

**IN THE SUPREME COURT OF FLORIDA**

FREDERIC GUTTENBERG, ETC.,  
ET AL.,

Appellants,

vs.

Case No. SC19-487  
Lower Case Nos. 4D19-229;  
062018CA009397XXXCE

THE SCHOOL BOARD OF BROWARD  
COUNTY,

\_\_\_\_\_  
Appellee. \_\_\_\_\_/

---

ON DISCRETIONARY REVIEW FROM THE DISTRICT  
COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

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**APPENDIX IN SUPPORT OF APPELLANTS'  
INITIAL BRIEF**

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Clerk of Court and e-served on all counsel of record named on the Service List on this 23rd day of May, 2019.

/s/ Stephen F. Rosenthal  
Stephen F. Rosenthal

## **CERTIFICATE OF COMPLIANCE WITH RULE 9.210(a)(2)**

I hereby certify that the type style utilized in this brief is 14 point Times New Roman proportionally spaced.

/s/ Stephen F. Rosenthal  
Stephen F. Rosenthal

Filing # 82447993 E-Filed 12/20/2018 06:37:54 PM

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE18009397 DIVISION 25 JUDGE Carol-lisa Phillips

**Laura Menescal**

Plaintiff(s) / Petitioner(s)

v.

**School Board of Broward County**

Defendant(s) / Respondent(s)

**AGREED ORDER**

**DECLARATORY JUDGMENT**

THIS CAUSE having come before the Court on the SCHOOL BOARD OF BROWARD COUNTY'S, Motion for Summary Judgment in this declaratory judgment action, and the Court having reviewed the motion and responses, pertinent case law, and having heard argument of counsel and being otherwise advised, it is hereby ORDERED AND ADJUDGED that the SCHOOL BOARD's motion is GRANTED.

As stated on the record, this Court must follow the Fourth District Court of Appeal's recent decision in *Dept. of Financial Servs. v. Barnett*, No. 4D17-2840, --- So. 3d --- (Fla. 4<sup>th</sup> DCA Oct. 10, 2018)(rehearing pending). There being no further business before this Court in this declaratory judgment action, this shall be deemed the final order in the case and the Plaintiffs and Intervenors shall go hence without day.

**DONE and ORDERED** in Chambers, at Broward County, Florida on 12-20-2018.

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Hon. Carol-lisa Phillips

**CIRCUIT JUDGE**

Electronically Signed by Carol-lisa Phillips

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## CHAPTER 73-313

## Committee Substitute for House Bills Nos. 315, 376

AN ACT relating to claims against the state; authorizing suits against the state or any of its agencies or political subdivisions for the tortious acts of their employees; providing a definition; providing for assistance; providing for appeals; providing for maximum claims; providing for notice; providing for service; providing a maximum on attorney fees; providing that officers and employees shall not be personally liable; providing the limitations of this act shall not apply when the entity has insurance; providing that the state or its agencies or subdivisions may purchase insurance if allowed by law; providing that claims must be filed within a certain period; providing that no action may be brought under certain circumstances; providing an effective date.

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

Section 1. Tort claim act.—

(1) In accordance with section 13, Article, X, Florida Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for 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 his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

(2) As used in this act, "state agencies or subdivisions" include the executive departments, the legislature, the judicial branch, and independent establishments of the state, counties and municipalities, and corporations primarily acting as instrumentalities or agencies of the state, counties or municipalities.

(3) Except for a municipality, the affected agency or subdivision may, at its discretion, request the assistance of the department of insurance in the consideration, adjustment and settlement of any claim under this act.

(4) Subject to the provisions of this section, any state agency or subdivision of the state of Florida shall have the right of appealing any award, compromise, settlement or determination to the court of appropriate jurisdiction.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period prior to judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$50,000.00, or any claim or judgement, or portions thereof, which, when totaled with all other claims

or judgments paid by the state arising out of the same incident or occurrence exceeds the sum of \$100,000.00, provided, however, that a judgment or judgments may be claimed and rendered in excess of these amounts, and may be settled and paid pursuant to this act up to \$50,000.00 or \$100,000.00, as the case may be, and that portion of the judgment that exceeds these amounts may be reported to the legislature but may be paid in part or in whole only by further act of the legislature.

