

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 472

INTRODUCER: Appropriations Committee and Governmental Oversight and Accountability Committee and Senators Brodeur and Rouson

SUBJECT: Suits Against the Government

DATE: February 23, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 472 increases the cap on the payment of judgments against government entities from \$200,000 to \$400,000 per individual, and from \$300,000 to \$600,000 per instance. The bill provides for the annual adjustment of the cap to reflect changes in the Consumer Price Index, beginning on July 1, 2029, recalculated every five years thereafter, and is not to exceed three percent for any adjustment.

The bill allows local government entities to settle a claim in any amount without the approval of a claim bill by the Legislature. If a state agency agrees to settle a claim or has a judgment render against it, the state agency may pay the amount in excess of the waiver of sovereign immunity and any insurance coverage, only by seeking excess payment from the Legislature through a claim bill.

The bill reduces from three years to 18 months the time allotted for pre-suit notice to the state, its agency, or a subdivision thereof, and also reduces the duration that entity has to review the notice from six months to four months.

The bill removes the statute of limitations and statute of repose for civil actions against state entities where the plaintiff in a sexual battery matter was younger than 16 years old at the time of the injury. The bill also reduces the statute of limitations for a negligence claim against the state, its agency, or a subdivision thereof from four years to two years.

The bill will likely have an indeterminate, significant negative fiscal impact on state and local governments. *See* Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2024, and applies to any claim that was not concluded by a final judgment or settlement before then.

II. Present Situation:

Presuit Procedures for a Claim against the Government

Before a claimant files a lawsuit against a government entity, the claimant must present the claim in writing to the government entity within a time period prescribed by law, which is generally three years.¹ If the claim is brought against the state, the claimant must also present the claim to the Department of Financial Services (DFS). The government entity generally then has six-months to review the claim. If the government entity does not dispose of the claim within that six-month period, the claimant may generally proceed with the lawsuit.²

Sovereign Immunity

Sovereign immunity is “[a] government’s immunity from being sued in its own courts without its consent.”³ The doctrine had its origin with the judge-made law of England. The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.⁴

Article X, s. 13 of the Florida Constitution authorizes the Legislature to enact laws that permit suits against the state and its subdivisions, thereby waiving sovereign immunity. Currently, Florida law allows tort lawsuits against the state and its subdivisions⁵ for damages that result from the negligence of government employees acting in the scope of their employment, but limits payment of judgments to \$200,000 per person and \$300,000 per incident.⁶ This liability exists only where a private person would be liable for the same conduct.⁷ Harmed persons who seek to recover amounts in excess of these limits may request that the Legislature enact a claim

¹ *See* s. 768.28(6)(a), F.S.

² *See* s. 768.28(6)(d), F.S.

³ BLACK’S LAW DICTIONARY (11th ed. 2019).

⁴ *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981) (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

⁵ Section 768.28(2), F.S., defines “state agencies or subdivisions” to include “executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.”

⁶ Section 768.28, F.S.

⁷ Section 768.28(1), F.S.

bill to appropriate the remainder of their court-awarded judgment.⁸ Article VII, s. 1(d) of the State Constitution prohibits funds from being drawn from the State Treasury except in pursuance of an appropriation made by law. However, local governments and municipalities are not subject to this provision, and therefore may appropriate their local funds according to their processes.

History of Florida Sovereign Immunity Law

Florida has adopted the common law of England as it existed on July 4, 1776.⁹ This adoption of English common law includes the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.¹⁰

The Legislature was first expressly authorized to waive the state's sovereign immunity under s. 19, Art. IV of the 1868 Florida Constitution.¹¹ When the Florida Constitution was amended in 1968, it again expressly authorized the Legislature to waive the state's sovereign immunity under s. 13, Art. X.¹²

Although the first general waiver of the state's sovereign immunity was not adopted until 1969, "one . . . could always petition for legislative relief by means of a claims bill."¹³ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.¹⁴ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent capitol building.¹⁵

The 1969 Legislature enacted s. 768.15, F.S., the state's first general waiver of sovereign immunity,¹⁶ which expired after one year.¹⁷ In 1973, the Legislature again adopted a law that waived the state's sovereign immunity.¹⁸ The statute, s. 768.28, F.S., was modeled after the Federal Tort Claims Act and remains substantially the same today.

Under s. 768.28(5), F.S. (1973), the state's ability to pay a tort judgment was limited to \$50,000 per person and \$100,000 per incident. In 1981, the Legislature increased the amount of damages that could be paid to \$100,000 per person and \$200,000 per incident.¹⁹ In 2010, the

⁸ Section 768.28(5)(a), F.S. *See also*, s. 11.066, F.S., which states that state agencies are not required to pay monetary damages under a court's judgment except pursuant to an appropriation made by law.

⁹ Section 2.01, F.S. English common law that is inconsistent with state or federal law is not included.

