims
 164 made on or after that date, the limitation of liability for
 165 purposes of this subsection shall be \$250,000 per claim or
 166 judgment by any one person.

167 2. Effective July 1, 2012, and annually on each July 1
 168 thereafter, the amount specified in subparagraph 1. shall be

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169 adjusted to reflect the average of the change in the Consumer
170 Price Index for all urban consumers and the change in the
171 medical care component of the Consumer Price Index for all urban
172 consumers, issued by the Bureau of Labor Statistics of the
173 United States Department of Labor for the United States as a
174 whole for the immediately preceding calendar year.

175 Section 3. Except as otherwise expressly provided in this
176 act, this act shall take effect July 1, 2010.