(6) An action shall not be instituted on a claim against the state or its agencies or subdivisions unless the claimant presents in writing the claim to the appropriate agency, and also, except as to any claim against a municipality, presents such claim in writing to the department of insurance, within three years after such claim accrues and the department of insurance or appropriate agency denies the claim in writing. The failure of the department of insurance or the appropriate agency to make final disposition of a claim within six (6) months after it is filed shall be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted by counterclaim pursuant to section 768.14, Florida Statutes.

(7) In actions brought pursuant to this section, process shall be served upon the head of the agency concerned and also, except as to a defendant municipality, upon the department of insurance, and the department or the agency concerned shall have thirty (30) days within which to plead thereto.

(8) No attorney may charge, demand, receive, or collect, for services rendered, fees in excess of twenty-five (25) percent of any judgment and/or settlement.

(9) No officer or employee of the state or its subdivisions shall be held personally liable in tort for any injuries or damages suffered as a result of any act, event or omission of such officer or employee in the scope of his employment, unless such officer or employee acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property.

(10) If the state or its agency or subdivision is insured against liability for damages for any negligent or wrongful act, omission or occurrence for which action may be brought pursuant to this section, then the limitations of this act shall not apply to actions brought to recover damages therefor to the extent such policy of insurance shall provide coverage. Agencies or political subdivisions presenting homogenous risks may join together to purchase insurance protection or to provide other means of meeting obligations for damages as provided by this act.

(11) Laws allowing the state or its agencies or subdivisions to buy insurance are still in force and effect and are not restricted in any way by the terms of this act.

(12) Every claim against the state or its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within four years after such claim accrues.

(13) No action may be brought against the state or any of its agencies or subdivisions by anyone who unlawfully participates in a riot, unlawful assembly, public demonstration, mob violence or civil disobedience, if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence or civil disobedience. Nothing in this act shall abridge traditional immunities pertaining to statements made in court.

(14) Any law of this state that is inconsistent with any part of this act is repealed to the extent of its inconsistency.

Section 2. (1) Any person who sustains personal injury, damage to or loss of property as a result of the negligence, wrongful act or omission of any state agency or county or employee of either when the employee is acting within the scope of his office or employment, under circumstances in which a private individual would be liable to a private person or persons, may file a claim for recovery for an amount not in excess of one thousand dollars (\$1,000) as provided in this act. Any claim for an amount not in excess of one thousand dollars (\$1,000) may be submitted only to the affected state agency or board of county commissioners and shall not be submitted to the legislature.

(2) As used in subsection (1) of this act, "agency" means the executive departments of state government.

(3) Subject to the provisions of this act, any denial, award, compromise, settlement, or determination made pursuant to this act shall be final and conclusive on the claimant and upon the state or county and all officers of the state or county, except when procured by means of fraud, and shall constitute a complete release of any claim against the state or county.

(4) Claims must be filed with the agency or county which the claim is against by the claimant, his agent or attorney. A duplicate of a claim against an agency shall be furnished to the department of administration. All claims filed shall set forth accurately and completely the facts and circumstances giving rise to the claim, describe the injury or damage and the time and place of its occurrence, cite the names and addresses of participants and witnesses, if known, and state the nature and amount of damages sought. All claims under this act must be filed within four (4) years from the time that the incident occurred, or the claim shall be forever barred. The department of administration shall establish minimum procedures and rules applicable to state agencies which shall guarantee due process to all parties to a claim filed under this act.

(5) The claim shall be considered by the affected agency and the head of said agency shall determine if there is reasonable justification for the claim. The affected agency may seek the advice of the attorney general. The affected agency shall make a decision on the claim within sixty (60) days after the claim has been filed. Accepted claims shall be paid from the budget of the affected agency. If the claim is rejected, the affected agency shall notify the claimant. A rejection by the affected agency shall be deemed final denial of the claim for the purposes of this act.

(6) The affected agency shall report to the department of administration all claims paid or denied under this act, stating the name of each

claimant, the amount claimed, the amount awarded and a brief description of the claim. The department of administration shall report this information to the legislature annually.

Section 3. Claims against a county.—All boards of county commissioners shall approve or disapprove and cause to be paid, if approved, claims against the county not to exceed one thousand dollars (\$1,000). A rejection by the county shall be deemed a final denial of the claim for the purposes of this act. Rules and procedures for responding to claims may be made by each board of county commissioners pursuant to §125.018, Florida Statutes.

