

# FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

*This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.*

**BILL #:** [HB 301](#)

**TITLE:** Suits Against the Government

**SPONSOR(S):** McFarland

**COMPANION BILL:** [SB 1570](#) (DiCeglie)

**LINKED BILLS:** [SB 2](#) (Rodriguez)

**RELATED BILLS:** [SB 2](#) (Rodriguez)

## Committee References

[Civil Justice & Claims](#)

17 Y, 1 N



[Budget](#)

25 Y, 3 N



[Judiciary](#)

## SUMMARY

### Effect of the Bill:

HB 301 increases the existing caps on the recovery of awards against a governmental entity. For a claim that accrues between October 1, 2025, and September 30, 2030, the cap is increased to \$1,000,000 per person from \$200,000 and the cap for multiple claims or judgments arising out of the same incident is increased to \$3,000,000 from \$300,000; the bill provides for one automatic increase in the caps for claims accruing on or after October 1, 2030. The limitations of liability in effect on the date the claim accrues apply to the claim.

The bill permits a subdivision of the state to settle a claim or judgment in excess of the caps without requiring the subdivision to seek further action by the Legislature.

The bill prohibits an insurance policy, beginning October 1, 2025, from conditioning the payment of benefits or the coverage of liability on the enactment of a claim bill. The bill also revises certain statutes of limitation and presuit procedures for certain types of claims against government entities.

### Fiscal or Economic Impact:

The bill will likely have an indeterminate, significant negative fiscal impact on state and local governments.

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## ANALYSIS

### **EFFECT OF THE BILL:**

#### Statutory Caps

HB 301 amends [s. 768.28, F.S.](#), relating to the state's limited waiver of [sovereign immunity](#) which allows for suits in [tort](#) against the state and its agencies and subdivisions, subject to statutory caps. The bill increases the [statutory caps](#) on judgments against the state or an [agency](#) or [subdivision](#) thereof on a graduated basis. For claims accruing between October 1, 2025 and September 30, 2030, the caps are increased from \$200,000 per person and \$300,000 per incident to \$1,000,000 per person and \$3,000,000 per incident. The bill includes a one-time automatic increase to the caps beginning on October 1, 2030, to \$1,100,000 per person and \$3,200,000 per incident. (Section [1](#)).

The bill clarifies that when determining liability limits for a claim, the caps in effect on the date the claim [accrues](#) will apply to the underlying claim. (Section [1](#)).

#### Settlement of Claims or Judgments Which Exceed Statutory Caps

The bill permits a subdivision of the state, which includes a county, city, municipality, special district, or other similar entity to choose to settle a claim or judgment which exceeds the caps without seeking further action by the Legislature. Thus, if a subdivision wishes to pay a judgment rendered against it in excess of the caps, it may do so without going through the [claim bill](#) process and, ultimately, without seeking legislative approval. (Section [1](#)).

**STORAGE NAME:** h0301d.BUC

**DATE:** 3/20/2025

## Insurance Policies

The bill prohibits an insurance policy from conditioning the liability coverage or the payment of benefits on the enactment of a claim bill. Specifically, an insurance policy may not be issued or delivered to the state, a state agency, or a subdivision of the state, which conditions the coverage or satisfaction of benefits on the matter going through the legislative claim bill process. Any such provision in a policy will be null and void. This prohibition applies to any insurance policy issued for delivery or delivered on or after October 1, 2025. (Section [1](#)).

## Timeframes for Filing an Action

The bill changes the current general four-year [statute of limitations](#) or filing a claim against the state or its agencies or subdivisions to the following timeframes:

- For claims based on [negligence](#): the claim must be filed within two years.<sup>1</sup>
- For claims based on [contribution](#): the claim must be filed within the limitations established in [s. 768.31\(4\), F.S.](#)
- For claims based on [medical malpractice](#) or [wrongful death](#): the claim must be filed within the limitations established in [s. 95.11\(4\), F.S.](#)
- For claims based on [sexual battery](#) on a victim under 16: the claim may be filed at any time; however, this does not resuscitate any claims that may have already been time barred by previous statutes of limitations.
- For any other claim: the claim must be filed within four years. (Section [1](#)).

To accommodate these changes in the statutes of limitations, the bill decreases the allotted [presuit notice](#) period for a claimant to present the required written notice of the claim to the appropriate agency from three years to 18 months. Similarly, the bill decreases the time period in which a claimant must present written notice of a claim for wrongful death from two years to 18 months. However, if the claim is based on a sexual battery of a victim under the age of 16, in violation of s. 794.011, the claimant may present written notice of the claim at any time. (Section [1](#)).