¹⁰ *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

¹¹ FLA. CONST. Art. IV, Section 19 (1868), states: "Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating."

¹² FLA. CONST. Art. X, s. 13 states: "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating."

¹³ *Cauley*, 403 So. 2d at note 5.

¹⁴ D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April 1988).

¹⁵ *Id.*

¹⁶ Chapter 69-116, Laws of Fla.

¹⁷ Chapter 69-357, Laws of Fla.

¹⁸ Chapter 73-313, Laws of Fla.

¹⁹ Chapter 81-317, Laws of Fla.

Legislature increased the limits to \$200,000 per person and \$300,000 per incident.²⁰ Attorney fees have been limited to 25 percent of the proceeds of judgments or settlements since 1979.²¹

Statutory Waivers of Sovereign Immunity

Section 768.28(1), F.S., allows tort lawsuits to be filed against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct. Section 768.28, F.S., applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment”²²

Section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per accident. Although a court may award a judgment in excess of these statutory limits, a claimant cannot collect more than provided for in statute without passage of a special claim bill passed by the legislature.²³

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment unless the damages result from the employee’s bad faith, malicious purpose, or wanton and willful disregard for human rights, safety, or property.²⁴ A government entity is not liable for any damages resulting for actions by an employee outside the scope of his or her employment and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.²⁵

Damages and Liability Caps

Generally, damages are of two kinds: compensatory and punitive. Compensatory damages are awarded as compensation for the loss sustained to make the party whole, insofar as that is possible. They arise from actual and indirect pecuniary loss. Punitive damages are the payment that a defendant is ordered to pay on top of compensatory damages and are often awarded when compensatory damages are deemed insufficient.²⁶ Punitive damages are designed to punish defendants whose conduct is considered grossly negligent or intentional.²⁷ Section 768.28, F.S., does not allow for the recovery of punitive damages, but only for the recovery of compensatory damages.

The liability caps in s. 768.28(5), F.S., of \$200,000 per person and \$300,000 per incident, apply to “all of the elements of the monetary award to a plaintiff against a sovereignly immune entity.”

²⁰ Chapter 2010-26, Laws of Fla.

²¹ Section 768.28(8), F.S.

²² *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.).

²³ *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

²⁴ Section 768.28(9)(a), F.S.

²⁵ *Id.*

²⁶ Investopedia.com, *What are Punitive Damages?*, <https://www.investopedia.com/terms/p/punitive-damages.asp#:~:text=Punitive%20damages%20are%20legal%20recompense,considered%20grossly%20negligent%20or%20intentional> (last visited Feb. 14, 2024).

²⁷ *Id.*

In other words, a plaintiff's entire recovery, including damages, back pay, attorney fees, and any other costs, are limited by the caps in s. 768.28, F.S.

Claim Bill Process

“A claim bill is not an action at law, but rather a legislative measure that directs the Chief Financial Officer of Florida, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.”²⁸

Persons who wish to seek the payment of claims in excess of the statutory cap must have a state legislator introduce a claim bill in the Legislature, which must pass both houses. Once a claim bill is filed, the presiding officer of each house of the Legislature may refer the bill to a Special Master,²⁹ as well as to one or more legislative committees, for review. Senate and House Special Masters typically hold a quasi-judicial, *de novo*³⁰ hearing to determine whether the elements of negligence have been satisfied: duty, breach, causation, and damages.³¹

The amount awarded by the Legislature in a claim bill is based on the Legislature's concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.³² “Unlike civil judgments, private relief acts are not obtainable by right upon the claimant's proof of his entitlement. Private relief acts are granted strictly as a matter of legislative grace.”³³

The beneficiary of a claim bill recovers by its enactment, regardless of whether the governmental tortfeasor purchased liability insurance to pay an excess judgment.³⁴ However, where the governmental tortfeasor has liability insurance above the statutory cap, and the claimant receives compensation above that statutory cap through a claim bill, the claim bill is paid with funds of the insured, not general revenue.³⁵

The following table represents the annual summary of all claim bill activity in the Florida Legislature from 2019-2023:

²⁸ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

²⁹ The Florida Bar defines a Special Master as “adjuncts of the court who exercise limited judicial authority and appointed by the court to perform specific tasks.” The Florida Bar Journal, *Utilizing “Special Masters” in Florida: Unanswered Questions, Practical Considerations, and the Order of Appointment*, Vol. 18, No. 9 (Oct. 2007), p.12, <https://www.floridabar.org/the-florida-bar-journal/utilizing-special-masters-in-florida-unanswered-questions-practical-considerations-and-the-order-of-appointment/> (last visited Feb. 8, 2024). See also, Cornell Law School, Legal Information Institute, *Special Master*, https://www.law.cornell.edu/wex/special_master (last visited Feb. 8, 2024).

