

## **UMBRELLA LIABILITY CONSIDERATIONS**

- Current Liability Limit - \$1M excess of \$400,000 Self-Insured Retention (SIR)
- Loss Experience - \$1.04M Wrongful Death claim in 2014
- Increase in Liability Claims
  - >Increased filing of Traumatic Brain Injury claims for auto accidents
  - >Reviver legislation that increases the statute of limitations to age 55
  - >Excessive Force claims
  - >Large verdicts
- State has a \$200,000/\$300,000 cap on liability claims but the following could pierce the cap:
  - >Federal cause of action
  - >Incident involving multiple causes of action
  - >Class action suits or civil rights violations/allegations
- State is considering Senate Bill 1302 which would increase the cap to \$1,000,000 plus an annual increase based on the Consumer Price Index
- Benchmarking
  - Miami, FL – Purchases \$5M excess limits
  - Sunrise, FL – Purchases \$5M excess limits
  - KY (similar cap as Florida's) – City of Louisville, Louisville Jefferson County Metro Government and other Transit, Water and Cities buy \$7M limit excess of their SIR
  - NV (strict on caps) – City of Las Vegas and Henderson buy \$10M limit excess of their SIRs
- \$1M Umbrella Limit (excess of General Liability, Auto Liability, Employers Liability) available for \$100,000 plus taxes and fees

By Senator Flores

39-01004A-20

20201302\_\_

1                                   A bill to be entitled

2           An act relating to sovereign immunity; amending s.

3           768.28, F.S.; providing a short title; providing an

4           exception to certain liability for the state and its

5           agencies and subdivisions; increasing the statutory

6           limits on liability for tort claims against the state

7           and its agencies and subdivisions; conforming

8           provisions to changes made by the act; revising when a

9           state and its agencies and subdivisions may agree to

10          settle a claim or judgment without further action from

11          the Legislature; requiring that the limitations on

12          tort liability be adjusted every year after a

13          specified date; specifying that the limitations in

14          effect on the date a final judgment is entered apply

15          to that judgment; requiring certain final judgment

16          amounts to be paid without further action by the

17          Legislature; providing liability for claims arising as

18          a result of certain acts or omissions by certain

19          persons; prohibiting an insurance policy from

20          conditioning the payment of benefits on the enactment

21          of claims bills; amending ss. 29.0081, 39.8297,

22          163.01, 252.36, 260.0125, 288.9625, 316.6146, 321.24,

23          324.022, 381.0056, 403.0862, 456.048, 458.320,

24          459.0085, 589.19, 616.242, 624.461, 624.462, 627.733,

25          760.11, 766.1115, 766.118, 768.1315, 768.135, 944.713,

26          984.09, 985.037, 1002.55, 1002.88, 1004.41, 1004.43,

27          1004.447, and 1006.261, F.S.; conforming cross

28          references; reenacting ss. 45.061, 110.504, 111.071,

29          163.01(15)(k), 190.043, 213.015, 284.31, 284.38,

30          337.19, 341.302, 373.1395, 375.251, 393.075, 403.706,

31          409.993, 455.221, 455.32, 456.009, 472.006, 497.167,

32          548.046, 556.106, 768.295, 946.5026, 946.514, 961.06,

33          1002.33, 1002.333, 1002.34, 1002.77, and 1002.83,

34          F.S., to incorporate the amendment made to s. 768.28,

35          F.S.; providing an effective date.

36

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

38

39           Section 1. Present subsections (1) through (20) of section

40 768.28, Florida Statutes, are redesignated as subsections (2)

41 through (21), respectively, a new subsection (1) is added to  
42 that section, and present subsection (5), paragraphs (a) and (b)  
43 of present subsection (9), and paragraph (a) of present  
44 subsection (16) of that section are amended, to read:

45       768.28 Florida Fair Claims Act; waiver of sovereign  
46 immunity in tort actions; recovery limits; limitation on  
47 attorney fees; statute of limitations; exclusions;  
48 indemnification; risk management programs.—

49       (1) This section may be cited as the "Florida Fair Claims  
50 Act."

51       (6)(a)(5) The state and its agencies and subdivisions shall  
52 be liable for tort claims in the same manner and to the same  
53 extent as a private individual under like circumstances, but  
54 liability shall not include punitive damages or interest for the  
55 period before judgment. Except as specified in paragraph (b),  
56 neither the state nor its agencies or subdivisions shall be  
57 liable to pay a claim or a judgment by any one person which  
58 exceeds the sum of \$200,000 or any claim or judgment, or  
59 portions thereof, which, when totaled with all other claims or  
60 judgments paid by the state or its agencies or subdivisions  
61 arising out of the same incident or occurrence, exceeds the sum  
62 of \$1 million ~~\$300,000~~. However, a judgment or judgments may be  
63 claimed and rendered in excess of this amount ~~these amounts and~~  
64 ~~may be settled and paid pursuant to this act up to \$1 million~~  
65 ~~\$200,000 or \$300,000, as the case may be; and that portion of~~  
66 ~~the judgment that exceeds this amount~~ these amounts may be  
67 reported to the Legislature, but may be paid in part or in whole  
68 only by further act of the Legislature. Notwithstanding the  
69 limited waiver of sovereign immunity provided herein, the state  
70 or an agency or subdivision thereof may agree, ~~within the limits~~  
71 ~~of insurance coverage provided,~~ to settle a claim made or a  
72 judgment rendered against it in excess of \$1 million without  
73 further action by the Legislature, ~~but~~ The state or agency or  
74 subdivision thereof may ~~shall~~ not be deemed to have waived any  
75 defense of sovereign immunity or to have increased the limits of  
76 its liability as a result of its obtaining insurance coverage  
77 for tortious acts in excess of the \$1 million ~~\$200,000 or~~  
78 ~~\$300,000~~ waiver provided above. The limitations of liability set  
79 forth in this subsection shall apply to the state and its  
80 agencies and subdivisions whether or not the state or its  
81 agencies or subdivisions possessed sovereign immunity before  
82 July 1, 1974.