The bill also decreases from six months to four months the time period in which the Department of Financial Services (DFS) or the appropriate agency must dispose of a presuit notice of a claim. As such, the responding agency must dispose of a claim within four months of a claim being filed or it is deemed a final denial (thus allowing the claimant to move forward with a civil suit). However, the bill does not change the time period by which an agency must dispose of a claim for medical malpractice or wrongful death. As such, a final disposition for a claim made for medical malpractice or wrongful death must still be made within 90 days from the date of filing or it is deemed a final denial of the claim. (Section [1](#)).

The bill provides that the statute of limitations for all prospective defendants, not just those in medical malpractice or wrongful death actions, is tolled for the period of time taken by the agency to deny the claim.<sup>2</sup> (Section [1](#)).

The bill amends [s. 944.713\(2\), F.S.](#), clarifying that the maximum amount for which a private vendor that contracts to build, lease, or operate a correctional facility must indemnify the state for certain incurred liabilities is the amount of the sovereign immunity caps as provided in the bill. (Section [2](#)).

The bill reenacts a number of statutes for the purpose of incorporating the changes made by the language of the bill. (Sections [3-61](#)).

The bill has an effective date of October 1, 2025. (Section [62](#)).

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<sup>1</sup> This two-year period is the same as the statute of limitations for bringing a negligence claim against a private party. See [s. 95.11\(4\)\(a\), F.S.](#)

<sup>2</sup> "To toll" means to stop the running of a time period, especially a time period set by a statute of limitations. Cornell Law School: Legal Information Institute, *Toll*, <https://www.law.cornell.edu/wex/toll#:~:text=To%20toll%20means%20to%20stop,by%20a%20statute%20of%20limitations%20>. (last visited Feb. 11, 2025).

## FISCAL OR ECONOMIC IMPACT:

### STATE GOVERNMENT:

By increasing the sovereign immunity caps, the bill increases the possibility that the state and its agencies will spend more of their resources to satisfy tort claims. The provision of larger payments in satisfaction of tort claims, however, may also reduce the demand for other government services that would have otherwise been necessary to assist claimants.

By reducing the statute of limitations for suits against the government arising in negligence, the bill may reduce the number of cases initiated and consequently the potential damages sought by claimants from the government. Further, by reducing the pre-suit time period for a government entity or DFS to review and dispose of a claim against the state, the bill may affect the pre-suit settlement process.

By increasing the statute of limitations for sexual battery on a victim under 16 to an indefinite period in which an alleged victim may bring a claim, the bill may increase the number of claims against the government for such sexual battery.

### LOCAL GOVERNMENT:

The costs resulting from increasing sovereign immunity caps, prohibiting the conditioning of certain insurance payments on the enactment of a claims bill, and changing a local government's ability to settle claims without regard to any statutory limit on damages under [s. 768.28, F.S.](#), are indeterminate, but may result in increased expenditures for local governments related to insurance premiums, settlements, awards, and other legal costs.

### PRIVATE SECTOR:

The bill may enable more individuals who have tort claims against the state or one of its agencies or subdivisions to receive larger payments without the need to pursue a claim bill. The ability to collect larger settlements or judgments against government entities may also serve as an incentive for private attorneys to represent claimants in these matters. However, the bill may reduce government services to the public in proportion to additional amounts required from the budget to satisfy tort claims.

## RELEVANT INFORMATION

### SUBJECT OVERVIEW:

#### [Civil Tort Action](#)

One of the goals of the civil justice system is to redress tortious conduct, or “torts.” A tort is a wrong for which the law provides a remedy. Torts are generally divided into two categories, as follows:

- An intentional tort, examples of which include an assault, battery, or false imprisonment.
- Negligence, which is a tort that is unintentionally committed. To prevail in a negligence lawsuit, the party seeking the remedy, the “plaintiff,” must demonstrate that the:
  - Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
  - Defendant breached his or her duty of care by failing to conform to the required standard;
  - Defendant’s breach caused the plaintiff to suffer an injury; and
  - Plaintiff suffered actual damage or loss resulting from such injury.<sup>3</sup>

#### [Accrual of a Claim](#)

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<sup>3</sup> 6 Florida Practice Series s. 1.1; see *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).

