

By Senator Jones

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1 A bill to be entitled
2 An act relating to the deprivation of constitutional
3 rights; creating s. 760.52, F.S.; providing for a
4 civil action against an officer, employee, or agent
5 acting under color of law of this state or its
6 political subdivisions for the deprivation of rights
7 secured under the United States and State
8 Constitutions; providing that certain claims may not
9 be 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; amending ss. 111.07
21 and 111.071, F.S.; conforming provisions to changes
22 made by the act; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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

28 760.52 Civil action for deprivation of constitutional
29 rights.-

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

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

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

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

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

56 (4) An officer, employee, or agent is immune from liability
57 under this section if he or she can establish, by clear and
58 convincing evidence, that his or her actions did not constitute

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59 a deprivation of constitutional rights as established or
60 construed by binding legal precedent.

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

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

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

74 Section 2. Section 111.07, Florida Statutes, is amended to
75 read:

76 111.07 Defense of civil actions against public officers,
77 employees, or agents.—Any agency of the state, or any county,
78 municipality, or political subdivision of the state, is
79 authorized to provide an attorney to defend any civil action
80 arising from a complaint for damages or injury suffered as a
81 result of any act or omission of action of any of its officers,
82 employees, or agents for an act or omission arising out of and
83 in the scope of his or her employment or function, unless, in
84 the case of a tort action, the officer, employee, or agent acted
85 in bad faith, with malicious purpose, or in a manner exhibiting
86 wanton and willful disregard of human rights, safety, or
87 property. Defense of such civil action includes, but is not

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88 limited to, any civil rights lawsuit, including actions brought
89 pursuant to s. 760.52, seeking relief personally against the
90 officer, employee, or agent for an act or omission under color
91 of state law, custom, or usage, wherein it is alleged that such
92 officer, employee, or agent has deprived another person of
93 rights secured under the United States ~~Federal~~ Constitution,
94 federal ~~or~~ laws, or the State Constitution. Legal representation
95 of an officer, employee, or agent of a state agency may be
96 provided by the Department of Legal Affairs. However, any
97 attorney ~~attorney's~~ fees paid from public funds for any officer,
98 employee, or agent who is found to be personally liable by
99 virtue of acting outside the scope of his or her employment, or
100 was acting in bad faith, with malicious purpose, or in a manner
101 exhibiting wanton and willful disregard of human rights, safety,
102 or property, may be recovered by the state, county,
103 municipality, or political subdivision in a civil action against
104 such officer, employee, or agent. If any agency of the state or
105 any county, municipality, or political subdivision of the state
106 is authorized pursuant to this section to provide an attorney to
107 defend a civil action arising from a complaint for damages or
108 injury suffered as a result of any act or omission of action of
109 any of its officers, employees, or agents and fails to provide
110 such attorney, such agency, county, municipality, or political
111 subdivision must ~~shall~~ reimburse any such defendant who prevails
112 in the action for court costs and reasonable attorney ~~attorney's~~
113 fees.

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

116 111.071 Payment of judgments or settlements against certain

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117 public officers or employees.—

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

122 (a) Any final judgment, including damages, costs, and
123 attorney ~~attorney's~~ fees, arising from a complaint for damages
124 or injury suffered as a result of any act or omission of action
125 of any officer, employee, or agent in a civil or civil rights
126 lawsuit described in s. 111.07, including any action rising
127 under s. 760.52. If the civil action arises under s. 768.28 as a
128 tort claim, the limitations and provisions of s. 768.28
129 governing payment shall apply. If the action is a civil rights
130 action arising under 42 U.S.C. s. 1983, or similar federal
131 statutes, payments for the full amount of the judgment may be
132 made unless the officer, employee, or agent has been determined
133 in the final judgment to have caused the harm intentionally.

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

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

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