

By Senator Diaz

36-00278B-21

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1 A bill to be entitled
2 An act relating to sovereign immunity; amending s.
3 768.28, F.S.; increasing the statutory limits on
4 liability for tort claims against the state and its
5 agencies and subdivisions; specifying that the
6 limitations in effect on the date a final judgment is
7 entered apply to that claim; requiring that the
8 limitations on tort liability be adjusted every year
9 after a specified date; revising sovereign immunity
10 applicability relating to certain hospitals and
11 employees and agents of such hospitals; conforming
12 provisions to changes made by the act; amending s.
13 766.111, F.S.; conforming provisions to changes made
14 by the act; providing an effective date.

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

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18 Section 1. Subsection (5), paragraph (b) of subsection (9),
19 and paragraph (f) of subsection (10) of section 768.28, Florida
20 Statutes, are amended, and subsection (21) is added to that
21 section, 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

36-00278B-21

20211678__

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 \$500,000 ~~\$200,000~~ or any
33 claim or judgment, or portions thereof, which, when totaled with
34 all other claims or judgments paid by the state or its agencies
35 or subdivisions arising out of the same incident or occurrence,
36 exceeds the sum of \$1 million ~~\$300,000~~. However, a judgment or
37 judgments may be claimed and rendered in excess of these amounts
38 and may be settled and paid pursuant to this act up to \$500,000
39 ~~\$200,000~~ or \$1 million ~~\$300,000~~, as the case may be; and that
40 portion of the judgment that exceeds these amounts may be
41 reported to the Legislature, but may be paid in part or in whole
42 only by further act of the Legislature.

43 (b) Notwithstanding the limited waiver of sovereign
44 immunity provided herein, the state or an agency or subdivision
45 thereof may agree, within the limits of insurance coverage
46 provided, to settle a claim made or a judgment rendered against
47 it without further action by the Legislature, but the state or
48 agency or subdivision thereof shall not be deemed to have waived
49 any defense of sovereign immunity or to have increased the
50 limits of its liability as a result of its obtaining insurance
51 coverage for tortious acts in excess of the \$500,000 ~~\$200,000~~ or
52 \$1 million ~~\$300,000~~ waiver provided above.

53 (c) The limitations of liability set forth in this
54 subsection shall apply to the state and its agencies and
55 subdivisions whether or not the state or its agencies or
56 subdivisions possessed sovereign immunity before July 1, 1974.

57 (d) When determining liability limits for a claim, the
58 limitations of liability in effect on the date a final judgment

36-00278B-21

20211678__

59 is entered shall apply to the claim.

60 (e) Beginning July 1, 2022, and every July 1 thereafter,
61 the limitations of liability in this subsection must be adjusted
62 to reflect changes in the Consumer Price Index for the Southeast
63 or a successor index as calculated by the United States
64 Department of Labor.

65 (9)

66 (b) As used in this subsection, the term:

67 1. "Employee" includes any volunteer firefighter.

68 2. "Officer, employee, or agent" includes, but is not
69 limited to, any health care provider when providing services
70 pursuant to s. 766.1115; ~~any nonprofit independent college or~~
71 ~~university located and chartered in this state which owns or~~
72 ~~operates an accredited medical school, and its employees or~~
73 ~~agents, when providing patient services pursuant to paragraph~~
74 ~~(10)(f);~~ and any public defender or her or his employee or
75 agent, including, among others, an assistant public defender and
76 an investigator.

77 (10)

78 ~~(f) For purposes of this section, any nonprofit independent~~
79 ~~college or university located and chartered in this state which~~
80 ~~owns or operates an accredited medical school, or any of its~~
81 ~~employees or agents, and which has agreed in an affiliation~~
82 ~~agreement or other contract to provide, or permit its employees~~
83 ~~or agents to provide, patient services as agents of a teaching~~
84 ~~hospital, is considered an agent of the teaching hospital while~~
85 ~~acting within the scope of and pursuant to guidelines~~
86 ~~established in the affiliation agreement or other contract. To~~
87 ~~the extent allowed by law, the contract must provide for the~~

