

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 594

INTRODUCER: Senator Hays

SUBJECT: Statutes of Limitations

DATE: March 8, 2011

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Boland  | Maclure        | JU        | <b>Pre-meeting</b> |
| 2. |         |                | GO        |                    |
| 3. |         |                | CA        |                    |
| 4. |         |                |           |                    |
| 5. |         |                |           |                    |
| 6. |         |                |           |                    |

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**I. Summary:**

A statute of limitations is a law that bars legal claims after a specified period of time, usually based on when the injury occurred or was discovered. Currently, claims against the state or its subdivisions for a negligent or wrongful act are subject to a 4-year statute of limitations. However, there is an exception for medical malpractice claims against the state or its subdivisions, which are subject to a 2-year limitations period. The bill adds “wrongful death” to the list of exceptions governed by the 2-year statute of limitations. Thus, the bill reduces the statute of limitations for wrongful death actions against the state from 4 years to 2 years.

This bill substantially amends s. 768.28, Florida Statutes.

**II. Present Situation:**

**Wrongful Death Actions**

A wrongful death action is a lawsuit brought on behalf of a decedent’s survivors for damages resulting from a tortious injury that caused the decedent’s death.<sup>1</sup> The “Florida Wrongful Death Act” is codified in ss. 768.16-768.26, F.S. The Florida Wrongful Death Act provides that when the death of a person is caused by the wrongful act, negligence, default, or breach of contract of any person, the person who would have been liable for injury, if death had not ensued, is still liable for the damages resulting from the tortious conduct.<sup>2</sup> Furthermore, s. 768.20, F.S., provides that the personal representative of the decedent shall bring the wrongful death action

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<sup>1</sup> Black’s Law Dictionary (9th ed. 2009).

<sup>2</sup> Section 768.19, F.S.

and seek recovery on behalf of the survivors and the decedent's estate. The following damages are recoverable under the Florida Wrongful Death Act:

- Payer of Medical and funeral expenses may recover those expenses;
- Surviving spouse, minor children (defined as under 25 years of age<sup>3</sup>), and all children if there is no surviving spouse, hereafter "survivors", may recover lost value of support and services from date of injury until resulting death;
- Survivors may recover lost value of future support and services;
- Survivors may recover for loss of companionship and mental pain and suffering;
- Parents of deceased minors may recover for mental pain and suffering from the date of injury; and
- Decedent's estate may recover lost earnings from date of injury to the date of death.<sup>4</sup>

### Statutes of Limitations

A statute of limitations is a law that bars legal claims after a specified period of time, usually based on when the injury occurred or was discovered.<sup>5</sup> These laws are designed to create equity and have a conclusive effect by preventing surprises and disallowing claims that have been allowed to slumber until evidence, memories, and availability of witnesses have eroded.<sup>6</sup> The theory behind a statute of limitations is that, even if one has a just claim, it is unjust not to put the adversary on notice that he/she must defend that claim within the period of limitation.<sup>7</sup>

Section 786.28, F.S., provides for tort actions against the state and its subdivisions. Section 768.28(14), F.S., creates special limitation periods when the state or one of its subdivisions is the defendant, notably:

Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4),<sup>8</sup> and an action for damages arising from medical malpractice must be commenced within the limitations for such an action in s. 95.11(4).

Section 95.11, F.S., sets forth the time limitations for commencing civil actions in Florida. Specifically, s. 95.11(4)(d), F.S., provides that an action for wrongful death must be commenced within 2 years of the death from which the cause of action accrues.

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<sup>3</sup> Section 768.18, F.S.

<sup>4</sup> Section 768.21, F.S.

<sup>5</sup> Black's Law Dictionary (9th ed. 2009).

<sup>6</sup> *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49 (1944).

<sup>7</sup> *Id.* at 349.

