

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Gregory offered the following:

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3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Paragraphs (a) and (d) of subsection (6) and  
6 subsection (14) of section 768.28, Florida Statutes, are amended  
7 to read:

8 768.28 Waiver of sovereign immunity in tort actions;  
9 recovery limits; civil liability for damages caused during a  
10 riot; limitation on attorney fees; statute of limitations;  
11 exclusions; indemnification; risk management programs.—

12 (6) (a) An action may not be instituted on a claim against  
13 the state or one of its agencies or subdivisions unless the

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14 claimant presents the claim in writing to the appropriate  
15 agency, and also, except as to any claim against a municipality,  
16 county, or the Florida Space Authority, presents such claim in  
17 writing to the Department of Financial Services, within 18  
18 months ~~3 years~~ after such claim accrues and the Department of  
19 Financial Services or the appropriate agency denies the claim in  
20 writing; however ~~except that~~, if:

21 1. such claim is for contribution pursuant to s. 768.31,  
22 it must be so presented within 6 months after the judgment  
23 against the tortfeasor seeking contribution has become final by  
24 lapse of time for appeal or after appellate review or, if there  
25 is no such judgment, within 6 months after the tortfeasor  
26 seeking contribution has either discharged the common liability  
27 by payment or agreed, while the action is pending against her or  
28 him, to discharge the common liability; ~~or~~

29 ~~2. Such action is for wrongful death, the claimant must~~  
30 ~~present the claim in writing to the Department of Financial~~  
31 ~~Services within 2 years after the claim accrues.~~

32 (d) For purposes of this section, complete, accurate, and  
33 timely compliance with the requirements of paragraph (c) shall  
34 occur prior to settlement payment, close of discovery or  
35 commencement of trial, whichever is sooner; provided the ability  
36 to plead setoff is not precluded by the delay. This setoff shall  
37 apply only against that part of the settlement or judgment  
38 payable to the claimant, minus claimant's reasonable attorney's

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39 fees and costs. Incomplete or inaccurate disclosure of unpaid  
40 adjudicated claims due the state, its agency, officer, or  
41 subdivision, may be excused by the court upon a showing by the  
42 preponderance of the evidence of the claimant's lack of  
43 knowledge of an adjudicated claim and reasonable inquiry by, or  
44 on behalf of, the claimant to obtain the information from public  
45 records. Unless the appropriate agency had actual notice of the  
46 information required to be disclosed by paragraph (c) in time to  
47 assert a setoff, an unexcused failure to disclose shall, upon  
48 hearing and order of court, cause the claimant to be liable for  
49 double the original undisclosed judgment and, upon further  
50 motion, the court shall enter judgment for the agency in that  
51 amount. Except as provided otherwise in this subsection, the  
52 failure of the Department of Financial Services or the  
53 appropriate agency to make final disposition of a claim within 4  
54 ~~6~~ months after it is filed shall be deemed a final denial of the  
55 claim for purposes of this section. For purposes of this  
56 subsection, in medical malpractice actions and in wrongful death  
57 actions, the failure of the Department of Financial Services or  
58 the appropriate agency to make final disposition of a claim  
59 within 90 days after it is filed shall be deemed a final denial  
60 of the claim. The statute of limitations for medical malpractice  
61 actions and wrongful death actions is tolled for the period of  
62 time taken by the Department of Financial Services or the  
63 appropriate agency to deny the claim. The provisions of this

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64 subsection do not apply to such claims as may be asserted by  
65 counterclaim pursuant to s. 768.14.

66 (14) Every claim against the state or one of its agencies  
67 or subdivisions for damages for a negligent or wrongful act or  
68 omission pursuant to this section shall be forever barred unless  
69 the civil action is commenced by filing a complaint in the court  
70 of appropriate jurisdiction ~~within:~~

71 (a) Within 2 years for an action founded on negligence.

72 (b) Within the limitations provided in s. 768.31(4) for an  
73 action for contribution.

74 (c) Within the limitations provided in s. 95.11(4) for an  
75 action for damages arising from medical malpractice or wrongful  
76 death.

77 (d) Within 4 years for any other action not specified in  
78 this subsection 4 years after such claim accrues; except that an  
79 action for contribution must be commenced within the limitations  
80 provided in s. 768.31(4), and an action for damages arising from  
81 medical malpractice or wrongful death must be commenced within  
82 the limitations for such actions in s. 95.11(4).

83 Section 2. This act shall apply to causes of action  
84 accruing after the effective date of this act.

85 Section 3. This act shall take effect upon becoming a law.

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88 **T I T L E A M E N D M E N T**

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89 Remove everything before the enacting clause and insert:  
90 A bill to be entitled  
91 An act relating to timeframes for bringing certain  
92 actions; amending s. 768.28, F.S.; revising the  
93 timeframe within which a claimant must present certain  
94 claims against a governmental entity in writing to  
95 certain entities; revising the timeframe within which  
96 a complaint must be filed in order to bring certain  
97 claims against a governmental entity; providing  
98 applicability; providing an effective date.

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