83

84 Beginning July 1, 2021, and every July 1 thereafter, the  
85 limitations of liability in this paragraph shall be adjusted to  
86 reflect changes in the Consumer Price Index For the Southeast or  
87 a successor index as calculated by the United States Department  
88 of Labor. When determining liability limits for a claim, the  
89 limitations of liability in effect on the date a final judgment  
90 is entered apply to the claim.

91       (b) The state and its agencies and subdivisions shall be

92 liable to pay the final judgment amount for compensatory damages  
93 for claims in which an officer, employee, or agent of the state  
94 or its subdivisions, in the scope of her or his employment or  
95 function, committed the act in bad faith or with malicious  
96 purpose or in a manner exhibiting wanton and willful disregard  
97 of human rights, safety, or property. The limits in effect on  
98 the date a final judgment is entered apply to the judgment. The  
99 final judgment amount for compensatory damages for such claims  
100 shall be paid without further action by the Legislature.

101 (10)+9(a) No officer, employee, or agent of the state or  
102 of any of its subdivisions shall be held personally liable in  
103 tort or named as a party defendant in any action for any injury  
104 or damage suffered as a result of any act, event, or omission of  
105 action in the scope of her or his employment or function, unless  
106 such officer, employee, or agent acted in bad faith or with  
107 malicious purpose or in a manner exhibiting wanton and willful  
108 disregard of human rights, safety, or property. However, such  
109 officer, employee, or agent shall be considered an adverse  
110 witness in a tort action for any injury or damage suffered as a  
111 result of any act, event, or omission of action in the scope of  
112 her or his employment or function. The exclusive remedy for  
113 injury or damage suffered as a result of an act, event, or  
114 omission of an officer, employee, or agent of the state or any  
115 of its subdivisions or constitutional officers shall be by  
116 action against the governmental entity, or the head of such  
117 entity in her or his official capacity, or the constitutional  
118 officer of which the officer, employee, or agent is an employee,  
119 unless such act or omission was committed in bad faith or with  
120 malicious purpose or in a manner exhibiting wanton and willful  
121 disregard of human rights, safety, or property. The state or its  
122 subdivisions shall not be liable in tort for the acts or  
123 omissions of an officer, employee, or agent committed while  
124 acting outside the course and scope of her or his employment.  
125 However, the state or its subdivision shall be liable for  
126 compensatory damages pursuant to paragraph (6)(b) and the  
127 employee, officer, or agent of the state or its subdivision  
128 shall be liable for all damages for any injury or damage  
129 suffered as a result of any act or omission that the person, in  
130 the scope of her or his employment or function, ~~ex~~ committed in  
131 bad faith or with malicious purpose or in a manner exhibiting  
132 wanton and willful disregard of human rights, safety, or  
133 property.

134 (b) As used in this subsection, the term:

135 1. "Employee" includes any volunteer firefighter.

136 2. "Officer, employee, or agent" includes, but is not  
137 limited to, any health care provider when providing services  
138 pursuant to s. 766.1115; any nonprofit independent college or  
139 university located and chartered in this state which owns or  
140 operates an accredited medical school, and its employees or  
141 agents, when providing patient services pursuant to paragraph

142 (11)(f) ~~(10)(f)~~; and any public defender or her or his employee

143 or agent, including, among others, an assistant public defender  
144 and an investigator.

145 (17)-(16)(a) The state and its agencies and subdivisions are  
146 authorized to be self-insured, to enter into risk management  
147 programs, or to purchase liability insurance for whatever  
148 coverage they may choose, or to have any combination thereof, in  
149 anticipation of any claim, judgment, and claims bill which they  
150 may be liable to pay pursuant to this section. Agencies or  
151 subdivisions, and sheriffs, that are subject to homogeneous  
152 risks may purchase insurance jointly or may join together as  
153 self-insurers to provide other means of protection against tort  
154 claims, any charter provisions or laws to the contrary  
155 notwithstanding. An insurance policy may not condition the  
156 payment of benefits, in whole or in part, on the enactment of  
157 claims bills.

158 Section 2. Paragraph (b) of subsection (2) of section  
159 29.0081, Florida Statutes, is amended to read:

160 29.0081 County funding of additional court personnel.—

161 (2) The agreement shall, at a minimum, provide that:

162 (b) The personnel whose employment is funded under the  
163 agreement are hired, supervised, managed, and fired by personnel  
164 of the judicial circuit. The county shall be considered the  
165 employer for purposes of s. 440.10 and chapter 443. Employees  
166 funded by the county under this section and other county  
167 employees may be aggregated for purposes of a flexible benefits  
168 plan pursuant to s. 125 of the Internal Revenue Code of 1986.  
169 The judicial circuit shall supervise the personnel whose  
170 employment is funded under the agreement; be responsible for  
171 compliance with all requirements of federal and state employment  
172 laws, including, but not limited to, Title VII of the Civil  
173 Rights Act of 1964, Title I of the Americans with Disabilities  
174 Act, 42 U.S.C. s. 1983, the Family Medical Leave Act, the Fair  
175 Labor Standards Act, chapters 447 and 760, and ss. 112.3187,  
176 440.105, and 440.205; and fully indemnify the county from any  
177 liability under such laws, as authorized by s. 768.28(20) ~~or~~  
178 ~~768.28(19)~~, to the extent such liability is the result of the  
179 acts or omissions of the judicial circuit or its agents or  
180 employees.

