

By the Committees on Community Affairs; and Judiciary; and
Senator Gruters

578-02848-22

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

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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 are
40 ~~shall be~~ liable for tort claims in the same manner and to the
41 same extent as a private individual under like circumstances,
42 but liability does ~~shall~~ not include punitive damages or
43 interest for the period before judgment. ~~Neither~~ The state, ~~nor~~
44 its agencies, and its ~~or~~ subdivisions are not ~~shall be~~ liable to
45 pay a claim or a judgment by any one person which exceeds the
46 sum of \$1 million ~~\$200,000~~ or any claim or judgment, or portions
47 thereof, which, when totaled with all other claims or judgments
48 paid by the state or its agencies or subdivisions arising out of
49 the same incident or occurrence, exceeds the sum of \$3 million
50 ~~\$300,000~~. However, a judgment or judgments may be claimed and
51 rendered in excess of these amounts and may be settled and paid
52 pursuant to this section ~~act~~ up to \$1 million or \$3 million, as
53 applicable. The ~~\$200,000 or \$300,000, as the case may be; and~~
54 ~~that~~ portion of the judgment that exceeds these amounts may be
55 reported to the Legislature, but may be paid in part or in whole
56 only by further act of the Legislature.

57 (b) Notwithstanding the limited waiver of sovereign
58 immunity provided in paragraph (a), a ~~herein, the state or an~~

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

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

74 (d) Beginning January 1, 2023, and on January 1 every 10
75 years thereafter, the Department of Financial Services shall
76 adjust the limitations of liability in this subsection, rounded
77 to the nearest \$10,000, to reflect changes in the Consumer Price
78 Index for the Southeast or a successor index as calculated by
79 the United States Department of Labor. After each adjustment,
80 the department must publish the adjusted liability limitation
81 amounts on its website.

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

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

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

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

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

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

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117 at any time pursuant to s. 95.11(9).

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

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

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

129 (c) An action arising from acts constituting a violation of
130 s. 794.011 involving a victim who was younger than the age of 16
131 at the time of the act may be commenced at any time pursuant to
132 s. 95.11(9). This paragraph applies only to claims that would
133 not have been time barred on or before July 1, 2010, under s.
134 95.11(9).

135 Section 2. Sections 45.061, 110.504, 111.071, 163.01,
136 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31,
137 284.38, 322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056,
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141 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34,
142 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, Florida
143 Statutes, are reenacted for the purpose of incorporating the
144 amendments made by this act to s. 768.28, Florida Statutes, in
145 references thereto.

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Section 3. This act shall take effect October 1, 2022.