An important date for the purpose of a claim bill is the date the claim accrues. Under [s. 95.031\(1\), F.S.](#), a claim accrues when the last element constituting the cause of action occurs. In a negligence claim, the cause of action accrues “upon the happening of an accident and the attendant injuries.”<sup>4</sup> Further, [s. 768.28\(6\)\(b\), F.S.](#), specifies that the requirements of notice to an agency and denial of the claim required under sovereign immunity are not deemed to be elements of the cause of action and do not affect the date on which the cause of action accrues.

### [Sovereign Immunity](#)

Sovereign immunity is a principle under which a government cannot be sued without its consent.<sup>5</sup> Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In accordance with art. X, s. 13 of the Florida Constitution, Florida law allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment.<sup>6</sup> This liability exists only where a private person would be liable for the same conduct. The waiver of sovereign immunity provided under section [768.28, F.S.](#), applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment.”<sup>7</sup>

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee’s acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.<sup>8</sup> A government entity is not liable for any damages resulting from actions by an employee outside the scope of his or her employment, and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.<sup>9</sup>

### [Statutory Caps on Recovery of Damages](#)

Under current law, [s. 768.28\(5\), F.S.](#), caps damages recoverable in a tort action against a governmental entity at \$200,000 per person and \$300,000 per incident.<sup>10</sup> Although a court may enter an excess judgment, absent a claim bill passed by the Legislature, a claimant may not actually collect more than the caps provide.<sup>11</sup>

### [State Agency](#)

A state agency means any department, agency, or instrumentality of a state or of a political subdivision of a state. Generally, a state agency is a government department, office, or board that operates within a state; state agencies are responsible for carrying out laws enacted by the state legislature. The current state agencies of Florida include:

- Agency for Health Care Administration (AHCA);
- Agency for Persons with Disabilities (APD);
- Commission on Ethics;
- Department of Management Services (DMS);
- Department of Military Affairs (DMA);
- Division of Administrative Hearings (DOAH);
- Florida Agricultural and Mechanical University (FAMU);
- Florida Atlantic University (FAU);
- Florida Citrus;
- Florida Commerce (formerly the Florida Department of Economic Opportunity or DEO);

<sup>4</sup> *Dept. of Transp. v. Soldovere*, 519 So. 2d 616 (Fla. 1988).

<sup>5</sup> *Sovereign immunity*, Legal Information Institute, [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited Feb. 11, 2025).

<sup>6</sup> [S. 768.28\(1\), F.S.](#)

<sup>7</sup> *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting [s. 768.28\(1\), F.S.](#)) (internal punctuation omitted).

<sup>8</sup> [S. 768.28\(9\)\(a\), F.S.](#)

<sup>9</sup> [S. 768.28, F.S.](#)

<sup>10</sup> [S. 768.28\(5\), F.S.](#)

<sup>11</sup> *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

- Florida Commission on Human Relations (FCHR);
- Florida Commission on Offender Review (Parole Commission);
- Florida Department of Agriculture and Consumer Services (FDACS);
- Florida Department of Business and Professional Regulation (DBPR);
- Florida Department of Children and Families (DCF);
- Florida Department of Corrections (DOC);
- Florida Department of Education (DOE);
- Florida Department of Elder Affairs;
- Florida Department of Environmental Protection (DEP);
- Florida Department of Financial Services (DFS);
- Florida Department of Health (DOH);
- Florida Department of Highway Safety and Motor Vehicles (DHSMV);
- Florida Department of Juvenile Justice (DJJ);
- Florida Department of Law Enforcement (FDLE);
- Florida Department of Legal Affairs (Office of the Attorney General or AOG);
- Florida Department of Revenue (DOR);
- Florida Department of State (DOS);
- Florida Department of Transportation (FDOT);
- Florida Department of Veterans' Affairs;
- Florida Division of Emergency Management;
- Florida Fish and Wildlife Conservation Commission (FWC);
- Florida Gulf Coast University (FGCU);
- Florida Housing Finance Corporation;
- Florida International University (FIU);
- Florida Lottery;
- Florida Office of Financial Regulation (OFR);
- Florida Office of Insurance Regulation (FLOIR);
- Florida Polytechnic University;
- Florida Public Service Commission (PSC);
- Florida School for the Deaf and the Blind;
- Florida State University (FSU);
- New College of Florida;
- University of Central Florida (UCF);
- University of Florida (UF);
- University of North Florida (UNF);
- University of South Florida (USF); and
- University of West Florida (UWF).<sup>12</sup>

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<sup>12</sup> Florida Executive Office of the Governor, *Info Center: State Agencies*, <https://www.flgov.com/eog/info/agencies> (last visited Feb. 11, 2025).