181 Section 3. Paragraph (b) of subsection (2) of section  
182 39.8297, Florida Statutes, is amended to read:

183 39.8297 County funding for guardian ad litem employees.—

184 (2) The agreement, at a minimum, must provide that:

185 (b) The persons who are employed will be hired, supervised,  
186 managed, and terminated by the executive director of the  
187 Statewide Guardian Ad Litem Office. The statewide office is  
188 responsible for compliance with all requirements of federal and  
189 state employment laws, and shall fully indemnify the county from  
190 any liability under such laws, as authorized by s. 768.28(20) ~~or~~  
191 ~~768.28(19)~~, to the extent such liability is the result of the  
192 acts or omissions of the Statewide Guardian Ad Litem Office or  
193 its agents or employees.

194 Section 4. Paragraph (h) of subsection (3) of section  
195 163.01, Florida Statutes, is amended to read:

196 163.01 Florida Interlocal Cooperation Act of 1969.—

197 (3) As used in this section:

198 (h) "Local government liability pool" means a reciprocal  
199 insurer as defined in s. 629.021 or any self-insurance program  
200 created pursuant to s. 768.28(17) ~~s. 768.28(16)~~, formed and  
201 controlled by counties or municipalities of this state to  
202 provide liability insurance coverage for counties,  
203 municipalities, or other public agencies of this state, which  
204 pool may contract with other parties for the purpose of  
205 providing claims administration, processing, accounting, and  
206 other administrative facilities.

207 Section 5. Paragraph (1) of subsection (5) of section  
208 252.36, Florida Statutes, is amended to read:

209 252.36 Emergency management powers of the Governor.—

210 (5) In addition to any other powers conferred upon the  
211 Governor by law, she or he may:

212 (1) Authorize the use of forces already mobilized as the  
213 result of an executive order, rule, or proclamation to assist  
214 the private citizens of the state in cleanup and recovery  
215 operations during emergencies when proper permission to enter  
216 onto or into private property has been obtained from the  
217 property owner. The provisions of s. 768.28(10) ~~s. 768.28(9)~~  
218 apply to this paragraph.

219 Section 6. Subsection (2) of section 260.0125, Florida  
220 Statutes, is amended to read:

221 260.0125 Limitation on liability of private landowners  
222 whose property is designated as part of the statewide system of  
223 greenways and trails.—

224 (2) Any private landowner who consents to designation of  
225 his or her land as part of the statewide system of greenways and  
226 trails pursuant to s. 260.016(2)(d) without compensation shall  
227 be considered a volunteer, as defined in s. 110.501, and shall  
228 be covered by state liability protection pursuant to s. 768.28,  
229 including s. 768.28(10) ~~s. 768.28(9)~~.

230 Section 7. Subsection (2) and paragraph (g) of subsection  
231 (10) of section 288.9625, Florida Statutes, are amended to read:

232 288.9625 Institute for Commercialization of Florida  
233 Technology.—

234 (2) The purpose of the institute is to assist, without any  
235 financial support or specific appropriations from the state, in  
236 the commercialization of products developed by the research and  
237 development activities of an innovation business, including, but  
238 not limited to, those defined in s. 288.1089. The institute  
239 shall fulfill its purpose in the best interests of the state.  
240 The institute:

241 (a) Is a corporation primarily acting as an instrumentality  
242 of the state pursuant to s. 768.28(3) ~~s. 768.28(2)~~, for the  
243 purposes of sovereign immunity;

244 (b) Is not an agency within the meaning of s. 20.03(11);

- 245 (c) Is subject to the open records and meetings  
246 requirements of s. 24, Art. I of the State Constitution, chapter  
247 119, and s. 286.011;
- 248 (d) Is not subject to chapter 287;
- 249 (e) Is governed by the code of ethics for public officers  
250 and employees as set forth in part III of chapter 112;
- 251 (f) May create corporate subsidiaries; and
- 252 (g) May not receive any financial support or specific  
253 appropriations from the state.
- 254 (10) The private fund manager:
- 255 (g) Is not a corporation primarily acting as an  
256 instrumentality of the state pursuant to s. 768.28(3) ~~or~~  
257 ~~768.28(2)~~, for the purposes of sovereign immunity.

258 Section 8. Section 316.6146, Florida Statutes, is amended  
259 to read:

260 316.6146 Transportation of private school students on  
261 public school buses and public school students on private school  
262 buses; agreement.—Private school students may be transported on  
263 public school buses and public school students may be  
264 transported on private school buses when there is mutual  
265 agreement between the local school board and the applicable  
266 private school. Any agreement for private school students to be  
267 transported on public school buses must be in accordance with  
268 ss. 768.28(10)(a) ~~ss. 768.28(9)(a)~~ and 316.6145. Any agreement  
269 for public school students to be transported on private school  
270 buses must be contingent on the private school bus driver's  
271 having adequate liability insurance through his or her employer.

272 Section 9. Subsection (5) of section 321.24, Florida  
273 Statutes, is amended to read:

274 321.24 Members of an auxiliary to Florida Highway Patrol.—

275 (5) Notwithstanding any other law to the contrary, any  
276 volunteer highway patrol troop surgeon appointed by the director  
277 of the Florida Highway Patrol and any volunteer licensed health  
278 professional appointed by the director of the Florida Highway  
279 Patrol to work under the medical direction of a highway patrol  
280 troop surgeon is considered an employee for purposes of s.  
281 768.28(10) ~~s. 768.28(9)~~.

