

By Senator Burt

16-1348A-01

1                                   A bill to be entitled  
2           An act relating to state motor vehicles;  
3           amending s. 287.17, F.S.; providing that  
4           vehicles assigned to state law enforcement  
5           officers and employees are covered by state  
6           collision insurance during certain off-duty  
7           activities; amending s. 768.28, F.S.; waiving  
8           sovereign immunity for vicarious liability of  
9           the state or any of its agencies and  
10          subdivisions when an employee is operating a  
11          motor vehicle outside the course and scope of  
12          employment; providing an effective date.

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

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16           Section 1. Subsection (4) of section 287.17, Florida  
17 Statutes, is amended to read:

18           287.17 Limitation on use of motor vehicles and  
19 aircraft.--

20           (4) An agency head, as defined in s. 287.012, shall  
21 comply with the following criteria for the special assignment  
22 of motor vehicles:

23           (a) An agency head may assign a motor vehicle to a  
24 state officer or employee only if the officer or employee is  
25 projected to drive the motor vehicle a minimum of 10,000 miles  
26 annually on official state business, unless an agency head  
27 annually provides written justification for the need of the  
28 assignment of a motor vehicle. Commuting mileage incidental to  
29 use of the motor vehicle on official state business shall be  
30 excluded from calculating the projected mileage. Priority in  
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1 assigning motor vehicles shall be given to those employees who  
2 drive over 15,000 miles annually on state business.

3 (b)1. An agency head may assign motor vehicles to  
4 state officers and employees who perform duties related to law  
5 enforcement. However, the agency head shall not assign a  
6 pursuit motor vehicle to an officer or employee whose job  
7 duties do not routinely require performance of a patrol or law  
8 enforcement function requiring a pursuit vehicle.

9 2. Such vehicles are covered by state collision  
10 insurance while the officers or employees are engaged in  
11 official state business, including incidental stops while  
12 commuting to and from work, authorized lunch breaks, and  
13 off-duty law enforcement details that involve the protection  
14 of persons or property.

15 Section 2. Subsections (1), (5), and (19) and  
16 paragraph (a) of subsection (9) of section 768.28, Florida  
17 Statutes, are amended to read:

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

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

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

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

1 motor vehicle in accordance with s. 324.021(9) and the  
2 employee of that agency or subdivision was acting outside the  
3 scope of the employee's office or employment in the operation  
4 of the motor vehicle, the state shall be liable to the same  
5 extent and in the same manner as an owner of a motor vehicle  
6 under the provisions of s. 324.021(9)(b)3., and the employee  
7 shall be considered a permissive user for purposes of the  
8 application of this section. However, a judgment or judgments  
9 may be claimed and rendered in excess of these amounts and may  
10 be settled and paid pursuant to this act up to \$100,000 or  
11 \$200,000, or the limits provided in s. 324.021(9)as the case  
12 may be; and that portion of the judgment that exceeds these  
13 amounts may be reported to the Legislature, but may be paid in  
14 part or in whole only by further act of the Legislature.  
15 Notwithstanding the limited waiver of sovereign immunity  
16 provided herein, the state or an agency or subdivision thereof  
17 may agree, within the limits of insurance coverage provided,  
18 to settle a claim made or a judgment rendered against it  
19 without further action by the Legislature, but the state or  
20 agency or subdivision thereof shall not be deemed to have  
21 waived any defense of sovereign immunity or to have increased  
22 the limits of its liability as a result of its obtaining  
23 insurance coverage for tortious acts in excess of the \$100,000  
24 or \$200,000 or other waiver provided above. The limitations  
25 of liability set forth in this subsection shall apply to the  
26 state and its agencies and subdivisions whether or not the  
27 state or its agencies or subdivisions possessed sovereign  
28 immunity before July 1, 1974.  
29 (9)(a) No officer, employee, or agent of the state or  
30 of any of its subdivisions shall be held personally liable in  
31 tort or named as a party defendant in any action for any

1 injury or damage suffered as a result of any act, event, or  
2 omission of action in the scope of her or his employment or  
3 function, unless such officer, employee, or agent acted in bad  
4 faith or with malicious purpose or in a manner exhibiting  
5 wanton and willful disregard of human rights, safety, or  
6 property. However, such officer, employee, or agent shall be  
7 considered an adverse witness in a tort action for any injury  
8 or damage suffered as a result of any act, event, or omission  
9 of action in the scope of her or his employment or function.  
10 The exclusive remedy for injury or damage suffered as a result  
11 of an act, event, or omission of an officer, employee, or  
12 agent of the state or any of its subdivisions or  
13 constitutional officers shall be by action against the  
14 governmental entity, or the head of such entity in her or his  
15 official capacity, or the constitutional officer of which the  
16 officer, employee, or agent is an employee, unless such act or  
17 omission was committed in bad faith or with malicious purpose  
18 or in a manner exhibiting wanton and willful disregard of  
19 human rights, safety, or property. The state or its  
20 subdivisions shall not be liable in tort for the acts or  
21 omissions of an officer, employee, or agent committed while  
22 acting outside the course and scope of her or his employment  
23 or committed in bad faith or with malicious purpose or in a  
24 manner exhibiting wanton and willful disregard of human  
25 rights, safety, or property, except as provided in s.  
26 324.021(9)(b)3., in which case a state agency owning the motor  
27 vehicle shall be directly responsible for payment of any  
28 resulting settlement or judgment.

29 (19) Every municipality, and any agency thereof, is  
30 authorized to undertake to indemnify those employees that are  
31 exposed to personal liability pursuant to the Clean Air Act

1 Amendments of 1990, 42 U.S.C.A. ss. 7401 et seq., and all  
2 rules and regulations adopted to implement that act, for acts  
3 performed within the course and scope of their employment with  
4 the municipality or its agency, including but not limited to  
5 indemnification pertaining to the holding, transfer, or  
6 disposition of allowances allocated to the municipality's or  
7 its agency's electric generating units, and the monitoring,  
8 submission, certification, and compliance with permits, permit  
9 applications, records, compliance plans, and reports for those  
10 units, when such acts are performed within the course and  
11 scope of their employment with the municipality or its agency.  
12 The authority to indemnify under this section covers every act  
13 by an employee when such act is performed within the course  
14 and scope of her or his employment with the municipality or  
15 its agency or as otherwise provided in this section, but does  
16 not cover any act of willful misconduct or any intentional or  
17 knowing violation of any law by the employee. The authority to  
18 indemnify under this section includes, but is not limited to,  
19 the authority to pay any fine and provide legal representation  
20 in any action.

21 Section 3. This act shall take effect July 1, 2001.

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24 SENATE SUMMARY

25 Provides that certain state vehicles assigned to state  
26 law enforcement officers and employees are covered by the  
27 state collision insurance at specified times. Waives  
28 sovereign immunity for vicarious liability of the state  
29 or its agencies and subdivisions when an employee operates  
30 a motor vehicle outside the scope of the employee's  
31 office or employment.