

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 a
6 government entity to settle a claim or judgment;
7 revising the timeframe within which the appropriate
8 agency must make final disposition of a claim after it
9 is filed to prevent the claim from being deemed
10 denied; revising exceptions relating to instituting
11 actions on claims against the state or one of its
12 agencies and to the statute of limitations for such
13 claims; reenacting ss. 45.061, 110.504, 111.071,
14 163.01, 190.043, 213.015, 252.51, 252.89, 252.944,
15 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302,
16 373.1395, 375.251, 381.0056, 393.075, 395.1055,
17 403.706, 409.993, 455.221, 455.32, 456.009, 456.076,
18 471.038, 472.006, 497.167, 513.118, 548.046, 556.106,
19 589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355,
20 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33,
21 1002.333, 1002.34, 1002.55, 1002.83, 1002.88, 1006.24,
22 and 1006.261, F.S., to incorporate the amendments made
23 to s. 768.28, F.S., in references thereto; providing
24 applicability; providing an effective date.
25

26 Be It Enacted by the Legislature of the State of Florida:

27

28 Section 1. Subsection (5), paragraphs (a) and (d) of
 29 subsection (6), and subsection (14) of section 768.28, Florida
 30 Statutes, are amended to read:

31 768.28 Waiver of sovereign immunity in tort actions;
 32 recovery limits; civil liability for damages caused during a
 33 riot; limitation on attorney fees; statute of limitations;
 34 exclusions; indemnification; risk management programs.—

35 (5)(a) The state and its agencies and subdivisions shall
 36 be liable for tort claims in the same manner and to the same
 37 extent as a private individual under like circumstances, but
 38 liability shall not include punitive damages or interest for the
 39 period before judgment. Neither the state nor its agencies or
 40 subdivisions shall be liable to pay a claim or a judgment by any
 41 one person which exceeds the sum of \$400,000; ~~\$200,000~~ or any
 42 claim or judgment, or portions thereof, which, when totaled with
 43 all other claims or judgments paid by the state or its agencies
 44 or subdivisions arising out of the same incident or occurrence,
 45 exceeds the sum of \$600,000 ~~\$300,000~~. However, a judgment or
 46 judgments may be claimed and rendered in excess of these amounts
 47 and may be settled and paid pursuant to this section ~~act~~ up to
 48 \$400,000 ~~\$200,000~~ or \$600,000, as applicable. The ~~\$300,000, as~~
 49 ~~the case may be; and that~~ portion of the judgment that exceeds
 50 these amounts may be reported to the Legislature, and ~~but~~ may be

51 | paid in part or in whole ~~only~~ by further act of the Legislature.

52 | **(b)** Notwithstanding the limited waiver of sovereign
53 | immunity provided in paragraph (a), ~~herein, the state or an~~
54 | ~~agency or~~ a subdivision of the state thereof may agree, ~~within~~
55 | ~~the limits of insurance coverage provided,~~ to settle a claim
56 | made or a judgment rendered against it in excess of the waiver
57 | provided in paragraph (a) without further action by the
58 | Legislature. ~~but~~ The state or an agency or a subdivision
59 | thereof may ~~shall~~ not be deemed to have waived any defense of
60 | sovereign immunity or to have increased the limits of its
61 | liability as a result of its obtaining insurance coverage for
62 | tortious acts in excess of the ~~\$200,000 or \$300,000~~ waiver
63 | provided in paragraph (a) ~~above~~.

64 | **(c)** The limitations of liability set forth in this
65 | subsection shall apply to the state and its agencies and
66 | subdivisions whether or not the state or its agencies or
67 | subdivisions possessed sovereign immunity before July 1, 1974.

68 | **(d)** ~~(b)~~ A municipality has a duty to allow the municipal
69 | law enforcement agency to respond appropriately to protect
70 | persons and property during a riot or an unlawful assembly based
71 | on the availability of adequate equipment to its municipal law
72 | enforcement officers and relevant state and federal laws. If the
73 | governing body of a municipality or a person authorized by the
74 | governing body of the municipality breaches that duty, the
75 | municipality is civilly liable for any damages, including

76 damages arising from personal injury, wrongful death, or
 77 property damages proximately caused by the municipality's breach
 78 of duty. The sovereign immunity recovery limits in paragraph (a)
 79 do not apply to an action under this paragraph.