³⁰ *De novo* meaning anew; afresh; a second time. Black's Law Dictionary, 8th Ed. (Bryan A. Garner, ed. 2004), available at <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf> (last visited Feb. 8, 2024).

³¹ See Fla. Senate R. 4.09(3) (2020-2024). See also, Florida Senate, *Legislative Claim Bill Manual*, 8-10 (Aug. 2023), available at <https://www.flsenate.gov/PublishedContent/ADMINISTRATIVEPUBLICATIONS/leg-claim-manual.pdf> (last visited Feb. 16, 2023).

³² *Wagner*, 960 So. 2d at 788 (citing Kahn, Legislative Claim Bills, Fla. B. Journal (April 1988)).

³³ *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

³⁴ *Servs. Auto Ass'n v. Phillips*, 740 So. 2d 1205 (Fla. 2d DCA 1999).

³⁵ *Fla. Mun. Ins. Trust v. Village of Golf*, 850 So. 2d 544, 548 (Fla. 4th DCA 2003), citing *Bonvento v. Bd. of Pub. Instruction*, 194 So. 2d 605 (Fla. 1967).

Session Year	Total Claims Filed	Number of Claims that Became Law	Total Dollar Amount Claimed	Total Dollar Amount Paid
2019	19	5	\$30,209,967	\$4,000,000
2020	15	2	\$59,555,928	\$6,650,000
2021	13	2	\$46,099,864	\$2,800,000
2022	18	5	\$43,305,151	\$2,297,500
2023	16	8	\$54,120,900	\$20,112,000

Division of Risk Management

Effect of Insurance Coverage on Damages Cap

A government entity may, without a claim bill, settle a claim against it for an amount above the caps in s. 768.28, F.S., if that amount is within the limits of insurance coverage.³⁶

Cost of Florida's Waiver of Sovereign Immunity

The exact cost of the state's waiver of sovereign immunity under s. 768.28, F.S., is unknown. No centralized location exists for local government entities, such as cities, counties, school boards, sheriff's offices, special districts, and other entities to record the value of the total claims paid under the current sovereign immunity waiver. Information documenting the cost of the sovereign immunity waiver to state government entities is available from the Division of Risk Management (Division). The Division provides general liability insurance to state agencies up to the amount of the sovereign immunity waiver.³⁷ The Division also settles and defends tort suits filed against the agencies.

In Fiscal Year 2021-2022, the Division paid \$7,637,712 for the resolution of 2,080 general liability claims.³⁸ Additionally, the Division provides auto liability insurance to state agencies for claims arising out of the use of state vehicles. In Fiscal Year 2021-22, the Division paid \$6,691,380 for the resolution of 472 automobile liability claims.³⁹

Sovereign Immunity in Other Jurisdictions

At least 27 other state legislatures have placed monetary caps on recovery from actions in tort against their state or political subdivisions:

- Colorado: \$350,000 per person; \$990,000 per occurrence;⁴⁰
- Georgia: One million dollars per person; three million dollars per occurrence;⁴¹

³⁶ *Michigan Millers Mut. Ins. Co. v. Burke*, 607 So. 2d 418, 421-22 (Fla. 1992); Section 768.28(5), F.S.

³⁷ Section 284.30, F.S.

³⁸ Department of Financial Services, Division of Risk Management, *Fiscal Year 2022 Annual Report*, 8-9 (2022), available at https://www.myfloridacfo.com/docs-sf/risk-management-libraries/risk-documents/annual-reports/risk-mgmt-annual-report-2022---final.pdf?sfvrsn=59248690_2 (last visited Feb. 16, 2023).

³⁹ *Id.*

⁴⁰ Colo. Rev. Stat. §24-10-114.

⁴¹ Ga. Code §50-21-29(a)-(b)(1).

- Idaho: \$500,000 per occurrence, regardless of the number of people, unless the government is insured above the limit;⁴²
- Illinois: \$2,000,000;⁴³
- Indiana: \$700,000 per person; five million dollars per occurrence;⁴⁴
- Kansas: \$500,000 per occurrence;⁴⁵
- Louisiana: \$500,000 per occurrence;⁴⁶
- Maine: \$400,000 per occurrence;⁴⁷
- Maryland: \$400,000 per person; \$890,000 per occurrence;⁴⁸
- Massachusetts: \$100,000;⁴⁹
- Minnesota: \$500,000 per person; \$1,500,000 per occurrence;⁵⁰
- Mississippi: \$500,000;⁵¹
- Missouri: \$300,000 per person and two million dollars per occurrence;⁵²
- Montana: \$750,000 per claim and \$1.5 million per occurrence;⁵³
- New Hampshire: \$475,000 per claimant and \$3.75 million per occurrence;⁵⁴
- New Mexico: \$200,000 per claim of property damage; \$300,000 per claim of medical expenses; \$400,000 for claims other than property damages or medical expenses; all claims limited to \$750,000 per occurrence;⁵⁵
- North Carolina: one million dollars per occurrence;⁵⁶
- North Dakota: \$375,000 per person; one million dollars per occurrence;⁵⁷
- Oklahoma: \$125,000 per person, with higher limits for specific categories; one million dollars per occurrence;⁵⁸
- Pennsylvania: \$250,000 per person; one million dollars per occurrence;⁵⁹
- Rhode Island: \$100,000;⁶⁰
- South Carolina: \$300,000 per person; \$600,000 per occurrence;⁶¹
- Tennessee: \$300,000 per person; one million dollars per occurrence;⁶²

⁴² Idaho Code §6-926.