282 Section 10. Subsection (1) of section 324.022, Florida  
283 Statutes, is amended to read:

284 324.022 Financial responsibility for property damage.—

285 (1) Every owner or operator of a motor vehicle required to  
286 be registered in this state shall establish and maintain the  
287 ability to respond in damages for liability on account of  
288 accidents arising out of the use of the motor vehicle in the  
289 amount of \$10,000 because of damage to, or destruction of,  
290 property of others in any one crash. The requirements of this  
291 section may be met by one of the methods established in s.  
292 324.031; by self-insuring as authorized by s. 768.28(17) ~~or~~  
293 ~~768.28(16)~~; or by maintaining an insurance policy providing  
294 coverage for property damage liability in the amount of at least  
295 \$10,000 because of damage to, or destruction of, property of

296 others in any one accident arising out of the use of the motor  
297 vehicle. The requirements of this section may also be met by  
298 having a policy which provides coverage in the amount of at  
299 least \$30,000 for combined property damage liability and bodily  
300 injury liability for any one crash arising out of the use of the  
301 motor vehicle. The policy, with respect to coverage for property  
302 damage liability, must meet the applicable requirements of s.  
303 324.151, subject to the usual policy exclusions that have been  
304 approved in policy forms by the Office of Insurance Regulation.  
305 No insurer shall have any duty to defend uncovered claims  
306 irrespective of their joinder with covered claims.

307 Section 11. Subsection (9) of section 381.0056, Florida  
308 Statutes, is amended to read:

309 381.0056 School health services program.—

310 (9) Any health care entity that provides school health  
311 services under contract with the department pursuant to a school  
312 health services plan developed under this section, and as part  
313 of a school nurse services public-private partnership, is deemed  
314 to be a corporation acting primarily as an instrumentality of  
315 the state solely for the purpose of limiting liability pursuant  
316 to s. 768.28(6) ~~s. 768.28(5)~~. The limitations on tort actions  
317 contained in s. 768.28(6) ~~s. 768.28(5)~~ shall apply to any action  
318 against the entity with respect to the provision of school  
319 health services, if the entity is acting within the scope of and  
320 pursuant to guidelines established in the contract or by rule of  
321 the department. The contract must require the entity, or the  
322 partnership on behalf of the entity, to obtain general liability  
323 insurance coverage, with any additional endorsement necessary to  
324 insure the entity for liability assumed by its contract with the  
325 department. The Legislature intends that insurance be purchased  
326 by entities, or by partnerships on behalf of the entity, to  
327 cover all liability claims, and under no circumstances shall the  
328 state or the department be responsible for payment of any claims  
329 or defense costs for claims brought against the entity or its  
330 subcontractor for services performed under the contract with the  
331 department. This subsection does not preclude consideration by  
332 the Legislature for payment by the state of any claims bill  
333 involving an entity contracting with the department pursuant to  
334 this section.

335 Section 12. Subsection (4) of section 403.0862, Florida  
336 Statutes, is amended to read:

337 403.0862 Discharge of waste from state groundwater cleanup  
338 operations to publicly owned treatment works.—

339 (4) The limitation on damages provided by s. 768.28(6) ~~s.~~  
340 ~~768.28(5)~~ shall not apply to any obligation or payment which may  
341 become due under this section.

342 Section 13. Paragraph (a) of subsection (2) of section  
343 456.048, Florida Statutes, is amended to read:

344 456.048 Financial responsibility requirements for certain  
345 health care practitioners.—

346 (2) The board or department may grant exemptions upon

347 application by practitioners meeting any of the following  
348 criteria:

349 (a) Any person licensed under chapter 457, s. 458.3475, s.  
350 459.023, chapter 460, chapter 461, s. 464.012, chapter 466, or  
351 chapter 467 who practices exclusively as an officer, employee,  
352 or agent of the Federal Government or of the state or its  
353 agencies or its subdivisions. For the purposes of this  
354 subsection, an agent of the state, its agencies, or its  
355 subdivisions is a person who is eligible for coverage under any  
356 self-insurance or insurance program authorized by the provisions  
357 of s. 768.28(17) ~~s. 768.28(16)~~ or who is a volunteer under s.  
358 110.501(1).

359 Section 14. Paragraph (a) of subsection (5) of section  
360 458.320, Florida Statutes, is amended to read:

361 458.320 Financial responsibility.—

362 (5) The requirements of subsections (1), (2), and (3) do  
363 not apply to:

364 (a) Any person licensed under this chapter who practices  
365 medicine exclusively as an officer, employee, or agent of the  
366 Federal Government or of the state or its agencies or its  
367 subdivisions. For the purposes of this subsection, an agent of  
368 the state, its agencies, or its subdivisions is a person who is  
369 eligible for coverage under any self-insurance or insurance  
370 program authorized by the provisions of s. 768.28(17) ~~s.~~  
371 ~~768.28(16)~~.

372 Section 15. Paragraph (a) of subsection (5) of section  
373 459.0085, Florida Statutes, is amended to read:

374 459.0085 Financial responsibility.—

375 (5) The requirements of subsections (1), (2), and (3) do  
376 not apply to:

377 (a) Any person licensed under this chapter who practices  
378 medicine exclusively as an officer, employee, or agent of the  
379 Federal Government or of the state or its agencies or its  
380 subdivisions. For the purposes of this subsection, an agent of  
381 the state, its agencies, or its subdivisions is a person who is  
382 eligible for coverage under any self-insurance or insurance  
383 program authorized by the provisions of s. 768.28(17) ~~s.~~  
384 ~~768.28(16)~~.

385 Section 16. Paragraph (e) of subsection (4) of section  
386 589.19, Florida Statutes, is amended to read:

387 589.19 Creation of certain state forests; naming of certain  
388 state forests; Operation Outdoor Freedom Program.—

389 (4)

390 (e)1. A private landowner who provides land for designation  
391 and use as an Operation Outdoor Freedom Program hunting site  
392 shall have limited liability pursuant to s. 375.251.