### Subdivision

A political subdivision is a separate legal entity of the State which usually has specific governmental functions.<sup>13</sup> Section [218.077\(2\)\(f\), F.S.](#), defines a political subdivision as a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. Local governments are incorporated by special acts of the Florida Legislature and include counties, municipalities, school districts, and special districts.<sup>14</sup>

Some examples of different types of political subdivisions of the State of Florida include, but are not limited to:

- Cities;
- Counties;
- Municipalities;
- School boards; and
- Special districts established by the Legislature.

### Legislative Claim Bill

A plaintiff may recover an amount greater than the caps described in [s. 768.28\(5\), F.S.](#), by way of a legislative claim bill. A claim bill is not an action at law, but rather is a legislative measure that directs the Chief Financial Officer, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.<sup>15</sup> Such obligations typically arise from the negligence of officers or employees of the State or a local governmental entity.<sup>16</sup> Legislative claim bills are typically pursued after procurement of a judgment or settlement in an action at law where the full amount of damages awarded cannot be satisfied because of statutory caps.<sup>17</sup> The amount awarded is based on the Legislature's concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.<sup>18</sup> Unlike civil judgments, claim bills are not obtainable by right upon the claimant's proof of his entitlement; rather, they are granted as a matter of legislative grace.<sup>19</sup>

Once a legislative claim bill is formally introduced, a special master<sup>20</sup> usually conducts a quasi-judicial hearing.<sup>21</sup> This hearing may resemble a trial during which the claimant offers testimony as well as documentary and physical evidence necessary to establish the claim. Trial records may be substituted for witness testimony. Testifying witnesses are sworn and subject to cross-examination.<sup>22</sup> A respondent may present a defense to contest the claim, and the special master may then prepare a report with an advisory recommendation to the Legislature if the bill is placed on an agenda.<sup>23</sup>

Alternatively, a government entity may, without the need for a claim bill, settle a claim or pay a judgment against it for an amount in excess of the caps in [s. 768.28, F.S.](#), but only if that amount is within the limits of its insurance coverage.<sup>24</sup>

### Statutes of Limitations

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<sup>13</sup> Social Security Administration, *How to Determine an Entity's Legal Status*, [https://www.ssa.gov/section218training/advanced\\_course\\_9.htm#3](https://www.ssa.gov/section218training/advanced_course_9.htm#3) (last visited Feb. 11, 2025).

<sup>14</sup> Susan A. MacManus, et al, *Politics in Florida*, (4th ed. 2015).

<sup>15</sup> *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

<sup>16</sup> *Id.*

<sup>17</sup> *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

<sup>18</sup> *Wagner*, 960 So. 2d at 788 (citing Kahn, Legislative Claim Bills, Fla. B. Journal (April 1988)).

<sup>19</sup> *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

<sup>20</sup> The "Special Master" is a role appointed by the Speaker of the House of Representatives and the Senate President, respectively. The special master oversees fact finding, which may include holding a de novo hearing on the claim which is administrative in nature, and prepares a report and recommendation to his or her respective chamber. See House Rule 5.6.

<sup>21</sup> *Wagner*, 960 So. 2d at 788 (citing Kahn at 26).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> S. [768.28\(5\), F.S.](#)



A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. A statute of limitations specifies when such time period begins, how long the limitation period runs, and the circumstances by which the running of the statute may be “tolled,” or suspended. A statute of limitations usually begins to run when a cause of action accrues, which generally, is when the harm occurs.

### [Negligence](#)

Negligence is a tort that is unintentionally committed. To prevail in a lawsuit for negligence, the plaintiff (the party seeking the remedy) must demonstrate that:

- The defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
- The defendant breached his or her duty of care by failing to conform to the required standard;
- The defendant’s breach caused the plaintiff to suffer an injury; and
- The plaintiff suffered actual damage or loss resulting from such injury.<sup>25</sup>

Section [95.11\(3\)\(a\), F.S.](#), currently provides that general actions against a private citizen or entity founded on negligence are subject to a two-year statute of limitations.