⁴³ Ill. Ann. Stat. ch. 705, §505/8.

⁴⁴ Ind. Code §34-13-3-4.

⁴⁵ Kan. Stat. Ann. §75-6105.

⁴⁶ La. Rev. Stat. Ann. §13:5106.

⁴⁷ Me. Rev. Stat. Ann. tit. 14, §8105.

⁴⁸ Md. State Government Code Ann. §12-104(a)(2).

⁴⁹ Mass. Gen. Laws Ann. ch. 258, §2.

⁵⁰ Minn. Stat. Ann. §3.736(4).

⁵¹ Miss. Code Ann. 11-46-15.

⁵² Mo. Ann. Stat. §537.610.

⁵³ Mont. Code. Ann. §2-9-108.

⁵⁴ N.H. Rev. Stat. Ann. §541-B:14.

⁵⁵ N.M. Stat. Ann. §41-4-19.

⁵⁶ N.C. Gen. Stat. §143-299.2.

⁵⁷ N.D. Cent. Code S32-12.2-02.

⁵⁸ Okla. Stat. tit. 51, §154.

⁵⁹ Pa. Cons. Stat. Ann. Tit. 42, §8528.

⁶⁰ R.I. Gen. Laws §9-31-2.

⁶¹ S.C. Code Ann. §15-78-120.

⁶² Tenn. Code Ann. §9-8-307.

- Texas: \$250,000 per person; \$500,000 per occurrence (\$100,000 per claim of destruction of personal property);⁶³
- Utah: \$233,600 for property damage; \$583,900 for personal injury person; three million dollars per occurrence;⁶⁴
- Vermont: \$500,000 per person; two million dollars per occurrence; and⁶⁵
- Virginia: \$100,000.⁶⁶

Tort Law - Statute of Limitations and Pre-Suit Notice

A statute of limitation prescribes by legislation a specific time period in which a cause of action may be brought upon certain claims or within which certain rights may be enforced.⁶⁷

Section 95.11, F.S., provides for statute of limitations for actions other than for recovery or real property. For actions other than recovery or real property the statute of limitations range from one year to 20 years to at any time⁶⁸ depending upon the action which arose

Negligence

Under Florida law, negligence action is defined to mean, without limitation, a civil action for damages based upon a theory, strict liability, products liability, professional malpractice, whether couched in terms of contract or tort, or breach of warranty and like theories. The substance of an action, not conclusory terms used by a party, determines whether an action is negligence action.⁶⁹ Under s. 95.11, F.S., the statute of limitations for the filing an action founded on negligence is within two years.

Wrongful Death

Wrongful death can be defined as the “death of a human being as the result of a wrongful act of another person.”⁷⁰ Wrongful death acts can include: negligence; an intentional act, such as assault or battery; a death committed in the course of another crime; vehicular manslaughter; manslaughter; or murder.⁷¹ Under s. 768.17, F.S., legislative intent as it relates to wrongful death, provides “it is the policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer.” Under s. 95.11, F.S., the statute of limitations for the filing of wrongful death actions is two years.

Medical Negligence

A claim for medical negligence or medical malpractice means a claim arising out of the rendering of, or the failure to render, medical care or services.⁷² An action for medical

⁶³ Tex. Civ. Prac. & Rem. Code Ann. §101.023.

⁶⁴ Utah Code. Ann. §63G-7-604.

⁶⁵ Vt. Stat. Ann. tit. 12, §5601.

⁶⁶ Va. Code §8.01-195.3.

⁶⁷ Black's Law Dictionary, 8th Ed. (Bryan A. Garner, ed. 2004), available at <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf> (last visited Feb. 8, 2024).

⁶⁸ Section 95.11, F.S.

⁶⁹ Section 768.81(c), F.S.

⁷⁰ Law.com, <https://dictionary.law.com/Default.aspx?selected=2268> (last visited Feb. 14, 2024).

