

By the Committee on Judiciary; and Senator Hays

590-02272-11

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1 A bill to be entitled
2 An act relating to sovereign immunity; amending s.
3 768.28, F.S.; requiring that a claim in a wrongful
4 death case be presented to the Department of Financial
5 Services within 2 years after the claim accrues;
6 providing that failure of the Department of Financial
7 Services or the appropriate agency to make final
8 disposition of a claim for wrongful death within 90
9 days after it is filed is deemed to be a final denial
10 of the claim; tolling the statute of limitations for
11 the period of time taken by the Department of
12 Financial Services or other agency to deny a medical
13 malpractice or wrongful death claim; providing that
14 actions for wrongful death against the state or one of
15 its agencies or subdivisions must be brought within
16 the period applicable to actions brought against other
17 defendants; providing for the application of the act
18 to causes of action accruing on or after the effective
19 date; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Paragraphs (a) and (d) of subsection (6) and
24 subsection (14) of section 768.28, Florida Statutes, are amended
25 to read:

26 768.28 Waiver of sovereign immunity in tort actions;
27 recovery limits; limitation on attorney fees; statute of
28 limitations; exclusions; indemnification; risk management
29 programs.—

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30 (6) (a) An action may not be instituted on a claim against
31 the state or one of its agencies or subdivisions unless the
32 claimant presents the claim in writing to the appropriate
33 agency, and also, except as to any claim against a municipality
34 or the Florida Space Authority, presents such claim in writing
35 to the Department of Financial Services, within 3 years after
36 such claim accrues and the Department of Financial Services or
37 the appropriate agency denies the claim in writing; except that,
38 if:

39 1. Such claim is for contribution pursuant to s. 768.31, it
40 must be so presented within 6 months after the judgment against
41 the tortfeasor seeking contribution has become final by lapse of
42 time for appeal or after appellate review or, if there is no
43 such judgment, within 6 months after the tortfeasor seeking
44 contribution has either discharged the common liability by
45 payment or agreed, while the action is pending against her or
46 him, to discharge the common liability; or

47 2. Such action is for wrongful death, the claimant must
48 present the claim in writing to the Department of Financial
49 Services within 2 years after the claim accrues.

50 (d) For purposes of this section, complete, accurate, and
51 timely compliance with the requirements of paragraph (c) shall
52 occur prior to settlement payment, close of discovery or
53 commencement of trial, whichever is sooner; provided the ability
54 to plead setoff is not precluded by the delay. This setoff shall
55 apply only against that part of the settlement or judgment
56 payable to the claimant, minus claimant's reasonable attorney's
57 fees and costs. Incomplete or inaccurate disclosure of unpaid
58 adjudicated claims due the state, its agency, officer, or

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59 subdivision, may be excused by the court upon a showing by the
60 preponderance of the evidence of the claimant's lack of
61 knowledge of an adjudicated claim and reasonable inquiry by, or
62 on behalf of, the claimant to obtain the information from public
63 records. Unless the appropriate agency had actual notice of the
64 information required to be disclosed by paragraph (c) in time to
65 assert a setoff, an unexcused failure to disclose shall, upon
66 hearing and order of court, cause the claimant to be liable for
67 double the original undisclosed judgment and, upon further
68 motion, the court shall enter judgment for the agency in that
69 amount. Except as provided otherwise in this subsection, the
70 failure of the Department of Financial Services or the
71 appropriate agency to make final disposition of a claim within 6
72 months after it is filed shall be deemed a final denial of the
73 claim for purposes of this section. For purposes of this
74 subsection, in medical malpractice actions and in wrongful death
75 actions, the failure of the Department of Financial Services or
76 the appropriate agency to make final disposition of a claim
77 within 90 days after it is filed shall be deemed a final denial
78 of the claim. The statute of limitations for medical malpractice
79 actions and wrongful death actions is tolled for the period of
80 time taken by the Department of Financial Services or the
81 appropriate agency to deny the claim. The provisions of this
82 subsection do not apply to such claims as may be asserted by
83 counterclaim pursuant to s. 768.14.

84 (14) Every claim against the state or one of its agencies
85 or subdivisions for damages for a negligent or wrongful act or
86 omission pursuant to this section shall be forever barred unless
87 the civil action is commenced by filing a complaint in the court

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88 of appropriate jurisdiction within 4 years after such claim
89 accrues; except that an action for contribution must be
90 commenced within the limitations provided in s. 768.31(4), and
91 an action for damages arising from medical malpractice or
92 wrongful death must be commenced within the limitations for such
93 actions ~~an action~~ in s. 95.11(4).

94 Section 2. This act shall take effect July 1, 2011, and
95 applies to causes of action accruing on or after that date.