80 (6) (a) An action may not be instituted on a claim against
 81 the state or one of its agencies or subdivisions unless the
 82 claimant presents the claim in writing to the appropriate
 83 agency, and also, except as to any claim against a municipality,
 84 county, or the Florida Space Authority, presents such claim in
 85 writing to the Department of Financial Services, within 3 years
 86 after such claim accrues and the Department of Financial
 87 Services or the appropriate agency denies the claim in writing;
 88 except that, if:

89 1. Such claim is for contribution pursuant to s. 768.31,
 90 it must be so presented within 6 months after the judgment
 91 against the tortfeasor seeking contribution has become final by
 92 lapse of time for appeal or after appellate review or, if there
 93 is no such judgment, within 6 months after the tortfeasor
 94 seeking contribution has either discharged the common liability
 95 by payment or agreed, while the action is pending against her or
 96 him, to discharge the common liability; ~~or~~

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

100 3. Such action arises from a violation of s. 794.011

101 involving a victim who was younger than the age of 16 at the
102 time of the act, the claimant may present the claim in writing
103 at any time pursuant to s. 95.11(9). This subparagraph applies
104 to a claim accruing at any time but shall also be construed in
105 accordance with s. 95.11(9) to apply only to claims which would
106 not have been time barred on or before July 1, 2010.

107 (d) For purposes of this section, complete, accurate, and
108 timely compliance with the requirements of paragraph (c) shall
109 occur prior to settlement payment, close of discovery or
110 commencement of trial, whichever is sooner; provided the ability
111 to plead setoff is not precluded by the delay. This setoff shall
112 apply only against that part of the settlement or judgment
113 payable to the claimant, minus claimant's reasonable attorney's
114 fees and costs. Incomplete or inaccurate disclosure of unpaid
115 adjudicated claims due the state, its agency, officer, or
116 subdivision, may be excused by the court upon a showing by the
117 preponderance of the evidence of the claimant's lack of
118 knowledge of an adjudicated claim and reasonable inquiry by, or
119 on behalf of, the claimant to obtain the information from public
120 records. Unless the appropriate agency had actual notice of the
121 information required to be disclosed by paragraph (c) in time to
122 assert a setoff, an unexcused failure to disclose shall, upon
123 hearing and order of court, cause the claimant to be liable for
124 double the original undisclosed judgment and, upon further
125 motion, the court shall enter judgment for the agency in that

126 amount. Except as provided otherwise in this subsection, the
 127 failure of the Department of Financial Services or the
 128 appropriate agency to make final disposition of a claim within 3
 129 ~~6~~ months after it is filed shall be deemed a final denial of the
 130 claim for purposes of this section. For purposes of this
 131 subsection, in medical malpractice actions and in wrongful death
 132 actions, the failure of the Department of Financial Services or
 133 the appropriate agency to make final disposition of a claim
 134 within 90 days after it is filed shall be deemed a final denial
 135 of the claim. The statute of limitations for medical malpractice
 136 actions and wrongful death actions is tolled for the period of
 137 time taken by the Department of Financial Services or the
 138 appropriate agency to deny the claim. The provisions of this
 139 subsection do not apply to such claims as may be asserted by
 140 counterclaim pursuant to s. 768.14.

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

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

149 (b) An action for damages arising from medical malpractice
 150 or wrongful death must be commenced within the limitations for

151 such actions in s. 95.11(4); and
 152 (c) An action arising from any act constituting a
 153 violation of s. 794.011 involving a victim who was younger than
 154 the age of 16 at the time of the act may be commenced at any
 155 time pursuant to s. 95.11(9). This paragraph applies to a claim
 156 accruing at any time as long as such claim would not have been
 157 time barred on or before July 1, 2010, under s. 95.11(9).

158 Section 2. Sections 45.061, 110.504, 111.071, 163.01,
 159 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31,
 160 284.38, 322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056,
 161 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009,
 162 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106,
 163 589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295,
 164 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34,
 165 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, Florida
 166 Statutes, are reenacted for the purpose of incorporating the
 167 amendments made by this act to s. 768.28, Florida Statutes, in
 168 references thereto.

169 Section 3. Except as otherwise expressly provided herein,
 170 this act applies to claims accruing on or after October 1, 2023.

171 Section 4. This act shall take effect October 1, 2023.