

By Senator Powell

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1 A bill to be entitled
2 An act relating to unlawful acts of officers,
3 employees, or agents of the state; creating s. 760.52,
4 F.S.; providing for a civil action against any
5 officer, employee, or agent of the state or its
6 political subdivisions for the deprivation of rights
7 secured under the United States Constitution or State
8 Constitution; providing that certain claims may not be
9 used as a defense against liability; providing an
10 affirmative defense to liability if certain conditions
11 are met; specifying circumstances under which an
12 officer, employee, or agent is immune from liability;
13 providing for the award of attorney fees and costs to
14 a prevailing plaintiff; prohibiting a plaintiff from
15 recovering additional damages if he or she has
16 recovered damages pursuant to a civil action brought
17 by the Attorney General; specifying applicability of
18 laws governing the defense of civil actions, and the
19 payment of judgments or settlements, against specified
20 officers, employees, and agents; requiring a law
21 enforcement officer to intervene when another officer
22 is using or attempting to use excessive force under
23 certain circumstances; providing criminal penalties;
24 requiring disciplinary action against a law
25 enforcement officer who knowingly fails to render aid
26 to a victim of excessive force or who fails to report
27 a use of excessive force by another officer; requiring
28 a law enforcement officer to report the commission of
29 a criminal offense by another officer while on duty;

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30 providing criminal penalties; amending ss. 111.07 and
31 111.071, F.S.; conforming provisions to changes made
32 by the act; providing an effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

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36 Section 1. Section 760.52, Florida Statutes, is created to
37 read:

38 760.52 Civil action for deprivation of constitutional
39 rights.-

40 (1) Any officer, employee, or agent of the state or any of
41 its political subdivisions who, acting under color of law,
42 subjects, or causes to be subjected, any individual within the
43 jurisdiction thereof to the deprivation of any rights,
44 privileges, or immunities secured by the United States
45 Constitution or the State Constitution is liable to the party
46 injured for legal and equitable relief or any other proper
47 redress. An individual who claims to have suffered a deprivation
48 of any rights, privileges, or immunities secured by the United
49 States Constitution or the State Constitution may file an action
50 under this section in circuit court.

51 (2) Notwithstanding any other law, it is not a defense
52 against, nor grounds to establish immunity from liability for,
53 an action brought pursuant to this section that:

54 (a) The rights, privileges, or immunities secured by the
55 United States Constitution or the State Constitution were not
56 clearly established at the time that the officer, employee, or
57 agent deprived the plaintiff of any such right, privilege, or
58 immunity.

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59 (b) The officer, employee, or agent was acting without bad
60 faith, malicious purpose, or wanton and willful disregard of
61 human rights, safety, or property or believed that his or her
62 conduct was lawful at the time it was committed.

63 (3) It is an affirmative defense to liability under this
64 section if a jury determines that the officer, employee, or
65 agent was acting in good faith and believed his or her conduct
66 was lawful.

67 (4) An officer, employee, or agent is immune from liability
68 under this section if he or she can establish, by clear and
69 convincing evidence, that his or her actions did not constitute
70 a deprivation of constitutional rights as established or
71 construed by binding legal precedent.

72 (5) In any action successfully brought under this section,
73 the court shall award reasonable attorney fees and costs to the
74 prevailing plaintiff. In any action brought under this section
75 where injunctive relief is sought, the court shall deem the
76 plaintiff to have prevailed if the plaintiff's action was a
77 substantial factor in obtaining the results sought by the
78 litigation.

79 (6) If a plaintiff has recovered damages through a civil
80 action brought by the Attorney General pursuant to s. 760.51, he
81 or she may not seek additional damages for the same violation of
82 constitutional rights under this section.

83 (7) Except as otherwise provided, ss. 111.065-111.071 apply
84 to any claim brought under this section.

85 Section 2. Law enforcement officers; duties concerning
86 excessive force and offenses by other officers.-

87 (1) (a) A law enforcement officer who witnesses another law

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88 enforcement officer, in the performance of his or her official
89 duties, using or attempting to use excessive force against
90 another person shall intervene, when such intervention is
91 objectively reasonable and possible, to end the use or attempted
92 use of excessive force or to prevent the further use or
93 attempted use of excessive force.

94 (b) A law enforcement officer who knowingly fails to
95 intervene in the use or attempted use of nondeadly excessive
96 force commits a misdemeanor of the second degree, punishable as
97 provided in s. 775.082 or s. 775.083, Florida Statutes.

98 (c)1. Except as provided in subparagraph 2., a law
99 enforcement officer who knowingly fails to intervene in the use
100 or attempted use of deadly excessive force commits a felony of
101 the third degree, punishable as provided in s. 775.082, s.
102 775.083, or s. 775.084, Florida Statutes.

