

By Senator Gruters

23-00780A-22

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1                                   A bill to be entitled  
2       An act relating to sovereign immunity; amending s.  
3       768.28, F.S.; revising the statutory limits on  
4       liability for tort claims against the state and its  
5       agencies and subdivisions; revising requirements for  
6       the state or an agency or a subdivision of the state  
7       to agree to settle a claim or judgment; prohibiting an  
8       insurance policy from conditioning the payment of  
9       benefits on the enactment of a claim bill; specifying  
10      that the limitations in effect on the date a final  
11      judgment is entered apply to that claim; requiring the  
12      Department of Financial Services to adjust the  
13      limitations on tort liability every year after a  
14      specified date; revising exceptions relating to  
15      instituting actions on claims against the state or one  
16      of its agencies and to the statute of limitations for  
17      such claims; reenacting ss. 45.061, 110.504, 111.071,  
18      163.01, 190.043, 213.015, 252.51, 252.89, 252.944,  
19      260.0125, 284.31, 284.38, 322.13, 337.19, 341.302,  
20      373.1395, 375.251, 381.0056, 393.075, 395.1055,  
21      403.706, 409.993, 455.221, 455.32, 456.009, 456.076,  
22      471.038, 472.006, 497.167, 513.118, 548.046, 556.106,  
23      589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355,  
24      768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33,  
25      1002.333, 1002.34, 1002.55, 1002.83, 1002.88, 1006.24,  
26      and 1006.261, F.S., to incorporate the amendments made  
27      to s. 768.28, F.S., in references thereto; providing  
28      an effective date.  
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30 Be It Enacted by the Legislature of the State of Florida:

31  
32 Section 1. Subsection (5), paragraph (a) of subsection (6),  
33 and subsection (14) of section 768.28, Florida Statutes, are  
34 amended to read:

35 768.28 Waiver of sovereign immunity in tort actions;  
36 recovery limits; civil liability for damages caused during a  
37 riot; limitation on attorney fees; statute of limitations;  
38 exclusions; indemnification; risk management programs.—

39 (5) (a) The state and its agencies and subdivisions shall be  
40 liable for tort claims in the same manner and to the same extent  
41 as a private individual under like circumstances, but liability  
42 shall not include punitive damages or interest for the period  
43 before judgment. Neither the state nor its agencies or  
44 subdivisions shall be liable to pay a claim or a judgment by any  
45 one person which exceeds the sum of \$1 million ~~\$200,000 or any~~  
46 ~~claim or judgment, or portions thereof, which, when totaled with~~  
47 ~~all other claims or judgments paid by the state or its agencies~~  
48 ~~or subdivisions arising out of the same incident or occurrence,~~  
49 ~~exceeds the sum of \$300,000. However, a judgment or judgments~~  
50 may be claimed and rendered in excess of this amount ~~these~~  
51 ~~amounts and may be settled~~ and paid pursuant to this act up to  
52 \$1 million per person, \$200,000 or \$300,000, as the case may be,  
53 and that portion of the judgment that exceeds this amount ~~these~~  
54 ~~amounts~~ may be reported to the Legislature, and ~~but~~ may be paid  
55 in part or in whole ~~only~~ by further act of the Legislature.

56 (b) Notwithstanding the limited waiver of sovereign  
57 immunity provided in paragraph (a) herein, the state or an  
58 agency or subdivision thereof may agree, ~~within the limits of~~

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59 ~~insurance coverage provided,~~ to settle a claim made or a  
60 judgment rendered against it in excess of the waiver provided in  
61 paragraph (a) without further action by the Legislature, but the  
62 state or agency or subdivision thereof shall not be deemed to  
63 have waived any defense of sovereign immunity or to have  
64 increased the limits of its liability as a result of its  
65 obtaining insurance coverage for tortious acts in excess of the  
66 ~~\$200,000 or \$300,000~~ waiver provided in paragraph (a) above. An  
67 insurance policy may not condition the payment of benefits, in  
68 whole or in part, on the enactment of a claim bill.

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

73 (d) When determining liability limits for a claim, the  
74 limitations of liability in effect on the date a final judgment  
75 is entered shall apply to the claim.

76 (e) Beginning July 1, 2023, and every July 1 thereafter,  
77 the Department of Financial Services shall adjust the  
78 limitations of liability in this subsection to reflect changes  
79 in the Consumer Price Index for the Southeast or a successor  
80 index as calculated by the United States Department of Labor.

81 (f) ~~(b)~~ A municipality has a duty to allow the municipal law  
82 enforcement agency to respond appropriately to protect persons  
83 and property during a riot or an unlawful assembly based on the  
84 availability of adequate equipment to its municipal law  
85 enforcement officers and relevant state and federal laws. If the  
86 governing body of a municipality or a person authorized by the  
87 governing body of the municipality breaches that duty, the

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88 municipality is civilly liable for any damages, including  
89 damages arising from personal injury, wrongful death, or  
90 property damages proximately caused by the municipality's breach  
91 of duty. The sovereign immunity recovery limits in paragraph (a)  
92 do not apply to an action under this paragraph.

93 (6) (a) An action may not be instituted on a claim against  
94 the state or one of its agencies or subdivisions unless the  
95 claimant presents the claim in writing to the appropriate  
96 agency, and also, except as to any claim against a municipality,  
97 county, or the Florida Space Authority, presents such claim in  
98 writing to the Department of Financial Services, within 3 years  
99 after such claim accrues and the Department of Financial  
100 Services or the appropriate agency denies the claim in writing;  
101 except that, if:

102 1. Such claim is for contribution pursuant to s. 768.31, it  
103 must be so presented within 6 months after the judgment against  
104 the tortfeasor seeking contribution has become final by lapse of  
105 time for appeal or after appellate review or, if there is no  
106 such judgment, within 6 months after the tortfeasor seeking  
107 contribution has either discharged the common liability by  
108 payment or agreed, while the action is pending against her or  
109 him, to discharge the common liability; ~~or~~

110 2. Such action is for wrongful death, the claimant must  
111 present the claim in writing to the Department of Financial  
112 Services within 2 years after the claim accrues; or

113 3. Such action arises from a violation of s. 794.011  
114 involving a victim who was younger than the age of 16 at the  
115 time of the act, the claimant may present the claim in writing  
116 at any time pursuant to s. 95.11(9).

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117 (14) Every claim against the state or one of its agencies  
118 or subdivisions for damages for a negligent or wrongful act or  
119 omission pursuant to this section shall be forever barred unless  
120 the civil action is commenced by filing a complaint in the court  
121 of appropriate jurisdiction within 4 years after such claim  
122 accrues; except that:

123 (a) An action for contribution must be commenced within the  
124 limitations provided in s. 768.31(4); ~~and~~

125 (b) An action for damages arising from medical malpractice  
126 or wrongful death must be commenced within the limitations for  
127 such actions in s. 95.11(4); and

128 (c) An action arising from acts constituting a violation of  
129 s. 794.011 involving a victim who was younger than the age of 16  
130 at the time of the act may be commenced at any time pursuant to  
131 s. 95.11(9).

132 Section 2. Sections 45.061, 110.504, 111.071, 163.01,  
133 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31,  
134 284.38, 322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056,  
135 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009,  
136 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106,  
137 589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295,  
138 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34,  
139 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, Florida  
140 Statutes, are reenacted for the purpose of incorporating the  
141 amendments made by this act to s. 768.28, Florida Statutes, in  
142 references thereto.

143 Section 3. This act shall take effect July 1, 2022.