Section 4. This act shall take effect January 1, 1975, and shall apply only to incidents occurring on or after that date.

Approved by the Governor June 25, 1973.

Filed in Office Secretary of State June 26, 1973.

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## CHAPTER 73-314

### House Bill No. 589

AN ACT relating to budgeting and appropriations; amending §216.262(1) (a), Florida Statutes, 1971, relating to the number of positions authorized and provisions for increases in the number; amending §216.292, Florida Statutes, 1971, to delete authorization for transfer of appropriations by heads of departments; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 216.262, Florida Statutes, 1971, is amended to read:

216.262 Authorized positions.—

(1)(a) Unless otherwise expressly provided by law, the total number of authorized positions shall not exceed the total provided in the appropriations acts. In the event any state agency finds that the number of positions so provided is not sufficient to administer its authorized programs, it may file an application with the department, and, if the agency and the department certify there are no authorized positions available for addition, deletion, or transfer within the agency as provided in paragraph (b), the commission may, after a public hearing, authorize an increase in the number of positions for the following reasons only:

1. To implement or provide for continuing federal grants or changes in grants not previously anticipated;

2. To implement *lump sum* appropriations made by the legislature; provided, however the number of positions shall be limited to the number authorized in the appropriation act for each lump sum ~~wherein funds were provided for positions in the appropriations acts for which no number was fixed;~~



Section 11. Section 706.07, Florida Statutes, is amended to read:

706.07 Public custodian for certain ports.--The governor shall appoint, ~~subject to confirmation by the Senate by-and-with-the-advice and-consent-of-the-senate,~~ for each port in the state into which have or shall come during any calendar year not fewer than 50 vessels of 500 tons burden each, a public custodian of lost timber and lumber, who shall give a bond in the sum of \$1,000 to the governor for the faithful discharge of his duties, and shall hold his office for 4 years, unless sooner removed by the governor for good cause.

Section 12. This act shall take effect upon becoming a law.

Approved by the Governor June 1, 1977.

Filed in Office Secretary of State June 2, 1977.

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CHAPTER 77-86

Committee Substitute for Senate Bill No. 396

AN ACT relating to the waiver of sovereign immunity; amending s. 768.28(5), Florida Statutes, to clarify that agencies and subdivisions are included in the \$100,000 per occurrence limitation of liability; repealing s. 768.28(10), Florida Statutes, which provides that the limitations of this act not apply to the extent the agency is insured and allows agencies to join together to purchase insurance; authorizing cities, counties, and school boards to enter into risk management arrangements; adding a new subsection (14) to s. 768.28, Florida Statutes, to authorize self-insurance, risk management programs, or the purchase of liability insurance, or any combination thereof, for any claim, judgment, or claims bill which the state, its agencies or subdivisions, may be liable to pay pursuant to s. 768.28, Florida Statutes; providing an effective date.

WHEREAS, Chapters 73-313 and 74-235, Laws of Florida, creating and subsequently amending sections 768.28 and 768.30, Florida Statutes, waived the sovereign immunity of the state and its agencies or subdivisions for liability for torts, and

WHEREAS, in enacting section 768.28, Florida Statutes, the Legislature clearly intended to make the state, the counties, and the municipalities liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, and

WHEREAS, the Florida Supreme Court in Fisher v. City of Miami (Fla. 1965), 172 So. 2d 455, indicated that the Legislature could restrict the amount of recovery for the torts of a municipality without unconstitutionally restricting the right of an individual to receive compensation for injuries, and

WHEREAS, the Attorney General, in his opinion number 076-41, dated February 23, 1976, failed to recognize the basis for the limitation of liability set forth in subsection (5) of section 768.28, Florida Statutes, and

WHEREAS, the Legislature finds that local governments throughout the state, because of the uncertainty caused by the Attorney General's opinion, are experiencing difficulty obtaining liability insurance, and, if the insurance is available, the rates are exorbitant and often beyond the ability of the local taxpayers to afford, and

WHEREAS, this problem requires clarification of the present statute, NOW, THEREFORE,

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

Section 1. Subsection (5) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitation; exclusions.--

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period prior to judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$50,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$100,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$50,000 or \$100,000, as the case may be, and that portion of the judgment that exceeds these amounts may be reported to the legislature, but may be paid in part or in whole only by further act of the legislature. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity prior to July 1, 1974.