⁷¹ *Id.*

⁷² Section 766.106, F.S.

negligence or medical malpractice⁷³ must be filed within two years from the time the incident is discovered, or should have been discovered; however, in no event shall the action be commenced later than four years from the date of the incident or occurrence, except this four year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday. Should it be revealed fraud, concealment, or intentional misrepresentation of fact prevented discovery of the injury, the statute of limitations is extended forward two years from the time the injury is discovered or should have been discovered, but in no event to exceed seven years from the date of the injury. Injuries which fall under ss. 766.301 and 766.316, F.S., relating to birth-related neurological injuries, are not subject to the statute of limitations within s. 95.11, F.S.

Pre-suit Notice

Medical negligence claims are subject to statutory presuit screening and investigation requirements.⁷⁴ A claimant may, and typically does, request the relevant medical records, which must be furnished by the medical providers at a reasonable charge.⁷⁵ The claimant must then conduct a reasonable investigation of the claim and obtain a written opinion from a medical expert that malpractice occurred.⁷⁶ The claimant may then serve a notice of intent to initiate litigation on every prospective defendant. The suit may not be filed until at least 90 days after service of the notice.⁷⁷ During the 90 days, the parties must engage in pretrial discovery⁷⁸ and the prospective defendant must conduct an investigation.⁷⁹ If not resolved in the 90 days, the claimant may file suit. When filing the suit, the attorney must file a certificate that he or she has reviewed the evidence and has a good faith belief that a medical negligence case is warranted.⁸⁰ Failure of the claimant to pursue the pretrial process constitutes grounds for a dismissal of the claim. A failure of any party to the action to cooperate with the presuit process may be grounds to strike any claim or defense raised by the non-cooperative party.⁸¹ After the presuit requirements are met, a claim of medical negligence generally proceeds through the court system like any other tort action.

A medical negligence claim against a practitioner is limited. In general, noneconomic damages may not exceed \$500,000 per claimant, and no individual practitioner is liable for more than \$500,000 in noneconomic damages, regardless of the number of claimants.⁸² However:

- The total noneconomic damages recoverable from all practitioners, regardless of the number of claimants, is one million dollars if:
 - The negligence resulted in a permanent vegetative state or death; or
 - The trial court determines that a manifest injustice would occur unless increased noneconomic damages are awarded, based on a finding that because of the special

⁷³ Under s. 95.11, F.S., "An action for medical malpractice" is defined as a claim in tort or in contract for damages because of the death, injury, or monetary loss to any person arising out of any medical, dental or surgical diagnosis, treatment, or care by any provider of health care.

⁷⁴ Sections 766.104, 766.106 and 766.203, F.S.

⁷⁵ Sections 766.104(3) and 766.204, F.S.

⁷⁶ Sections 766.104(1) and 766.203(2), F.S.

⁷⁷ Section 766.106(4), F.S.

⁷⁸ Section 766.106(6) and 766.205, F.S.

⁷⁹ Section 766.203(3), F.S.

⁸⁰ Section 766.104(1), F.S.

⁸¹ Section 766.106(7), F.S.

⁸² Section 766.118(2)(a), F.S.

- circumstances of the case, the noneconomic harm sustained by the injured patient was particularly severe; and the trier of fact determines that the defendant's negligence caused a catastrophic injury to the patient.⁸³
- If the practitioner was providing emergency services and care to a patient who does not have a then-existing patient-practitioner relationship with that practitioner, then:
 - Regardless of the number of practitioner defendants, noneconomic damages may not exceed \$150,000 per claimant, and
 - The total noneconomic damages recoverable by all claimants from all practitioners may not exceed \$300,000.⁸⁴
 - If the practitioner was providing medical services to a Medicaid recipient, regardless of the number of such practitioner defendants providing the services and care, noneconomic damages may not exceed \$200,000 per claimant, unless the claimant pleads and proves, by clear and convincing evidence, that the practitioner acted in a wrongful manner, in which case damages may not exceed \$300,000.⁸⁵

For purposes of the Medicaid exception, the term “wrongful manner” means acting “in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.”⁸⁶

A medical negligence claim against a nonpractitioner is limited as follows: In general, noneconomic damages may not exceed \$750,000 per claimant, and no individual nonpractitioner is liable for more than \$750,000 in noneconomic damages, regardless of the number of claimants.⁸⁷ However:

- The total noneconomic damages recoverable by such claimant from all nonpractitioner defendants may not exceed \$1.5 million if:
 - The negligence resulted in a permanent vegetative state or death, or
 - The trial court determines that a manifest injustice would occur unless increased noneconomic damages are awarded, based on a finding that because of the special circumstances of the case, the noneconomic harm sustained by the injured patient was particularly severe; and the trier of fact determines that the defendant's negligence caused a catastrophic injury to the patient.⁸⁸
- If the nonpractitioner was a hospital or ambulatory surgical center providing medical services to a Medicaid recipient, regardless of the number of such nonpractitioner defendants providing the services and care, noneconomic damages may not exceed \$200,000 per claimant, unless the claimant pleads and proves, by clear and convincing evidence, that the practitioner acted in a wrongful manner, in which case damages may not exceed \$300,000.⁸⁹

These limits are commonly referred to as a “per incident” limit as opposed to a “per claimant” limit. These limits are in current statutes but are not enforced because appellate court decisions have ruled them unconstitutional.

