

By Senator Burt

16-914B-01

1 A bill to be entitled
2 An act relating to waiver of sovereign
3 immunity; amending s. 768.28, F.S.; waiving
4 sovereign immunity for vicarious liability of
5 the state or any of its agencies and
6 subdivisions when an employee is operating a
7 motor vehicle outside the course and scope of
8 employment; providing an effective date.

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

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12 Section 1. Subsections (1), (5), and (19) and
13 paragraph (a) of subsection (9) of section 768.28, Florida
14 Statutes, are amended to read:

15 768.28 Waiver of sovereign immunity in tort actions;
16 recovery limits; limitation on attorney fees; statute of
17 limitations; exclusions; indemnification; risk management
18 programs.--

19 (1) In accordance with s. 13, Art. X of the State
20 Constitution, the state, for itself and for its agencies or
21 subdivisions, hereby waives sovereign immunity for liability
22 for torts, but only to the extent specified in this act.
23 Actions at law against the state or any of its agencies or
24 subdivisions to recover damages in tort for money damages
25 against the state or its agencies or subdivisions for injury
26 or loss of property, personal injury, or death caused by the
27 negligent or wrongful act or omission of any employee of the
28 agency or subdivision while acting within the scope of the
29 employee's office or employment under circumstances in which
30 the state or such agency or subdivision, if a private person,
31 would be liable to the claimant, in accordance with the

1 general laws of this state, may be prosecuted subject to the
2 limitations specified in this act. Further, actions at law
3 against the state or its agencies or subdivisions, as owner of
4 a motor vehicle, to recover damages in tort for money damages
5 against the state or its agencies or subdivisions for injury
6 or loss of property, personal injury, or death caused by the
7 negligent or wrongful act or omission of any employee of the
8 agency or subdivision in the operation of that motor vehicle,
9 or for the acts of the employee in connection with operating
10 the vehicle, while the employee operator was not acting in the
11 course and scope of employment, may be prosecuted subject to
12 the limitations in this act. Any such action may be brought in
13 the county where the property in litigation is located or, if
14 the affected agency or subdivision has an office in such
15 county for the transaction of its customary business, where
16 the cause of action accrued.

17 (5) The state and its agencies and subdivisions shall
18 be liable for tort claims in the same manner and to the same
19 extent as a private individual under like circumstances, but
20 liability shall not include punitive damages or interest for
21 the period before judgment. Neither the state nor its
22 agencies or subdivisions shall be liable to pay a claim or a
23 judgment by any one person which exceeds the sum of \$100,000
24 or any claim or judgment, or portions thereof, which, when
25 totaled with all other claims or judgments paid by the state
26 or its agencies or subdivisions arising out of the same
27 incident or occurrence, exceeds the sum of \$200,000, except
28 that when the state or its agencies or subdivisions own a
29 motor vehicle in accordance with s. 324.021(9) and the
30 employee of that agency or subdivision was acting outside the
31 scope of the employee's office or employment in the operation

1 of the motor vehicle, the state shall be liable to the same
2 extent and in the same manner as an owner of a motor vehicle
3 under the provisions of s. 324.021(9)(b)3., and the employee
4 shall be considered a permissive user for purposes of the
5 application of this section. However, a judgment or judgments
6 may be claimed and rendered in excess of these amounts and may
7 be settled and paid pursuant to this act up to \$100,000 or
8 \$200,000, or the limits provided in s. 324.021(9)as the case
9 may be; and that portion of the judgment that exceeds these
10 amounts may be reported to the Legislature, but may be paid in
11 part or in whole only by further act of the Legislature.
12 Notwithstanding the limited waiver of sovereign immunity
13 provided herein, the state or an agency or subdivision thereof
14 may agree, within the limits of insurance coverage provided,
15 to settle a claim made or a judgment rendered against it
16 without further action by the Legislature, but the state or
17 agency or subdivision thereof shall not be deemed to have
18 waived any defense of sovereign immunity or to have increased
19 the limits of its liability as a result of its obtaining
20 insurance coverage for tortious acts in excess of the \$100,000
21 or \$200,000 or other waiver provided above. The limitations
22 of liability set forth in this subsection shall apply to the
23 state and its agencies and subdivisions whether or not the
24 state or its agencies or subdivisions possessed sovereign
25 immunity before July 1, 1974.

26 (9)(a) No officer, employee, or agent of the state or
27 of any of its subdivisions shall be held personally liable in
28 tort or named as a party defendant in any action for any
29 injury or damage suffered as a result of any act, event, or
30 omission of action in the scope of her or his employment or
31 function, unless such officer, employee, or agent acted in bad

1 faith or with malicious purpose or in a manner exhibiting
2 wanton and willful disregard of human rights, safety, or
3 property. However, such officer, employee, or agent shall be
4 considered an adverse witness in a tort action for any injury
5 or damage suffered as a result of any act, event, or omission
6 of action in the scope of her or his employment or function.
7 The exclusive remedy for injury or damage suffered as a result
8 of an act, event, or omission of an officer, employee, or
9 agent of the state or any of its subdivisions or
10 constitutional officers shall be by action against the
11 governmental entity, or the head of such entity in her or his
12 official capacity, or the constitutional officer of which the
13 officer, employee, or agent is an employee, unless such act or
14 omission was committed in bad faith or with malicious purpose
15 or in a manner exhibiting wanton and willful disregard of
16 human rights, safety, or property. The state or its
17 subdivisions shall not be liable in tort for the acts or
18 omissions of an officer, employee, or agent committed while
19 acting outside the course and scope of her or his employment
20 or committed in bad faith or with malicious purpose or in a
21 manner exhibiting wanton and willful disregard of human
22 rights, safety, or property, except as provided in s.
23 324.021(9)(b)3., in which case a state agency owning the motor
24 vehicle shall be directly responsible for payment of any
25 resulting settlement or judgment.

26 (19) Every municipality, and any agency thereof, is
27 authorized to undertake to indemnify those employees that are
28 exposed to personal liability pursuant to the Clean Air Act
29 Amendments of 1990, 42 U.S.C.A. ss. 7401 et seq., and all
30 rules and regulations adopted to implement that act, for acts
31 performed within the course and scope of their employment with

1 the municipality or its agency, including but not limited to
2 indemnification pertaining to the holding, transfer, or
3 disposition of allowances allocated to the municipality's or
4 its agency's electric generating units, and the monitoring,
5 submission, certification, and compliance with permits, permit
6 applications, records, compliance plans, and reports for those
7 units, when such acts are performed within the course and
8 scope of their employment with the municipality or its agency.
9 The authority to indemnify under this section covers every act
10 by an employee when such act is performed within the course
11 and scope of her or his employment with the municipality or
12 its agency or as otherwise provided in this section, but does
13 not cover any act of willful misconduct or any intentional or
14 knowing violation of any law by the employee. The authority to
15 indemnify under this section includes, but is not limited to,
16 the authority to pay any fine and provide legal representation
17 in any action.

18 Section 2. This act shall take effect July 1, 2001.

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SENATE SUMMARY

Waives sovereign immunity for vicarious liability of the state or its agencies and subdivisions when an employee operates a motor vehicle outside the scope of the employee's office or employment.