393 2. A private landowner who consents to the designation and  
394 use of land as part of the Operation Outdoor Freedom Program  
395 without compensation shall be considered a volunteer, as defined  
396 in s. 110.501, and shall be covered by state liability  
397 protection pursuant to s. 768.28, including s. 768.28(10) ~~s.~~

398 ~~768.28(9)~~.

399 3. This subsection does not:

400 a. Relieve any person of liability that would otherwise  
401 exist for deliberate, willful, or malicious injury to persons or  
402 property.

403 b. Create or increase the liability of any person.

404 Section 17. Paragraph (c) of subsection (9) of section  
405 616.242, Florida Statutes, is amended to read:

406 616.242 Safety standards for amusement rides.--

407 (9) INSURANCE REQUIREMENTS.--

408 (c) The insurance requirements imposed under this  
409 subsection do not apply to a governmental entity that is covered  
410 by the provisions of s. 768.28(17) ~~s. 768.28(16)~~.

411 Section 18. Section 624.461, Florida Statutes, is amended  
412 to read:

413 624.461 Definition.--For the purposes of the Florida  
414 Insurance Code, "self-insurance fund" means both commercial  
415 self-insurance funds organized under s. 624.462 and group self  
416 insurance funds organized under s. 624.4621. The term "self  
417 insurance fund" does not include a governmental self-insurance  
418 pool created under s. 768.28(17) ~~s. 768.28(16)~~.

419 Section 19. Subsection (6) of section 624.462, Florida  
420 Statutes, is amended to read:

421 624.462 Commercial self-insurance funds.--

422 (6) A governmental self-insurance pool created pursuant to  
423 s. 768.28(17) ~~s. 768.28(16)~~ shall not be considered a commercial  
424 self-insurance fund.

425 Section 20. Paragraph (b) of subsection (3) of section  
426 627.733, Florida Statutes, is amended to read:

427 627.733 Required security.--

428 (3) Such security shall be provided:

429 (b) By any other method authorized by s. 324.031(2) or (3)  
430 and approved by the Department of Highway Safety and Motor  
431 Vehicles as affording security equivalent to that afforded by a  
432 policy of insurance or by self-insuring as authorized by s.  
433 768.28(17) ~~s. 768.28(16)~~. The person filing such security shall  
434 have all of the obligations and rights of an insurer under ss.  
435 627.730-627.7405.

436 Section 21. Subsection (5) of section 760.11, Florida  
437 Statutes, is amended to read:

438 760.11 Administrative and civil remedies; construction.--

439 (5) In any civil action brought under this section, the  
440 court may issue an order prohibiting the discriminatory practice  
441 and providing affirmative relief from the effects of the  
442 practice, including back pay. The court may also award  
443 compensatory damages, including, but not limited to, damages for  
444 mental anguish, loss of dignity, and any other intangible  
445 injuries, and punitive damages. The provisions of ss. 768.72 and  
446 768.73 do not apply to this section. The judgment for the total  
447 amount of punitive damages awarded under this section to an  
448 aggrieved person shall not exceed \$100,000. In any action or

449 proceeding under this subsection, the court, in its discretion,  
450 may allow the prevailing party a reasonable ~~attorney attorney's~~  
451 fee as part of the costs. It is the intent of the Legislature  
452 that this provision for ~~attorney attorney's~~ fees be interpreted  
453 in a manner consistent with federal case law involving a Title  
454 VII action. The right to trial by jury is preserved in any such  
455 private right of action in which the aggrieved person is seeking  
456 compensatory or punitive damages, and any party may demand a  
457 trial by jury. The commission's determination of reasonable  
458 cause is not admissible into evidence in any civil proceeding,  
459 including any hearing or trial, except to establish for the  
460 court the right to maintain the private right of action. A civil  
461 action brought under this section shall be commenced no later  
462 than 1 year after the date of determination of reasonable cause  
463 by the commission. The commencement of such action shall divest  
464 the commission of jurisdiction of the complaint, except that the  
465 commission may intervene in the civil action as a matter of  
466 right. Notwithstanding the above, the state and its agencies and  
467 subdivisions shall not be liable for punitive damages. The total  
468 amount of recovery against the state and its agencies and  
469 subdivisions shall not exceed the limitation as set forth in s.  
470 768.28(6) ~~s. 768.28(5)~~.

471 Section 22. Subsection (4) and paragraphs (a) and (b) of  
472 subsection (12) of section 766.1115, Florida Statutes, are  
473 amended to read:

474 766.1115 Health care providers; creation of agency  
475 relationship with governmental contractors.—

476 (4) CONTRACT REQUIREMENTS.—A health care provider that  
477 executes a contract with a governmental contractor to deliver  
478 health care services on or after April 17, 1992, as an agent of  
479 the governmental contractor is an agent for purposes of s.  
480 768.28(10) ~~s. 768.28(9)~~, while acting within the scope of duties  
481 under the contract, if the contract complies with the  
482 requirements of this section and regardless of whether the  
483 individual treated is later found to be ineligible. A health  
484 care provider shall continue to be an agent for purposes of s.  
485 768.28(10) ~~s. 768.28(9)~~ for 30 days after a determination of  
486 ineligibility to allow for treatment until the individual  
487 transitions to treatment by another health care provider. A  
488 health care provider under contract with the state may not be  
489 named as a defendant in any action arising out of medical care  
490 or treatment provided on or after April 17, 1992, under  
491 contracts entered into under this section. The contract must  
492 provide that:

493 (a) The right of dismissal or termination of any health  
494 care provider delivering services under the contract is retained  
495 by the governmental contractor.

496 (b) The governmental contractor has access to the patient  
497 records of any health care provider delivering services under  
498 the contract.