⁸³ Section 766.118(2)(b), F.S.

⁸⁴ Section 766.118(4), F.S.

⁸⁵ Section 766.118(6), F.S.

⁸⁶ Section 766.118(6)(c), F.S.

⁸⁷ Section 766.118(3)(a), F.S.

⁸⁸ Section 766.118(3)(b), F.S.

⁸⁹ Section 766.118(6), F.S.

Sexual Battery on a Person Under 16

Section 95.11, F.S., provides statutes of limitation for various types of civil actions. In 2010, the Legislature amended s. 95.11, F.S., to remove any statute of limitations applying to a civil action against a private entity for sexual battery if the victim was under 16 at the time of the crime.⁹⁰ The Legislature provided, however, that this amendment would not resuscitate any civil claims that were already barred by the statute of limitations at the time.⁹¹

Uniform Contribution Tortfeasors Act

In tort law, contribution refers to the action a defendant may bring in a joint and several liability jurisdiction to recover for damages they paid out but did not cause.⁹² In a jurisdiction that follows joint and several liability, a negligent defendant is liable to pay damages for all harm suffered by the plaintiff, even if the negligence of other parties caused some of that harm.⁹³

In common law, contribution is the sharing of a loss or payment among several or the act of any one or several of a number of co-debtors, co-sureties, etc., in reimbursing one of their number who has paid the whole debt or suffered the whole liability, each to the extent of his proportionate share.⁹⁴

A tortfeasor is an individual or entity that has been found to have committed a civil offense that injures another party.⁹⁵ Negligence, fraud, emotional harm and trespassing are included in civil offenses tortfeasors may have committed.⁹⁶ Such matters are resolved through tort law, which covers civil lawsuits. The person claiming damage by the actions of another party, is a plaintiff.⁹⁷ Under certain causes of action, more than one party may be found responsible for the tort⁹⁸ brought by the Plaintiff in his or her lawsuit. The court may award monetary judgement against the parties according to the proportionate share of the damage each party was responsible for.⁹⁹ Such amount may include reimbursement for lost wages, medical expenses, or related losses.¹⁰⁰

⁹⁰ Ch. 2010-54, s. 1, Laws of Fla.; s. 95.11(9), F.S.

⁹¹ *Id.* (“This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010”).

⁹² Cornell Law School, Legal Information Institute,

<https://www.law.cornell.edu/wex/contribution#:~:text=In%20the%20field%20of%20tort,out%20but%20did%20not%20cause> (last visited Feb. 8, 2024).

⁹³ *Id.*

⁹⁴ Black's Law Dictionary, 8th Ed. (Bryan A. Garner, ed. 2004), available at <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf> (last visited Feb. 8, 2024).

⁹⁵ Investopedia, *Tortfeasor: What it is, How it Works, Types*, <https://www.investopedia.com/terms/t/tortfeasor.asp> (last visited Feb. 8, 2024).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* Tort is defined as “an act or an omission that causes harm to another person or entity.”

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Actions arising from torts fall into three main categories, each with its own standards: strict liability,¹⁰¹ intentional torts¹⁰² and negligent torts.¹⁰³ In some civil instances, actions involving torts may affect insurance policies; insurance companies that indemnify their policyholders are required to defend them against civil claims and may be responsible for reimbursing tortfeasors for damages¹⁰⁴ settled or awarded.

Under s. 76.81, F.S., when two or more persons become jointly or severally liable in tort for the same injury to person or property, or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them. In addition, the right of contribution exists only in favor of a tortfeasor who has paid more than her or his pro rata share of the common liability, and the tortfeasor's total recovery is limited to the amount paid by her or him in excess of her or his pro rata share.¹⁰⁵ Under Florida law, no tortfeasor is compelled to make contribution beyond her or his own pro rata share of the entire liability;¹⁰⁶ however, in instances of willful and wanton actions which caused or contributed to the injury or death of another, there is no right of contribution in favor of any tortfeasor.

Section 768.31(b), F.S., provides enforcement:

- Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate actions;¹⁰⁷
- When a judgement has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants, by motion upon notice to all parties to the action;
- If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by her or him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review; and
- If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the tortfeasor's right of contribution is barred unless she or he has either:
 - Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against her or him and has commenced her or his action for contribution within one year after payment, or
 - Agreed, while action is pending against her or him, to discharge the common liability and has within one year after the agreement paid the liability and commenced her or his action for contribution

¹⁰¹ *Id.* Strict liability tort seeks to redress damages caused unintentionally by another party, who is, nonetheless, responsible.

