

CS/CS/HB 277

2011

1 A bill to be entitled

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

19
20 Be It Enacted by the Legislature of the State of Florida:

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

25 768.28 Waiver of sovereign immunity in tort actions;
26 recovery limits; limitation on attorney fees; statute of
27 limitations; exclusions; indemnification; risk management
28 programs.—

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

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

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

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

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

83 (14) Every claim against the state or one of its agencies
84 or subdivisions for damages for a negligent or wrongful act or

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85 | omission pursuant to this section shall be forever barred unless
86 | the civil action is commenced by filing a complaint in the court
87 | of appropriate jurisdiction within 4 years after such claim
88 | accrues; except that an action for contribution must be
89 | commenced within the limitations provided in s. 768.31(4), and
90 | an action for damages arising from medical malpractice or
91 | wrongful death must be commenced within the limitations for such
92 | actions ~~an action~~ in s. 95.11(4).

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