

By Senator Bennett

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

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

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19 Section 1. Effective July 1, 2010, and applicable to claims
20 arising on or after that date, subsections (5) and (8) of
21 section 768.28, Florida Statutes, are amended to read:

22 768.28 Waiver of sovereign immunity in tort actions;
23 recovery limits; limitation on attorney fees; statute of
24 limitations; exclusions; indemnification; risk management
25 programs.—

26 (5) (a) The state and its agencies ~~and subdivisions~~ shall be
27 liable for tort claims in the same manner and to the same extent
28 as a private individual under like circumstances, but liability
29 shall not include punitive damages or interest for the period

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

56 (b) A subdivision of the state shall be liable for tort
57 claims in the same manner and to the same extent as a private
58 individual under like circumstances, but liability shall not

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59 include punitive damages or interest for the period before
60 judgment. A subdivision of the state shall not be liable to pay
61 a claim or a judgment by any one person which exceeds the sum of
62 \$100,000 or any claim or judgment, or portions thereof, which,
63 when totaled with all other claims or judgments paid by the
64 subdivision of the state arising out of the same incident or
65 occurrence, exceeds the sum of \$200,000. Notwithstanding the
66 limited waiver of sovereign immunity provided in this paragraph,
67 a subdivision of the state may agree, within the limits of
68 insurance coverage provided or other available funds, to settle
69 a claim made or a judgment rendered against it without further
70 action by the Legislature. However, if the subdivision does not
71 agree to pay that portion of a settlement or a judgment rendered
72 against it which is in excess of the limits of liability
73 specified in this paragraph, in part or in whole, that portion
74 of the settlement or judgment which exceeds those amounts and is
75 not agreed to by the subdivision may be reported to the
76 Legislature, but may be paid by the subdivision in part or in
77 whole only by further act of the Legislature. The subdivision
78 shall not be deemed to have waived any defense of sovereign
79 immunity or to have increased the limits of its liability as a
80 result of its obtaining insurance coverage for tortious acts in
81 excess of the \$100,000 or \$200,000 waiver provided above or as a
82 result of its having agreed to a settlement or to pay a judgment
83 in an amount exceeding the limits of liability set forth in this
84 paragraph. The limitations of liability set forth in this
85 paragraph shall apply to subdivisions whether or not the
86 subdivision possessed sovereign immunity before July 1, 1974.

87 (8) No attorney may charge, demand, receive, or collect,

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88 for services rendered, fees in excess of 25 percent of any
89 judgment or settlement plus an additional 5 percent of any
90 recovery after the institution of any appellate proceeding is
91 filed or postjudgment or postsettlement relief or action is
92 required for recovery on the judgment or settlement.

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

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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

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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 made
164 on or after that date, the limitation of liability for purposes
165 of this subsection shall be \$250,000 per claim or judgment by
166 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
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.

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