¹⁰² *Id.* Intentional torts are committed by tortfeasors who understood that their conduct could result in damage to other parties. Even acts that involve violence can be pursued as intentional torts by victims who seek compensations that cannot be found in a criminal proceeding.

¹⁰³ *Id.* Negligent torts are caused by a tortfeasor who caused an injury by failing to take reasonable care.

¹⁰⁴ *Id.*

¹⁰⁵ Section 768.31(3), F.S. Pro rata share of tortfeasors in the entire liability is determined by: (1) The tortfeasors' relative degree of fault shall be the basis for allocation of liability; (2) If equity requires, the collective liability of some as a group shall constitute a single share; and (3) Principles of equity applicable to contribution generally shall apply.

¹⁰⁶ Section 768.31(3), F.S.

¹⁰⁷ Section 768.31(4), F.S.

Florida law provides the recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied.¹⁰⁸ Furthermore, the satisfaction of the judgment does not impair any right of contribution. The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.¹⁰⁹

III. Effect of Proposed Changes:

Liability Caps

The bill amends s. 786.28, F.S., to increase the limits of the waiver of sovereign immunity for a claim made against the state and its agencies and subdivisions from \$200,000 to \$400,000 per person, and from \$300,000 to \$600,000 per incident. Beginning July 1, 2025, the bill provides for the adjustment of the cap every five years to reflect changes in the Southeast Consumer Price Index or a successor index as calculated by the U.S. Department of Labor. A claim's liability limits will be determined on the date that a final judgment is entered on a claim.

Settlement in Excess of Liability Cap

The bill allows a subdivision of the state, but not the state or an agency, to settle a claim in any amount without approval of a claim bill by the Legislature. Under current law, amounts that exceed the sovereign immunity caps may be paid without approval of the Legislature only from the proceeds of an insurance policy.¹¹⁰

This provision therefore allows a local government to pay a settled amount in excess of the sovereign immunity caps out of its own coffers, or through its insurance coverage. A state entity, however, is limited in its ability to pay above the sovereign immunity caps by either its insurance policy limit or a legislative appropriation resulting from the claim bill process.¹¹¹

Additionally, the bill prohibits a party from lobbying against any agreed upon settlement brought to the Legislature in the claims bill process and prohibits an insurance company from placing any conditions on the payment of benefits on the enactment of a claim bill.¹¹²

When determining liability limits for a claim, the limitations of liability in effect on the date when the claim incident occurred apply to the settled claim.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ "No claims bill is necessary if excess insurance is purchased and the plaintiffs find it necessary to proceed directly against the excess carrier." *Hillsborough Co. v. Star Ins. Co.*, 847 F.3d 1296, 1306 (2017).

¹¹¹ See discussion of FLA. CONST. art. VII, s. 1(d), *infra*.

¹¹² This provision will likely prevent inclusion of contractual provisions that bar recovery for claimants pursuant to an insurance policy by, e.g., requiring the claimant to first go through the Legislative Claims Bill process before the insurance policy may be used for payment of a settlement. See, *Martin v. Nat'l. Union Fire Ins. Co. of Pittsburgh, Pa.*, 616 So. 2d 11433, 1145 (Fla. 4th DCA 1993).

Pre-suit Notice and Statutes of Limitation

The bill reduces the pre-suit notice timeframe from three years to 18 months, therefore requiring that a claimant provide quicker notice to the state, or one of its agencies or subdivisions than required under current law. The bill also reduces the Department of Financial Services' (DFS) or appropriate agency's allotted time to review a claim in the pre-suit notice phase from six-months to four-months—during which the statute of limitations is now tolled for all defendants, not just in cases for medical malpractice and wrongful death actions. After the DFS or state agency issues its final disposition of a claim, or a final denial of a claim has occurred, the claimant has the greater of 60 days or the remainder of the period of the applicable statute of limitations to file suit against the appropriate actor.

The bill imposes varied statutes of limitations (barring the action unless commenced within prescribed timeframe), requiring a claimant to file a civil action against the state or an agency or subdivision of as follows:

- For claims based on negligence, within two years;
- For claims of sexual battery where the plaintiff was younger than 16 years old at the time of the injury (other than one which would have been time barred on or before July 1, 2010), there is no statute of limitations; and
- For any other claim—within four years.

The bill takes effect October 1, 2024, and applies to any claim that was not concluded by a final judgment or settlement before then.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article I, s. 10 of the State Constitution prohibits laws that impair the obligations of existing contracts.¹¹³ Because the bill bars insurance conditioned on the payment of a claim bill, the Legislature should specify that this provision applies to insurance contracts entered into or renewed on or after the effective date of the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may enable more individuals harmed by a state entity-tortfeasor to receive larger payments without the need to pursue a claim bill. The capacity for a larger reward without a claim bill may incentivize private attorneys to represent such claimants.

C. Government Sector Impact:

The bill has an indeterminate impact to state revenue and expenditures.