499 (c) Adverse incidents and information on treatment outcomes

500 must be reported by any health care provider to the governmental.  
501 contractor if the incidents and information pertain to a patient  
502 treated under the contract. The health care provider shall  
503 submit the reports required by s. 395.0197. If an incident  
504 involves a professional licensed by the Department of Health or  
505 a facility licensed by the Agency for Health Care  
506 Administration, the governmental contractor shall submit such  
507 incident reports to the appropriate department or agency, which  
508 shall review each incident and determine whether it involves  
509 conduct by the licensee that is subject to disciplinary action.  
510 All patient medical records and any identifying information  
511 contained in adverse incident reports and treatment outcomes  
512 which are obtained by governmental entities under this paragraph  
513 are confidential and exempt from the provisions of s. 119.07(1)  
514 and s. 24(a), Art. I of the State Constitution.

515 (d) Patient selection and initial referral must be made by  
516 the governmental contractor or the provider. Patients may not be  
517 transferred to the provider based on a violation of the  
518 antidumping provisions of the Omnibus Budget Reconciliation Act  
519 of 1989, the Omnibus Budget Reconciliation Act of 1990, or  
520 chapter 395.

521 (e) If emergency care is required, the patient need not be  
522 referred before receiving treatment, but must be referred within  
523 48 hours after treatment is commenced or within 48 hours after  
524 the patient has the mental capacity to consent to treatment,  
525 whichever occurs later.

526 (f) The provider is subject to supervision and regular  
527 inspection by the governmental contractor.

528 (g) As an agent of the governmental contractor for purposes  
529 of s. 768.28(10) ~~s. 768.28(9)~~, while acting within the scope of  
530 duties under the contract, a health care provider licensed under  
531 chapter 466 may allow a patient, or a parent or guardian of the  
532 patient, to voluntarily contribute a monetary amount to cover  
533 costs of dental laboratory work related to the services provided  
534 to the patient. This contribution may not exceed the actual cost  
535 of the dental laboratory charges.

536  
537 A governmental contractor that is also a health care provider is  
538 not required to enter into a contract under this section with  
539 respect to the health care services delivered by its employees.

540 (12) APPLICABILITY.—This section applies to incidents  
541 occurring on or after April 17, 1992. This section does not:

542 (a) Apply to any health care contract entered into by the  
543 Department of Corrections which is subject to s. 768.28(11)(a)  
544 ~~s. 768.28(10)(a)~~.

545 (b) Apply to any affiliation agreement or other contract  
546 that is subject to s. 768.28(11)(f) ~~s. 768.28(10)(f)~~.

547 Section 23. Paragraph (c) of subsection (6) of section  
548 766.118, Florida Statutes, is amended to read:

549 766.118 Determination of noneconomic damages.—

550 (6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF A

551 PRACTITIONER PROVIDING SERVICES AND CARE TO A MEDICAID  
552 RECIPIENT.—Notwithstanding subsections (2), (3), and (5), with  
553 respect to a cause of action for personal injury or wrongful  
554 death arising from medical negligence of a practitioner  
555 committed in the course of providing medical services and  
556 medical care to a Medicaid recipient, regardless of the number  
557 of such practitioner defendants providing the services and care,  
558 noneconomic damages may not exceed \$300,000 per claimant, unless  
559 the claimant pleads and proves, by clear and convincing  
560 evidence, that the practitioner acted in a wrongful manner. A  
561 practitioner providing medical services and medical care to a  
562 Medicaid recipient is not liable for more than \$200,000 in  
563 noneconomic damages, regardless of the number of claimants,  
564 unless the claimant pleads and proves, by clear and convincing  
565 evidence, that the practitioner acted in a wrongful manner. The  
566 fact that a claimant proves that a practitioner acted in a  
567 wrongful manner does not preclude the application of the  
568 limitation on noneconomic damages prescribed elsewhere in this  
569 section. For purposes of this subsection:

570 (c) The term "wrongful manner" means in bad faith or with  
571 malicious purpose or in a manner exhibiting wanton and willful  
572 disregard of human rights, safety, or property, and shall be  
573 construed in conformity with the standard set forth in s.  
574 768.28(10)(a) ~~s. 768.28(9)(a)~~.

575 Section 24. Paragraph (c) of subsection (2) of section  
576 768.1315, Florida Statutes, is amended to read:

577 768.1315 Good Samaritan Volunteer Firefighters' Assistance  
578 Act; immunity from civil liability.—

579 (2) DEFINITIONS.—As used in this section, the term:

580 (c) "State agency or subdivision" shall have the meaning  
581 provided in s. 768.28(3) ~~s. 768.28(2)~~.

582  
583 Nothing in this section shall be construed as a waiver of  
584 sovereign immunity.

585 Section 25. Subsection (4) of section 768.135, Florida  
586 Statutes, is amended to read:

587 768.135 Volunteer team physicians; immunity.—

588 (4) As used in this section, the term "wrongful manner"  
589 means in bad faith or with malicious purpose or in a manner  
590 exhibiting wanton and willful disregard of human rights, safety,  
591 or property, and shall be construed in conformity with the  
592 standard set forth in s. 768.28(10)(a) ~~s. 768.28(9)(a)~~.

593 Section 26. Subsection (2) of section 944.713, Florida  
594 Statutes, is amended to read:

595 944.713 Insurance against liability.—

596 (2) The contract shall provide for indemnification of the  
597 state by the private vendor for any liabilities incurred up to  
598 the limits provided under s. 768.28(6) ~~s. 768.28(5)~~. The  
599 contract shall provide that the private vendor, or the insurer  
600 of the private vendor, is liable to pay any claim or judgment  
601 for any one person which does not exceed the sum of \$100,000 or

602 any claim or judgment, or portions thereof, which, when totaled  
603 with all other claims or judgments arising out of the same  
604 incident or occurrence, does not exceed the sum of \$200,000. In  
605 addition, the contractor must agree to defend, hold harmless,  
606 and indemnify the department against any and all actions,  
607 claims, damages and losses, including costs and attorney  
608 ~~attorney's~~ fees.