### [Contribution](#)

Section [768.31, F.S.](#), provides for the right to contribution. Generally, contribution is a legal action that allows a tortfeasor to collect from others responsible for the same tort after the tortfeasor has paid more than his or her pro rata share of the damages. No single tortfeasor is compelled to make contribution beyond his or her own pro rata share of the entire liability.<sup>26</sup>

An action for contribution must be filed within one year after the judgment has become final by lapse of time for appeal or after appellate review.<sup>27</sup>

### [Medical Malpractice](#)

Section [766.102, F.S.](#), provides for the recovery of damages based on the death or personal injury of any person in which it is alleged the injury resulted from the negligence of a health care provider. In a medical malpractice case, the claimant has the burden of proving by a greater weight of the evidence that the alleged actions of the provider represented a breach in the prevailing professional standard of care for that healthcare provider.<sup>28</sup>

An action for medical malpractice must be filed within two years from the time the incident giving rise to the action occurred or within two years from the time the incident is discovered, or should have been discovered with the exercise of due diligence.<sup>29</sup> However, generally, no medical malpractice action may be filed more than four years after the date of the incident or occurrence out of which the cause of action accrued.<sup>30</sup>

### [Wrongful Death](#)

Generally, an action for wrongful death may be brought when a person dies due to the wrongful act, negligence, default, or breach of contract or warranty of any person, and the event would have entitled the person injured to bring an action and recover damages if the death had not ensued.<sup>31</sup> An action for wrongful death must be initiated within two years from the death of the subject person.<sup>32</sup>

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<sup>25</sup> 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).

<sup>26</sup> S. [768.31, F.S.](#)

<sup>27</sup> S. [768.31\(4\)\(c\), F.S.](#)

<sup>28</sup> S. [766.102\(1\), F.S.](#)

<sup>29</sup> S. [766.102\(1\), F.S.](#)

<sup>30</sup> S. [95.11\(5\)\(c\), F.S.](#)

<sup>31</sup> S. [768.19, F.S.](#)

<sup>32</sup> S. [95.11\(5\)\(e\), F.S.](#)

### [Civil Claim for Sexual Battery](#)

Section [794.011, F.S.](#), establishes the criminal offense of sexual battery. Pursuant to statute, sexual battery means oral, anal, or female genital penetration, by or union with, the sexual organ of another or the anal or female genital penetration of another by any other object. The definition of sexual battery, however, does not include an act done for a bona fide medical purpose. Sexual battery by an adult (18 years of age or older) upon another adult is a first-degree felony punishable, in general, by imprisonment for up to 30 years and a fine of up to \$10,000.<sup>33</sup> The penalties for sexual battery are increased for victims under the age of 18, vulnerable victims, and habitual offenders.

Section [95.11, F.S.](#), provides statutes of limitation for various types of civil actions. In 2010, the Legislature amended [s. 95.11, F.S.](#), to remove any statute of limitations applying to a civil action against a private entity for sexual battery if the victim was under 16 at the time of the crime.<sup>34</sup> The Legislature provided, however, that this amendment would not resuscitate any civil claims that were already barred by the statute of limitations at the time.<sup>35</sup>

### [Presuit Procedures](#)

Before a claimant files a lawsuit against a government entity, the claimant generally must present the claim in writing to the government entity within a time period prescribed by law, which is generally three years.<sup>36</sup> If the claim is brought against the state, the claimant must also present the claim to the Department of Financial Services (DFS). The government entity generally then has six months to review the claim. If the government entity does not dispose of the claim within that six-month period, the claimant may generally proceed with the lawsuit.<sup>37</sup>

### **OTHER RESOURCES:**

[Legislative Claim Bill Manual 2024](#)

[National Association of Attorneys General: State Sovereign Immunity Nationwide](#)

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## **BILL HISTORY**

<b>COMMITTEE REFERENCE</b>	<b>ACTION</b>	<b>DATE</b>	<b>STAFF DIRECTOR/ POLICY CHIEF</b>	<b>ANALYSIS PREPARED BY</b>
<u><a href="#">Civil Justice &amp; Claims Subcommittee</a></u>	17 Y, 1 N	2/19/2025	Jones	Mathews
<u><a href="#">Budget Committee</a></u>	25 Y, 3 N	3/20/2025	Pridgeon	Willson
<u><a href="#">Judiciary Committee</a></u>				

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<sup>33</sup> Ss. [775.082, F.S.](#) and [775.083, F.S.](#)

<sup>34</sup> Ch. 2010-54, s. 1, Laws of Fla.; [s. 95.11\(9\), F.S.](#)

<sup>35</sup> *Id.* (“This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010”).

<sup>36</sup> See [s. 768.28\(6\)\(a\), F.S.](#)

<sup>37</sup> See [s. 768.28\(6\)\(d\), F.S.](#)