The cost to local governments is indeterminate as it relates to its ability to settle claims without regard to any statutory limit on damages under s. 768.28, F.S. However, local governments may experience an increase in expenditures due to settlements, awards, and other legal costs.

By reducing the statute of limitations for suits against the government arising in negligence, the bill may reduce the number of cases initiated and the potential damages sought by claimants from the government. Further, by reducing the pre-suit time period for a government entity or the Department of Financial Services (DFS) to review and dispose of a claim against the state, the bill may affect the pre-suit settlement process.

By increasing the statute of limitations for sexual battery on a victim under 16, the bill may increase the number of claims against the government for such sexual battery. The bill may reduce the workload of the Legislature by reducing the number of claim bills filed but may also reduce the legislative oversight of claims against local government entities.

The DFS estimates, in order to establish and maintain a separate section to process the increased claims and defense attorney billings, the bill will require an additional five positions, with recurring salaries and benefits cost of \$366,455 and nonrecurring costs

¹¹³ *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1190 (Fla. 2017).

of \$58,980.¹¹⁴ The DFS did not include an estimate for rate associated with the requested positions.¹¹⁵ The DFS proposes the five positions as follows:¹¹⁶

DFS – Division of Risk Management Proposed Staffing to Implement SB 472							
Title	Pay Grade	Class Code	Salaries	Benefits	Expenses	TR/DMS	Total
Records Specialist	15	0130	\$35,000	\$21,958	\$11,436	\$360	\$68,754
Risk Management Program Specialist	22	3545	\$46,549	\$24,408	\$11,436	\$360	\$82,753
Risk Management Program Specialist	22	3545	\$46,549	\$24,408	\$11,436	\$360	\$82,753
Risk Management Program Specialist	22	3545	\$46,549	\$24,408	\$11,436	\$360	\$82,753
Risk Management Program Administrator	424	3546	\$75,000	\$31,626	\$11,436	\$360	\$118,422
Total			\$249,647	\$116,808	\$57,180	\$1,800	\$453,435

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 45.061, 110.504, 111.071, 125.01015, 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302, 351.03, 373.1395, 375.251, 381.0056, 393.075, 394.9085, 395.1055, 403.706, 409.175, 409.993, 420.504, 420.507, 455.221, 455.32, 456.009, 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106, 589.19, 627.7491, 723.0611, 760.11, 766.1115, 766.112, 768.1335, 768.1382, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.351, 1002.37, 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261.

¹¹⁴ *Id* at 4.

¹¹⁵ *Id* at 4.

¹¹⁶ *Id* at 4.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 22, 2024:

The committee substitute:

- Restores the home venue provision to current law;
- Establishes determination of liability limits for a claim is based on the limitations of liability in effect when the claim incident occurred versus the date of final judgment; and
- Provides the DFS shall adjust the limitations of liability every five years based on the changes in the Consumer Price Index for the Southeast or a successor index, not to exceed three percent.

CS by Governmental Oversight and Accountability on January 29, 2024:

The committee substitute:

- Abolishes the common law doctrine of “home venue privilege” in relation to negligence suits against the state.
- Allows a subdivision of the state, but not the state or an agency, to agree to settle a claim in excess of the sovereign immunity cap, and without regard to insurance coverage limits, without further state action.
- Allows the state or an agency to agree to settle a claim pursuant to the sovereign immunity waiver, and seek excess payment from the Legislature through a claim bill, or up to the maximum limit of its insurance coverage without further legislative action.
- Prohibits a party from lobbying the Legislature to vote against a claims bill that it agreed to settle.
- Sets the date on which a claim’s liability limits are determined as that on which a final judgment is entered.
- Delays the calculation of an adjusted sovereign immunity cap (based on CPI) to July 1, 2029, and requires a recalculation every five years.
- Requires a claimant to file pre-suit notice of a claim with the appropriate agency no later than 18 months, rather than three years, after the claim accrues in order to pursue an action against the state or one of its agencies or subdivisions.
- Reduces from six months to four months the general pre-suit statutory timeframe for a government entity’s review and disposal of a claim.
- Tolls the statute of limitations for all defendants, not just those in medical malpractice and wrongful death actions, for the duration of the Department of Financial Services’ (DFS) or agency’s pre-suit consideration of a claim.
- Provides 60 days or the remainder of the statute of limitations, whichever is greater, from the date on which the DFS or appropriate agency issues a final disposition of a claim or otherwise is deemed to have issued a final denial, for a claimant to file suit.
- Reduces the statute of limitations for filing a claim against a governmental entity for claims based in negligence from four to two years, but maintains the 4-year statute of limitations for “any other action not specified.”

- Removes the statute of limitations for filing a claim against a governmental entity for sexual battery of a victim under the age of 16.
- Changes the effective date to October 1, 2024, and states that it applies to claims that accrue on or after that date.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