103 2. A law enforcement officer who knowingly fails to
104 intervene in the use or attempted use of deadly excessive force
105 that leads to death or permanent and significant physical
106 impairment of the victim commits a felony of the second degree,
107 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
108 Florida Statutes.

109 (2) A law enforcement officer who fails to render aid, as
110 circumstances objectively permit, to any person injured as the
111 result of a use of excessive force prohibited under subsection
112 (1) or to report in the manner required by department policy
113 such use of excessive force shall be subject to disciplinary
114 action, including dismissal, demotion, suspension, or transfer.

115 (3) A law enforcement officer who has actual knowledge of
116 the commission of a criminal offense by another law enforcement

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117 officer while such officer was on duty and who fails to report
118 such offense commits a misdemeanor of the second degree,
119 punishable as provided in s. 775.082 or s. 775.083, Florida
120 Statutes.

121 Section 3. Section 111.07, Florida Statutes, is amended to
122 read:

123 111.07 Defense of civil actions against public officers,
124 employees, or agents.—Any agency of the state, or any county,
125 municipality, or political subdivision of the state, is
126 authorized to provide an attorney to defend any civil action
127 arising from a complaint for damages or injury suffered as a
128 result of any act or omission of action of any of its officers,
129 employees, or agents for an act or omission arising out of and
130 in the scope of his or her employment or function, unless, in
131 the case of a tort action, the officer, employee, or agent acted
132 in bad faith, with malicious purpose, or in a manner exhibiting
133 wanton and willful disregard of human rights, safety, or
134 property. Defense of such civil action includes, but is not
135 limited to, any civil rights lawsuit, including actions brought
136 pursuant to s. 760.52, seeking relief personally against the
137 officer, employee, or agent for an act or omission under color
138 of state law, custom, or usage, wherein it is alleged that such
139 officer, employee, or agent has deprived another person of
140 rights secured under the United States ~~Federal~~ Constitution,
141 federal ~~or~~ laws, or the State Constitution. Legal representation
142 of an officer, employee, or agent of a state agency may be
143 provided by the Department of Legal Affairs. However, any
144 attorney ~~attorney's~~ fees paid from public funds for any officer,
145 employee, or agent who is found to be personally liable by

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146 virtue of acting outside the scope of his or her employment, or
147 was acting in bad faith, with malicious purpose, or in a manner
148 exhibiting wanton and willful disregard of human rights, safety,
149 or property, may be recovered by the state, county,
150 municipality, or political subdivision in a civil action against
151 such officer, employee, or agent. If any agency of the state or
152 any county, municipality, or political subdivision of the state
153 is authorized pursuant to this section to provide an attorney to
154 defend a civil action arising from a complaint for damages or
155 injury suffered as a result of any act or omission of action of
156 any of its officers, employees, or agents and fails to provide
157 such attorney, such agency, county, municipality, or political
158 subdivision must ~~shall~~ reimburse any such defendant who prevails
159 in the action for court costs and reasonable attorney ~~attorney's~~
160 fees.

161 Section 4. Subsection (1) of section 111.071, Florida
162 Statutes, is amended to read:

163 111.071 Payment of judgments or settlements against certain
164 public officers or employees.—

165 (1) Any county, municipality, political subdivision, or
166 agency of the state which has been excluded from participation
167 in the Insurance Risk Management Trust Fund is authorized to
168 expend available funds to pay:

169 (a) Any final judgment, including damages, costs, and
170 attorney ~~attorney's~~ fees, arising from a complaint for damages
171 or injury suffered as a result of any act or omission of action
172 of any officer, employee, or agent in a civil or civil rights
173 lawsuit described in s. 111.07, including any action arising
174 under s. 760.52. If the civil action arises under s. 768.28 as a

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175 tort claim, the limitations and provisions of s. 768.28
176 governing payment shall apply. If the action is a civil rights
177 action arising under 42 U.S.C. s. 1983, or similar federal
178 statutes, payments for the full amount of the judgment may be
179 made unless the officer, employee, or agent has been determined
180 in the final judgment to have caused the harm intentionally.

181 (b) Any compromise or settlement of any claim or litigation
182 as described in paragraph (a), subject to the limitations set
183 forth in that paragraph.

184 (c) Any reimbursement required under s. 111.07 for court
185 costs and reasonable attorney ~~attorney's~~ fees when the county,
186 municipality, political subdivision, or agency of the state has
187 failed to provide an attorney and the defendant prevails.

188 Section 5. This act shall take effect October 1, 2021.