

1 A bill to be entitled
2 An act relating to the deprivation of rights by public
3 officers and employees; creating s. 760.52, F.S.;
4 providing for a civil action against an officer,
5 employee, or agent acting under color of law of this
6 state or its political subdivisions for the
7 deprivation of rights secured under the United States
8 and State Constitutions; providing that certain claims
9 may not be used as a defense against liability;
10 providing an affirmative defense to liability if
11 certain conditions are met; specifying circumstances
12 under which an officer, employee, or agent is immune
13 from liability; providing for the award of attorney
14 fees and costs to a prevailing plaintiff; prohibiting
15 a plaintiff from recovering additional damages if he
16 or she has recovered damages pursuant to a civil
17 action brought by the Attorney General; specifying
18 applicability of laws governing the defense of civil
19 actions, and the payment of judgments or settlements,
20 against specified officers, employees, and agents;
21 amending ss. 111.07 and 111.071, F.S.; conforming
22 provisions to changes made by the act; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

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

760.52 Civil action for deprivation of constitutional rights.-

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

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

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

(b) The officer, employee, or agent was acting without bad faith, malicious purpose, or wanton and willful disregard of

51 human rights, safety, or property, or believed that his or her
52 conduct was lawful at the time it was committed.

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

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

62 (5) In any action successfully brought under this section,
63 the court shall award reasonable attorney fees and costs to the
64 prevailing plaintiff. In any action brought under this section
65 where injunctive relief is sought, the court shall deem the
66 plaintiff to have prevailed if the plaintiff's action was a
67 substantial factor in obtaining the results sought by the
68 litigation.

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

73 (7) Except as otherwise provided, the provisions of ss.
74 111.065-111.071 apply to any claim brought under this section.

75 Section 2. Section 111.07, Florida Statutes, is amended to

76 read:

77 111.07 Defense of civil actions against public officers,
78 employees, or agents.—Any agency of the state, or any county,
79 municipality, or political subdivision of the state, is
80 authorized to provide an attorney to defend any civil action
81 arising from a complaint for damages or injury suffered as a
82 result of any act or omission of action of any of its officers,
83 employees, or agents for an act or omission arising out of and
84 in the scope of his or her employment or function, unless, in
85 the case of a tort action, the officer, employee, or agent acted
86 in bad faith, with malicious purpose, or in a manner exhibiting
87 wanton and willful disregard of human rights, safety, or
88 property. Defense of such civil action includes, but is not
89 limited to, any civil rights lawsuit, including actions brought
90 pursuant to s. 760.52, seeking relief personally against the
91 officer, employee, or agent for an act or omission under color
92 of state law, custom, or usage, wherein it is alleged that such
93 officer, employee, or agent has deprived another person of
94 rights secured under the United States ~~Federal~~ Constitution,
95 federal ~~or~~ laws, or the State Constitution. Legal representation
96 of an officer, employee, or agent of a state agency may be
97 provided by the Department of Legal Affairs. However, any
98 attorney ~~attorney's~~ fees paid from public funds for any officer,
99 employee, or agent who is found to be personally liable by
100 virtue of acting outside the scope of his or her employment, or

101 was acting in bad faith, with malicious purpose, or in a manner
 102 exhibiting wanton and willful disregard of human rights, safety,
 103 or property, may be recovered by the state, county,
 104 municipality, or political subdivision in a civil action against
 105 such officer, employee, or agent. If any agency of the state or
 106 any county, municipality, or political subdivision of the state
 107 is authorized pursuant to this section to provide an attorney to
 108 defend a civil action arising from a complaint for damages or
 109 injury suffered as a result of any act or omission of action of
 110 any of its officers, employees, or agents and fails to provide
 111 such attorney, such agency, county, municipality, or political
 112 subdivision must ~~shall~~ reimburse any such defendant who prevails
 113 in the action for court costs and reasonable attorney ~~attorney's~~
 114 fees.

115 Section 3. Subsection (1) of section 111.071, Florida
 116 Statutes, is amended to read:

117 111.071 Payment of judgments or settlements against
 118 certain public officers or employees.—

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

123 (a) Any final judgment, including damages, costs, and
 124 attorney ~~attorney's~~ fees, arising from a complaint for damages
 125 or injury suffered as a result of any act or omission of action

126 of any officer, employee, or agent in a civil or civil rights
127 lawsuit described in s. 111.07, including any action rising
128 under s. 760.52. If the civil action arises under s. 768.28 as a
129 tort claim, the limitations and provisions of s. 768.28
130 governing payment shall apply. If the action is a civil rights
131 action arising under 42 U.S.C. s. 1983, or similar federal
132 statutes, payments for the full amount of the judgment may be
133 made unless the officer, employee, or agent has been determined
134 in the final judgment to have caused the harm intentionally.

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

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

142 Section 4. This act shall take effect October 1, 2021.