Section 2. Subsection (10) of section 768.28, Florida Statutes, is hereby repealed.

Section 3. Subsection (14) is added to section 768.28, Florida Statutes, to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions.--

(14) The state and its agencies and subdivisions are hereby authorized to be self-insured, or to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, for any claim, judgment, and claims bill which they may be liable to pay pursuant to this section.

Section 4. This act shall take effect upon becoming a law.

GENERAL ACTS  
RESOLUTIONS AND MEMORIALS  
ADOPTED BY THE  
SIXTH LEGISLATURE OF FLORIDA  
UNDER THE CONSTITUTION  
AS REVISED IN 1968

During its First Regular Session  
April 3, 1979 through June 6, 1979  
and the Special Session June 6, 1979



Volume I, Part One

Published by Authority of Law

Under Direction of the

JOINT LEGISLATIVE MANAGEMENT  
COMMITTEE

TALLAHASSEE

1979

WHEREAS, it is the intent of the Legislature that all amendments to the United States Internal Revenue Code shall be given effect under the Florida Income Tax Code in such manner and for such periods as are prescribed in the United States Internal Revenue Code, to the same extent as if such amendment had been adopted by the Legislature, NOW, THEREFORE,

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

Section 1. Paragraph (h) of subsection (1) and paragraph (c) of subsection (2) of section 220.03, Florida Statutes, 1978 Supplement, are amended to read:

220.03 Definitions.--

(1) SPECIFIC TERMS.--When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(h) "Internal Revenue Code" means the United States Internal Revenue Code of 1954, as amended and in effect on January 1, 1979 ~~1978~~, except as provided in subsection (3).

(2) DEFINITIONAL RULES.--When used in this code and neither otherwise distinctly expressed nor manifestly incompatible with the intent thereof:

(c) Any term used in this code shall have the same meaning as when used in a comparable context in the Internal Revenue Code and other statutes of the United States relating to federal income taxes, as such code and statutes are in effect on January 1, 1979 ~~1978~~. However, if subsection (3) is implemented, the meaning of any term shall be taken at the time the term is applied under this code.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 9, 1979.

Filed in Office Secretary of State May 9, 1979.

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CHAPTER 79-36

Committee Substitute for Senate Bill No. 727

An act relating to professional and occupational regulation; amending s. 20.06(2), Florida Statutes, deleting certain powers of examining and licensing boards; amending s. 20.30, Florida Statutes, 1978 Supplement, renaming the Department of Professional and Occupational Regulation; abolishing the Division of Occupations and bureaus within the Division of General Services and renaming the latter division; creating the Division of Legal Services of the department; providing for directors of the divisions of the department; renaming various boards; increasing the number of lay members on certain boards; amending s. 215.22(4), Florida Statutes, to conform to the act; amending s. 215.37, Florida Statutes, 1978 Supplement, providing



for the deposit of certain fees and other moneys in a Professional Regulation Trust Fund; providing for finances and budgeting of the department; deleting a provision which requires each board to pay a percentage of its revenues into the General Revenue Fund; requiring the department to pay a percentage; requiring the maintenance of separate revenue accounts for each regulated profession; providing for reports; reorganizing chapter 455, Florida Statutes, and renumbering sections thereof; creating part I and part II of chapter 455, Florida Statutes, relating to the department; amending s. 455.001, Florida Statutes, providing legislative intent; creating s. 455.002, Florida Statutes, providing duties of the department with respect to the boards and regulated professions; authorizing the department to challenge rules of boards; permitting the boards to challenge final agency actions; amending s. 455.004, Florida Statutes, providing for contact of boards through regional offices; amending s. 455.007, Florida Statutes, requiring the department to perform certain administrative functions for the boards; providing duties of the department and the boards with respect to examinations; providing the duties of the Division of Legal Services; requiring the Department of Legal Affairs to legally assist the boards; authorizing the department to employ assistance outside the department; granting the department certain investigatory powers; deleting provisions which relate to the use of legal services of the department by boards and which permit the boards to not use the department's investigative services; creating s. 455.008, Florida Statutes, providing general licensing provisions; providing hearing procedures with respect to licensing; providing qualified witness immunity; creating s. 455.0113, Florida Statutes, providing for the determination of the amount of fees by the boards and for their disposition; requiring the maintenance of separate revenue accounts; providing for the proportionate allocation of expenses of the department; providing for reports; creating s. 455.0114, Florida Statutes, authorizing boards to make certain rules relating to examinations; requiring certain records and providing for the confidentiality of certain records; creating s. 455.0115, Florida Statutes, providing general provisions with respect to the appointment, meetings, and compensation of board members; amending s. 455.013, Florida Statutes, providing a procedure for receipt of complaints and determinations thereon by a panel of members of the appropriate board or by the department prior to a hearing; providing for issuance of final orders; authorizing judicial review; requiring periodic notification of the complainant; providing for informal dispositions of complaints; authorizing the department to file and pursue complaints whether written or oral; providing for confidentiality and its waiver; providing for publication of notice; providing qualified witness immunity; creating s. 455.017, Florida Statutes, authorizing boards to take certain disciplinary actions against licensees and applicants and providing grounds therefor; providing injunctive relief; creating s.

