



388774

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/09/2011	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

768.28 Waiver of sovereign immunity in tort actions;
recovery limits; limitation on attorney fees; statute of
limitations; exclusions; indemnification; risk management
programs.—

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



388774

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

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



388774

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 6
54 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
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 4 years after such claim
71 accrues; except that an action for contribution must be



388774

72 commenced within the limitations provided in s. 768.31(4), and
73 an action for damages arising from medical malpractice or
74 wrongful death must be commenced within the limitations for such
75 actions ~~an action~~ in s. 95.11(4).

76 Section 2. This act shall take effect July 1, 2011, and
77 applies to causes of action accruing on or after that date.

78
79 ===== T I T L E A M E N D M E N T =====

80 And the title is amended as follows:

81 Delete everything before the enacting clause
82 and insert:

83 A bill to be entitled
84 An act relating to sovereign immunity; amending s.
85 768.28, F.S.; requiring that a claim in a wrongful
86 death case be presented to the Department of Financial
87 Services within 2 years after the claim accrues;
88 providing that failure of the Department of Financial
89 Services or the appropriate agency to make final
90 disposition of a claim for wrongful death within 90
91 days after it is filed is deemed to be a final denial
92 of the claim; tolling the statute of limitations for
93 the period of time taken by the Department of
94 Financial Services or other agency to deny a medical
95 malpractice or wrongful death claim; providing that
96 actions for wrongful death against the state or one of
97 its agencies or subdivisions must be brought within
98 the period applicable to actions brought against other
99 defendants; providing for the application of the act
100 to causes of action accruing on or after the effective



388774

101

date; providing an effective date.