609 Section 27. Subsection (3) of section 984.09, Florida  
610 Statutes, is amended to read:

611 984.09 Punishment for contempt of court; alternative  
612 sanctions.—

613 (3) ALTERNATIVE SANCTIONS.—Each judicial circuit shall have  
614 an alternative sanctions coordinator who shall serve under the  
615 chief administrative judge of the juvenile division of the  
616 circuit court, and who shall coordinate and maintain a spectrum  
617 of contempt sanction alternatives in conjunction with the  
618 circuit plan implemented in accordance with s. 790.22(4)(c).  
619 Upon determining that a child has committed direct contempt of  
620 court or indirect contempt of a valid court order, the court may  
621 immediately request the alternative sanctions coordinator to  
622 recommend the most appropriate available alternative sanction  
623 and shall order the child to perform up to 50 hours of  
624 community-service manual labor or a similar alternative  
625 sanction, unless an alternative sanction is unavailable or  
626 inappropriate, or unless the child has failed to comply with a  
627 prior alternative sanction. Alternative contempt sanctions may  
628 be provided by local industry or by any nonprofit organization  
629 or any public or private business or service entity that has  
630 entered into a contract with the Department of Juvenile Justice  
631 to act as an agent of the state to provide voluntary supervision  
632 of children on behalf of the state in exchange for the manual  
633 labor of children and limited immunity in accordance with s.  
634 768.28(12) ~~s. 768.28(11)~~.

635 Section 28. Subsection (3) of section 985.037, Florida  
636 Statutes, is amended to read:

637 985.037 Punishment for contempt of court; alternative  
638 sanctions.—

639 (3) ALTERNATIVE SANCTIONS.—Each judicial circuit shall have  
640 an alternative sanctions coordinator who shall serve under the  
641 chief administrative judge of the juvenile division of the  
642 circuit court, and who shall coordinate and maintain a spectrum  
643 of contempt sanction alternatives in conjunction with the  
644 circuit plan implemented in accordance with s. 790.22(4)(c).  
645 Upon determining that a child has committed direct contempt of  
646 court or indirect contempt of a valid court order, the court may  
647 immediately request the alternative sanctions coordinator to  
648 recommend the most appropriate available alternative sanction  
649 and shall order the child to perform up to 50 hours of  
650 community-service manual labor or a similar alternative  
651 sanction, unless an alternative sanction is unavailable or  
652 inappropriate, or unless the child has failed to comply with a

653 prior alternative sanction. Alternative contempt sanctions may  
654 be provided by local industry or by any nonprofit organization  
655 or any public or private business or service entity that has  
656 entered into a contract with the Department of Juvenile Justice  
657 to act as an agent of the state to provide voluntary supervision  
658 of children on behalf of the state in exchange for the manual  
659 labor of children and limited immunity in accordance with s.  
660 768.28(12) ~~s. 768.28(11)~~.

661 Section 29. Paragraph (1) of subsection (3) of section  
662 1002.55, Florida Statutes, is amended to read:

663 1002.55 School-year prekindergarten program delivered by  
664 private prekindergarten providers.—

665 (3) To be eligible to deliver the prekindergarten program,  
666 a private prekindergarten provider must meet each of the  
667 following requirements:

668 (1) Notwithstanding paragraph (j), for a private  
669 prekindergarten provider that is a state agency or a subdivision  
670 thereof, as defined in s. 768.28(3) ~~s. 768.28(2)~~, the provider  
671 must agree to notify the coalition of any additional liability  
672 coverage maintained by the provider in addition to that  
673 otherwise established under s. 768.28. The provider shall  
674 indemnify the coalition to the extent permitted by s. 768.28.

675 Section 30. Paragraph (p) of subsection (1) of section  
676 1002.88, Florida Statutes, is amended to read:

677 1002.88 School readiness program provider standards;  
678 eligibility to deliver the school readiness program.—

679 (1) To be eligible to deliver the school readiness program,  
680 a school readiness program provider must:

681 (p) Notwithstanding paragraph (m), for a provider that is a  
682 state agency or a subdivision thereof, as defined in s.  
683 768.28(3) ~~s. 768.28(2)~~, agree to notify the coalition of any  
684 additional liability coverage maintained by the provider in  
685 addition to that otherwise established under s. 768.28. The  
686 provider shall indemnify the coalition to the extent permitted  
687 by s. 768.28.

688 Section 31. Paragraph (e) of subsection (4) and paragraph  
689 (d) of subsection (5) of section 1004.41, Florida Statutes, are  
690 amended to read:

691 1004.41 University of Florida; J. Hillis Miller Health  
692 Center.—

693 (4)

694 (e) Shands Teaching Hospital and Clinics, Inc., in support  
695 of the health affairs mission of the University of Florida Board  
696 of Trustees and with the board's prior approval, may create or  
697 have created either for-profit or not-for-profit subsidiaries  
698 and affiliates, or both. The University of Florida Board of  
699 Trustees, which may act through the president of the university  
700 or his or her designee, may control Shands Teaching Hospital and  
701 Clinics, Inc. For purposes of sovereign immunity pursuant to s.  
702 768.28(3) ~~s. 768.28(2)~~, Shands Teaching Hospital and Clinics,  
703 Inc., and any not-for-profit subsidiary which directly delivers

704 health care services and whose governing board is chaired by the  
705 president of the university or his or her designee and is  
706 controlled by the University of Florida Board of Trustees, which  
707 may act through the president of the university or his or her  
708 designee and whose primary purpose is the support of the  
709 University of Florida Board of Trustees' health affairs mission,  
710 shall be conclusively deemed a corporation primarily acting as  
711 an instrumentality of the state.

