

By the Committees on Community Affairs; and Judiciary; and
Senator Hays

578-04258-11

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1 A bill to be entitled
2 An act relating to sovereign immunity; amending s.
3 768.28, F.S.; requiring that a claim in a wrongful
4 death case be presented to the Department of Financial
5 Services within 2 years after the claim accrues;
6 providing that failure of the Department of Financial
7 Services or the appropriate agency to make final
8 disposition of a claim for wrongful death within 90
9 days after it is filed is deemed to be a final denial
10 of the claim; tolling the statute of limitations for
11 the period of time taken by the Department of
12 Financial Services or other agency to deny a medical
13 malpractice or wrongful death claim; providing that
14 actions for wrongful death against the state or one of
15 its agencies or subdivisions must be brought within
16 the period applicable to actions brought against other
17 defendants; specifying applicability to workers'
18 compensation claims; providing for the application of
19 the act to causes of action accruing on or after the
20 effective date; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraphs (a) and (d) of subsection (6) and
25 subsection (14) of section 768.28, Florida Statutes, are
26 amended, and subsection (21) is added to that section, to read:
27 768.28 Waiver of sovereign immunity in tort actions;
28 recovery limits; limitation on attorney fees; statute of
29 limitations; exclusions; indemnification; risk management

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30 programs.—

31 (6) (a) An action may not be instituted on a claim against
32 the state or one of its agencies or subdivisions unless the
33 claimant presents the claim in writing to the appropriate
34 agency, and also, except as to any claim against a municipality
35 or the Florida Space Authority, presents such claim in writing
36 to the Department of Financial Services, within 3 years after
37 such claim accrues and the Department of Financial Services or
38 the appropriate agency denies the claim in writing; except that,
39 if:

40 1. Such claim is for contribution pursuant to s. 768.31, it
41 must be so presented within 6 months after the judgment against
42 the tortfeasor seeking contribution has become final by lapse of
43 time for appeal or after appellate review or, if there is no
44 such judgment, within 6 months after the tortfeasor seeking
45 contribution has either discharged the common liability by
46 payment or agreed, while the action is pending against her or
47 him, to discharge the common liability; or

48 2. Such action is for wrongful death, the claimant must
49 present the claim in writing to the Department of Financial
50 Services within 2 years after the claim accrues.

51 (d) For purposes of this section, complete, accurate, and
52 timely compliance with the requirements of paragraph (c) shall
53 occur prior to settlement payment, close of discovery or
54 commencement of trial, whichever is sooner; provided the ability
55 to plead setoff is not precluded by the delay. This setoff shall
56 apply only against that part of the settlement or judgment
57 payable to the claimant, minus claimant's reasonable attorney's
58 fees and costs. Incomplete or inaccurate disclosure of unpaid

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59 adjudicated claims due the state, its agency, officer, or
60 subdivision, may be excused by the court upon a showing by the
61 preponderance of the evidence of the claimant's lack of
62 knowledge of an adjudicated claim and reasonable inquiry by, or
63 on behalf of, the claimant to obtain the information from public
64 records. Unless the appropriate agency had actual notice of the
65 information required to be disclosed by paragraph (c) in time to
66 assert a setoff, an unexcused failure to disclose shall, upon
67 hearing and order of court, cause the claimant to be liable for
68 double the original undisclosed judgment and, upon further
69 motion, the court shall enter judgment for the agency in that
70 amount. Except as provided otherwise in this subsection, the
71 failure of the Department of Financial Services or the
72 appropriate agency to make final disposition of a claim within 6
73 months after it is filed shall be deemed a final denial of the
74 claim for purposes of this section. For purposes of this
75 subsection, in medical malpractice actions and in wrongful death
76 actions, the failure of the Department of Financial Services or
77 the appropriate agency to make final disposition of a claim
78 within 90 days after it is filed shall be deemed a final denial
79 of the claim. The statute of limitations for medical malpractice
80 actions and wrongful death actions is tolled for the period of
81 time taken by the Department of Financial Services or the
82 appropriate agency to deny the claim. The provisions of this
83 subsection do not apply to such claims as may be asserted by
84 counterclaim pursuant to s. 768.14.

85 (14) Every claim against the state or one of its agencies
86 or subdivisions for damages for a negligent or wrongful act or
87 omission pursuant to this section shall be forever barred unless

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88 the civil action is commenced by filing a complaint in the court
89 of appropriate jurisdiction within 4 years after such claim
90 accrues; except that an action for contribution must be
91 commenced within the limitations provided in s. 768.31(4), and
92 an action for damages arising from medical malpractice or
93 wrongful death must be commenced within the limitations for such
94 actions ~~an action~~ in s. 95.11(4).

95 (21) No provision of this section, or any other provision
96 of state law, waives the immunity of the state or any of its
97 agencies with regard to claims brought under s. 440.205. Claims
98 brought against the state or any of its agencies pursuant to s.
99 440.205 must be brought in compliance with this section.

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