455.021, Florida Statutes, authorizing the appropriate board to intervene in a proceeding regarding the issuance of a license; creating ss. 455.022 and 455.023, Florida Statutes, requiring places of business established under a license by the department to post certain notices at their places of business; providing a penalty; providing for the accountability of board members to the Governor; exempting the boards and their members from liability; amending s. 455.01, Florida Statutes, to conform to the act; amending s. 455.012, Florida Statutes, deleting provisions relating to the eligibility of aliens to engage in professions and occupations; amending ss. 455.016 and 455.02, Florida Statutes, to conform to the act; repealing s. 455.011, Florida Statutes, relating to examinations to conform to the act; repealing s. 455.014, Florida Statutes, which requires the department to assist Cubans to become eligible for licensure; repealing s. 455.03, Florida Statutes, which exempts certain war veterans from examination requirements; repealing s. 455.04, Florida Statutes, relating to enforcement of certain health laws; repealing s. 455.05, Florida Statutes, relating to evidence of licensure by certain boards; repealing s. 455.08, Florida Statutes, relating to the confidentiality of certain records; repealing s. 455.09, Florida Statutes, relating to terms of licenses to conform to the act; renumbering ss. 455.06 and 455.07, Florida Statutes, to transfer provisions relating to liability insurance of the state and its political subdivisions and expenses of the Department of Legal Affairs to the appropriate chapters; requiring the relocation of joint coordinatorships; transferring the personnel, records, property, and funds from each board to the department; granting the department certain powers during the reorganization period necessitated by the act; providing for the continuation of rules; providing an effective date.

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

Section 1. Subsection (2) of section 20.06, Florida Statutes, is amended to read:

20.06 Method of reorganization.--The executive branch of state government shall be reorganized by transferring the specified agencies, programs, and functions to the departments, commissions or offices created or referred to herein. Types of transfers used herein are defined as follows:

(2) TYPE TWO TRANSFER.--A type two transfer is the assigning to any department of an examining and licensing board which has as a function the setting of standards for, or the regulation of, a profession or occupation or the examination, licensing or certifying of practitioners of such profession or occupation. ~~For any agency assigned a type two transfer, the collection of license fees and other revenues, payroll, procurement, and related administrative functions shall be exercised by the head of the department to which the board is assigned. Any agency assigned by a type two transfer shall independently exercise the other powers, duties, and functions prescribed by law, including but not limited to rule making, licensing, regulation, and enforcement. Appeals from decisions of~~

examining--and--licensing--boards--shall--be--made--directly--to--the  
 judiciary--as--provided--by--law--Each--examining--and--licensing--board--may  
 provide--for--its--own--investigative--and--legal--services--Each--examining  
 and--licensing--board--has--the--authority--and--responsibility--for--the  
 preparation--of--its--examinations--unless--otherwise--provided--by--law  
 Each--examining--and--licensing--board--given--a--type--two--transfer--shall  
 continue--to--have--supervision--and--control--of--such--funds--collected--in  
 trust--in--connection--with--its--licensing--certifying--and--related  
 activities--as--shall--be--appropriated--to--it--The--present--membership--of  
 each--examining--and--licensing--board--is--continued--and--future  
 appointments--shall--be--made--as--provided--by--the--specific--statutory  
 provisions--relating--to--each--board.