712 (5)

713 (d) For purposes of sovereign immunity pursuant to s.  
714 768.28(3) ~~s. 768.28(2)~~, Shands Jacksonville Medical Center,  
715 Inc., Shands Jacksonville HealthCare, Inc., and any not-for  
716 profit subsidiary which directly delivers health care services  
717 and whose governing board is chaired by the President of the  
718 University of Florida or his or her designee and is controlled  
719 by the University of Florida Board of Trustees, which may act  
720 through the president of the university or his or her designee  
721 and whose primary purpose is the support of the University of  
722 Florida Board of Trustees' health affairs mission, shall be  
723 conclusively deemed corporations primarily acting as  
724 instrumentalities of the state.

725 Section 32. Subsection (1) of section 1004.43, Florida  
726 Statutes, is amended to read:

727 1004.43 H. Lee Moffitt Cancer Center and Research  
728 Institute.—There is established the H. Lee Moffitt Cancer Center  
729 and Research Institute, a statewide resource for basic and  
730 clinical research and multidisciplinary approaches to patient  
731 care.

732 (1) The Board of Trustees of the University of South  
733 Florida shall enter into a lease agreement for the utilization  
734 of the lands and facilities on the campus of the University of  
735 South Florida to be known as the H. Lee Moffitt Cancer Center  
736 and Research Institute, including all furnishings, equipment,  
737 and other chattels used in the operation of such facilities,  
738 with a Florida not-for-profit corporation organized solely for  
739 the purpose of governing and operating the H. Lee Moffitt Cancer  
740 Center and Research Institute. The lease agreement with the not  
741 for-profit corporation shall be rent free as long as the not  
742 for-profit corporation and its subsidiaries utilize the lands  
743 and facilities primarily for research, education, treatment,  
744 prevention, and early detection of cancer or for teaching and  
745 research programs conducted by state universities or other  
746 accredited medical schools or research institutes. The lease  
747 agreement shall provide for review of construction plans and  
748 specifications by the University of South Florida for  
749 consistency with the university's campus master plan, impact on  
750 the university's utilities infrastructure, compliance with  
751 applicable building codes and general design characteristics,  
752 and compatibility with university architecture, as appropriate.  
753 The not-for-profit corporation may, with the prior approval of  
754 the Board of Governors, create either for-profit or not-for

755 profit corporate subsidiaries, or both, to fulfill its mission.  
756 The not-for-profit corporation and any approved not-for-profit  
757 subsidiary shall be conclusively deemed corporations primarily  
758 acting as instrumentalities of the state, pursuant to s.  
759 768.28(3) ~~s. 768.28(2)~~, for purposes of sovereign immunity. For  
760 profit subsidiaries of the not-for-profit corporation may not  
761 compete with for-profit health care providers in the delivery of  
762 radiation therapy services to patients. The not-for-profit  
763 corporation and its subsidiaries are authorized to receive,  
764 hold, invest, and administer property and any moneys received  
765 from private, local, state, and federal sources, as well as  
766 technical and professional income generated or derived from  
767 practice activities of the institute, for the benefit of the  
768 institute and the fulfillment of its mission. The affairs of the  
769 corporation shall be managed by a board of directors who shall  
770 serve without compensation. The President of the University of  
771 South Florida and the chair of the Board of Governors, or his or  
772 her designee, shall be directors of the not-for-profit  
773 corporation. Each director shall have only one vote, shall serve  
774 a term of 3 years, and may be reelected to the board. Other than  
775 the President of the University of South Florida and the chair  
776 of the Board of Governors, directors shall be elected by a  
777 majority vote of the board. The chair of the board of directors  
778 shall be selected by majority vote of the directors.

779 Section 33. Paragraph (a) of subsection (2) of section  
780 1004.447, Florida Statutes, is amended to read:

781 1004.447 Florida Institute for Human and Machine Cognition,  
782 Inc.—

783 (2) The corporation and any authorized and approved  
784 subsidiary:

785 (a) Shall be a corporation primarily acting as an  
786 instrumentality of the state, pursuant to s. 768.28(3) ~~s.~~  
787 ~~768.28(2)~~, for purposes of sovereign immunity.

788 Section 34. Paragraph (b) of subsection (2) of section  
789 1006.261, Florida Statutes, is amended to read:

790 1006.261 Use of school buses for public purposes.—

791 (2)

792 (b) For purposes of liability for negligence, state  
793 agencies or subdivisions as defined in s. 768.28(3) ~~s. 768.28(2)~~  
794 shall be covered by s. 768.28. Every other corporation or  
795 organization shall provide liability insurance coverage in the  
796 minimum amounts of \$100,000 on any claim or judgment and  
797 \$200,000 on all claims and judgments arising from the same  
798 incident or occurrence.

799 Section 35. Sections 45.061, 110.504, 111.071,  
800 163.01(15)(k), 190.043, 213.015, 284.31, 284.38, 337.19,  
801 341.302, 373.1395, 375.251, 393.075, 403.706, 409.993, 455.221,  
802 455.32, 456.009, 472.006, 497.167, 548.046, 556.106, 768.295,  
803 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.77,  
804 and 1002.83, Florida Statutes, are reenacted for the purpose of  
805 incorporating the amendment made by this act to s. 768.28,

806 Florida Statutes, in references thereto.

807 Section 36. This act shall take effect October 1, 2020.