36-00278B-21

20211678__

88 ~~indemnification of the teaching hospital, up to the limits set~~
89 ~~out in this chapter, by the agent for any liability incurred~~
90 ~~which was caused by the negligence of the college or university~~
91 ~~or its employees or agents. The contract must also provide that~~
92 ~~those limited portions of the college, university, or medical~~
93 ~~school which are directly providing services pursuant to the~~
94 ~~contract and which are considered an agent of the teaching~~
95 ~~hospital for purposes of this section are deemed to be acting on~~
96 ~~behalf of a public agency as defined in s. 119.011(2).~~

97 ~~1. For purposes of this paragraph, the term:~~

98 ~~a. "Employee or agent" means an officer, employee, agent,~~
99 ~~or servant of a nonprofit independent college or university~~
100 ~~located and chartered in this state which owns or operates an~~
101 ~~accredited medical school, including, but not limited to, the~~
102 ~~faculty of the medical school, any health care practitioner or~~
103 ~~licensee as defined in s. 456.001 for which the college or~~
104 ~~university is vicariously liable, and the staff or~~
105 ~~administrators of the medical school.~~

106 ~~b. "Patient services" mean:~~

107 ~~(I) Comprehensive health care services as defined in s.~~
108 ~~641.19, including any related administrative service, provided~~
109 ~~to patients in a teaching hospital;~~

110 ~~(II) Training and supervision of interns, residents, and~~
111 ~~fellows providing patient services in a teaching hospital; or~~
112 ~~(III) Training and supervision of medical students in a~~
113 ~~teaching hospital.~~

114 ~~e. "Teaching hospital" means a teaching hospital as defined~~
115 ~~in s. 408.07 which is owned or operated by the state, a county~~
116 ~~or municipality, a public health trust, a special taxing~~

36-00278B-21

20211678__

117 ~~district, a governmental entity having health care~~
118 ~~responsibilities, or a not-for-profit entity that operates such~~
119 ~~facility as an agent of the state, or a political subdivision of~~
120 ~~the state, under a lease or other contract.~~

121 ~~2. The teaching hospital or the medical school, or its~~
122 ~~employees or agents, must provide notice to each patient, or the~~
123 ~~patient's legal representative, that the college or university~~
124 ~~that owns or operates the medical school and the employees or~~
125 ~~agents of that college or university are acting as agents of the~~
126 ~~teaching hospital and that the exclusive remedy for injury or~~
127 ~~damage suffered as the result of any act or omission of the~~
128 ~~teaching hospital, the college or university that owns or~~
129 ~~operates the medical school, or the employees or agents of the~~
130 ~~college or university, while acting within the scope of duties~~
131 ~~pursuant to the affiliation agreement or other contract with a~~
132 ~~teaching hospital, is by commencement of an action pursuant to~~
133 ~~the provisions of this section. This notice requirement may be~~
134 ~~met by posting the notice in a place conspicuous to all persons.~~

135 ~~3. This paragraph does not designate any employee providing~~
136 ~~contracted patient services in a teaching hospital as an~~
137 ~~employee or agent of the state for purposes of chapter 440.~~

138 (21) Unless otherwise provided in this section, the
139 limitations in this section do not apply to a hospital licensed
140 under chapter 395, which is owned or operated by the state, a
141 county or municipality, a public health trust, a special taxing
142 district, a governmental entity having health care
143 responsibilities, or a not-for-profit entity that operates such
144 facility under a lease or other contract as an agent of the
145 state or a political subdivision of the state.

36-00278B-21

20211678__

146 Section 2. Paragraph (b) of subsection (12) of section
147 766.1115, Florida Statutes, is amended to read:

148 766.1115 Health care providers; creation of agency
149 relationship with governmental contractors.-

150 (12) APPLICABILITY.-This section applies to incidents
151 occurring on or after April 17, 1992. This section does not:

152 ~~(b) Apply to any affiliation agreement or other contract~~
153 ~~that is subject to s. 768.28(10)(f).~~

154 Section 3. This act shall take effect July 1, 2021.