Section 2. Section 20.30, Florida Statutes, 1978 Supplement, is amended to read:

20.30 Department of Professional and Occupational Regulation.--  
 There is created a Department of Professional and Occupational  
 Regulation.

(1) The head of the Department of Professional and Occupational  
 Regulation is the Secretary of Professional and Occupational  
 Regulation. The secretary shall be appointed by the Governor subject  
 to confirmation by the Senate. The secretary shall serve at the  
 pleasure of the Governor.

(2) The following divisions, and bureaus within these divisions,  
 of the Department of Professional and Occupational Regulation are  
 established:

(a) Division of Administrative General Services;

1. Bureau of Records Administration;

2. Bureau of Examinations;

3. Bureau of Investigative Services; and

4. Bureau of Legal Services;

(b) Division of Professions; and

(c) Division of Legal Services Occupations.

(3) There shall ~~not~~ be a director of the Division of Professions,  
 a director of the Division of Administrative Services, and a General  
Counsel, who shall be the director of the Division of Legal Services.  
Each division director shall directly administer his division and  
shall be responsible to the secretary of the department. ~~or of the~~  
~~Division of Occupations. These two divisions shall be administered~~  
~~directly by the Secretary of Professional and Occupational~~  
~~Regulation.~~

(4) The following examining and licensing boards are established  
within assigned by type two transfers to the Department of  
Professional and Occupational Regulation, Division of Professions:

(a) State Board of Accountancy, created under chapter 473;

(b) State Board of Architecture, created under chapter 467;

- (c) Board of Chiropractic Examiners, created under chapter 460;
  - (d) State Board of Dentistry, created under chapter 466;
  - (e) State Board of Professional Engineers and Land Surveyors, created under chapter 471;
  - (f) Board of Registration for Foresters, created under chapter 492;
  - (g) Board of Funeral Directors and Embalmers, created under chapter 470;
  - (h) Board of Landscape Architects, created under chapter 481;
  - (i) State Board of Medical Examiners, created under chapter 458;
  - (j) Florida-State Board of Nursing, created under chapter 464;
  - (k) State Board of Optometry, created under chapter 463;
  - (l) Board of Osteopathic Medical Examiners, created under chapter 459;
  - (m) Board of Pharmacy, created under chapter 465;
  - (n) State Board of Podiatry Examiners, created under chapter 461;
  - (o) Board of Examiners of Psychology, created under chapter 490;
  - (p) Board of Veterinary Medicine, created under chapter 474; and
  - (q) State Board of Pilot Commissioners, created under chapter 310.
- ~~{5}---The-following-examining-and-licensing-boards-are-assigned-by-type-two-transfers-to-the-Department-of-Professional-and-Occupational-Regulation,-Division-of-Occupations-~~
- (r){a} Barbers' Board Sanitary-Commission, created under chapter 476;
  - (s){b} Construction Industry Licensing Board, created under part II of chapter 468;
  - (t){c}--State Board of Cosmetology, created under chapter 477;
  - (u){d}--Florida Board of Massage, created under chapter 480;
  - (v){e} Board of Naturopathic Examiners, created under chapter 462;
  - (w){f} Board of Dispensing Opticians, created under chapter 484;
  - (x){g}--Florida Real Estate Commission, created under chapter 475;
  - (y) Board of Examiners of Nursing Home Administrators; and
  - (z) Electrical Contractors' Licensing Board.



~~(h) Sanitarians' Registration Board, created under chapter 491, and~~

~~(i) Florida Watchmakers' Commission, created under chapter 489.~~

(5)(6) Each examining and licensing board with five or more members shall have at least two lay members ~~one additional member who is a lay member and who are is not and have has never been members a member or practitioners practitioner of the profession or occupation regulated by such board or of any closely related profession or occupation. Each board with less than five members shall have at least one lay member who is not and has never been a member or practitioner of the profession regulated by such board or of any closely related profession. The Governor shall appoint such a lay member. This member shall be in addition to the current number of members on the board.~~

Section 3. Subsection (4) of section 215.22, Florida Statutes, is amended to read:

215.22 Certain moneys and certain trust funds enumerated.--The following described moneys and trust funds, by whatever name designated, shall be those from which the deductions authorized by s. 215.20 shall be made:

(4) The Professional Regulation Trust Fund ~~trust funds of the examining and licensing boards as defined in s. 215.37, unless a different percentage is authorized in the aforesaid section.~~

Section 4. Section 215.37, Florida Statutes, 1978 Supplement, is amended to read:

215.37 Department of Professional Regulation and the Examining and licensing boards to be financed from fees collected; moneys deposited in trust fund funds; 4 to 10 percent to General Revenue Fund; appropriation.--

~~(1) For the purposes of this section, examining and licensing boards shall include: State Board of Accountancy, Florida State Board of Architecture, Florida State Board of Chiropractic Examiners, Florida State Board of Dentistry, State Board of Dispensing Opticians, Florida State Board of Professional Engineers and Land Surveyors, State Board of Registration for Foresters, State Board of Funeral Directors and Embalmers, Florida State Board of Examiners of Landscape Architecture, State Board of Medical Examiners, State Board of Naturopathic Examiners, Florida State Board of Nursing, Florida State Board of Optometry, State Board of Osteopathic Medical Examiners, Florida Board of Pharmacy, Board of Podiatry Examiners, Florida State Board of Examiners of Psychology, Florida Real Estate Commission, Sanitarians' Registration Board, Florida State Board of Veterinary Medicine, Florida Watchmakers' Commission, and Florida Construction Industry Licensing Board.~~

(1)(2) Except as otherwise provided, All fees, licenses, and other charges assessed by each board within the Department of Professional Regulation shall be collected by the Bureau of Records Administration of the Division of General Services of the Department of Professional and Occupational Regulation and shall be deposited in the State Treasury into the Professional Regulation Trust Fund a separate trust fund to the credit of the department individual board.

(2)(3) ~~The department~~ Each--board shall be financed solely and ~~individually~~ from revenue collected by ~~income--accruing--to~~ it from fees, licenses, and other charges collected by the bureau, and all such revenue is ~~moneys--are~~ hereby appropriated to the department each ~~such--board~~. All salaries and expenses of the department shall be paid as budgeted after the budget has ~~said--budgets--have~~ been approved by the secretary of the Department of Administration or within the conditions and limitations of the any appropriation for that purpose which may be included in the General Appropriations Act.

(3)(4) The department Each-board shall be charged 4 10 percent of all revenue collections (excluding refunds, grants, donations, etc.) made and credited to its account. The amount so charged shall be deposited in the General Revenue Fund unallocated.

(4)(5) The department Each--board shall submit a biennial ~~an~~ annual legislative budget by division and operating budgets as required of all governmental subdivisions in chapters 215 and 216, to be based upon anticipated revenues ~~together--with--any--unexpended~~ balance--of--moneys--which--may--accrue--to--the--credit--of--the--particular board--such--budgets--shall--be--subject--to--appropriate--legislative action.

(5) The department shall maintain separate revenue accounts in the Professional Regulation Trust Fund for every profession within the department. The department shall, to the extent practicable, provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The department shall provide each board an annual report of revenue and allocated expenses related to the regulation of that profession, and these reports shall be used by the board to determine the amount of licensing fees for each profession regulated by the department.

(6)--Each--board--shall--operate--financially--within--the--budget approved by the Secretary of the Department of Administration,--and all--disbursements--shall--be--made--by--the--Comptroller--only--as--provided by law for all agencies of government.

(7)--It--is--the--intent--and--purpose--of--the--legislature--to--place--all examining--and--licensing--boards--under--strict--budgetary--control--and--to determine--the--policy--of--budgeting--all--collections--and--expenditures--of moneys--collected--through--examining--and--licensing--laws--and--to--be--used by the boards for enforcement and administrative purposes.