<sup>8</sup> Section 768.31 (4), F.S., provides that where there is a judgment for wrongful death against a tortfeasor seeking contribution, any separate action by her or him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

In *Beard v. Hambrick*, 396 So. 2d 708 (Fla. 1981), the Florida Supreme Court held that the 4-year statute of limitations provided in s. 768.28, F.S., is applicable to political subdivisions of the state rather than the 2-year statute of limitations for wrongful death actions provided in s. 95.11(4), F.S. The Court based its holding on a determination that a sheriff's office was an integral part of a "county" as defined in the Florida Constitution and therefore fell within the definition of a "political subdivision" of the state.<sup>9</sup> The Court found that the Legislature intended there to be one limitations period for all actions brought under s. 768.28, F.S.<sup>10</sup> Therefore, there is currently a 4-year statute of limitations for filing a wrongful death action against the state and its political subdivisions, and there is a 2-year statute of limitations for filing a wrongful death action against anyone other than the state and its political subdivisions.

### III. Effect of Proposed Changes:

This bill shortens the statute of limitations for wrongful death actions against the state from 4 years to 2 years. Whereas the Court in *Beard v. Hambrick* held that the 4-year statute of limitations was applicable to wrongful death actions against the state and its subdivisions, this bill would legislatively override that decision and offer only the 2-year statute of limitations, provided for in s. 95.11(4), F.S., in which to file a wrongful death action against the state and its subdivisions.<sup>11</sup> Potentially, shortening the statute of limitations will bar some claims against the state based on the fact that claims filed after the 2-year limitation period will be untimely and dismissed on those grounds.

The bill provides an effective date of July 1, 2011.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

This bill does not specify whether the newly created 2-year statute of limitations will apply only to claims that accrue on or after the effective date, or whether it will apply to claims which have already accrued. Generally, the court will construe a statute to be prospective in nature unless the Legislature specifically commands its retroactive

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<sup>9</sup> *Hambrick*, 396 So. 2d at 711-12.

<sup>10</sup> *Id.* at 712.

<sup>11</sup> *Id.*

application.<sup>12</sup> That being said, this bill does have the potential to be applied to causes of action that have already accrued but are not yet filed. In this way, the bill would not be applied to currently pending claims; however, it might be applied to causes of action that have already accrued but are not yet pending (i.e., the death has occurred but no action has been filed).

Generally, only procedural or remedial statutes may be applied retroactively, and if the Legislature is silent on the issue of retroactivity, there is a presumption against the retroactive application of a law that affects substantive rights.<sup>13</sup> Substantive laws are those that impose new obligations or duties, or impair or destroy existing rights; they are laws that exist for their own sake and not in regard to another law (i.e., a law creating a crime, but not a law establishing the methods of punishment of a crime).<sup>14</sup> In order to be a constitutional retroactive application of law, the bill must not impair vested rights, create new obligations, or impose new penalties.<sup>15</sup> If the bill were applied to causes of action which have already accrued, then the bill might raise some constitutional concerns about retroactively impairing an individual's existing right. For example, under current law, if the death occurred 3 years ago, the estate would have a year remaining in which to file a lawsuit. If the bill were applied retroactively, it would close off the period for filing the lawsuit. In other scenarios, retroactive application might significantly reduce a prospective plaintiff's time to prepare for the filing of a lawsuit. To the extent that affecting plaintiffs in this manner constitutes an impairment of an existing or vested right, the bill may raise constitutional concerns, and a court may declare that it can only be applied prospectively.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

An estate will have a shorter period of time in which to commence a lawsuit on behalf of the survivors of a person whose death is caused by the wrongful act of the state or one of its subdivisions.

### C. Government Sector Impact:

To the extent that a shorter period of time in which to institute litigation against the state or its subdivisions results in fewer wrongful death lawsuits being filed, the state and its subdivisions may potentially benefit fiscally from having fewer judgments entered against them.

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<sup>12</sup> Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

<sup>13</sup> See *Arrow Air, Inc. v. Walsh*, 645 So. 2d 422, 425 (Fla. 1994).

<sup>14</sup> See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).

<sup>15</sup> *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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