Section 5. Sections 455.011, 455.014, 455.03, 455.05, and 455.08, Florida Statutes, section 455.04, Florida Statutes, as amended by chapter 77-147, Laws of Florida, and section 455.09, Florida Statutes, as created by chapter 76-161, Laws of Florida, are repealed, sections 455.06 and 455.07, Florida Statutes, are renumbered as sections 286.28 and 16.016, Florida Statutes, respectively, the remaining sections of chapter 455, Florida Statutes, are amended, and sections 455.002, 455.008, 455.0113, 455.0114, 455.0115, 455.017, 455.021, 455.022, and 455.023, Florida Statutes, are created to read:

#### PART I

##### DEPARTMENT OF PROFESSIONAL REGULATION

455.001 Department of Professional and Occupational Regulation; examining-and-licensing boards; legislative intent.--

provided in s. 284.01. The division is hereby authorized to purchase any necessary insurance either by a primary insurance contract, excess coverage insurance, or by reinsurance to cover the contents of the mansion whether title of the contents is in the state or in any other person or entity, not a resident of the mansion, notwithstanding the provision of s. 287.025.

Section 2. The Governor shall direct that the proper government entity or agency shall develop an inventory of all state owned museum collections, artifacts, relics, or fine arts, their location, current market value, and the entity which is responsible for possession and safekeeping of said objects, and develop recommendations on the need for, along with the cost and amount of, insurance required to protect the interest of the state. The Governor shall report the findings with respect to the objects delineated above to the Legislature by January 15, 1982.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor July 8, 1981.

Filed in Office Secretary of State July 9, 1981.

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CHAPTER 81-317

Committee Substitute for Senate Bill No. 895

An act relating to sovereign immunity; amending s. 768.28(1), (5) and (9), Florida Statutes, 1980 Supplement; providing for alternative venue in tort actions against the state and its agencies or subdivisions; increasing the amount which the state and its agencies or subdivisions shall be liable to pay on any claim or judgment; providing that the officer, employee, or agent of the state or a political subdivision shall be an adverse witness in any action in tort for damages which arises as a result of his act or omission; providing an effective date.

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

Section 1. Subsections (1), (5) and (9) of section 768.28, Florida Statutes, 1980 Supplement, are amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions.--

(1) In accordance with s. 13, Art. X, State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for 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 his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant in

accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. Any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period prior to judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$100,000 ~~\$50,000~~ or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000 ~~\$100,000~~. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$100,000 or \$200,000, ~~\$50,000~~ or ~~\$100,000~~, as the case may be, and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity prior to July 1, 1974.

(9)(a) No officer, employee, or agent of the state or its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injuries or damages suffered as a result of any act, event, or omission of action in the scope of his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Provided, however, such officer, employee, or agent of the state or its subdivisions shall be considered an adverse witness in a tort action for any injuries or damages suffered as a result of any act, event, or omission of action in the scope of his employment or function. The exclusive remedy for injury or damages suffered as a result of any act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term "employee" includes any volunteer firefighter.

Section 2. This act shall take effect October 1, 1981, and shall apply only to causes of actions which accrue on or after that date.



1987 Fla. Sess. Law Serv. 87-134 (West)

FLORIDA

1987 GENERAL LAWS AND PROPOSED CONSTITUTIONAL AMENDMENTS

Tenth Legislature, First Regular and Special 'A' to 'C' Sessions

Additions are indicated by <<+ UPPERCASE +>>

Deletions by <<- \*\*\* ->>

Changes in tabular material are not indicated

CHAPTER 87-134

House Bill No. 285

Tort liability of governmental entities

A bill to be entitled

An act relating to tort liability of governmental entities; amending s. 230.23, F.S., relating to the duties of the school board regarding the carrying of insurance on school property; amending s. 240.213, F.S., relating to authority of the Board of Regents to secure liability insurance; deleting references to separate waiver of governmental immunity; prohibiting suit by or against a self-insurance program; providing for payment of claims by the Board of Regents; exempting claims files of such programs from public records requirements; providing for review and repeal; amending s. 768.28, F.S.; providing the state or an agency or subdivision thereof with authority to settle claims under certain circumstances; clarifying the extent of waiver of sovereign immunity by the state or an agency or subdivision thereof which purchases liability insurance; repealing s. 30.55, F.S., relating to liability insurance for county sheriffs; repealing s. 286.28, F.S., relating to liability insurance for political subdivisions; providing an effective date.

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

FL ST § 230.23

Section 1. Paragraph (d) of subsection (9) of section 230.23, Florida Statutes, 1986 Supplement, is amended to read:

230.23. Powers and duties of school board

The school board, acting as a board, shall exercise all powers and perform all duties listed below:

(9) **School Plant.**—Approve plans for locating, planning, constructing, sanitating, insuring, maintaining, protecting, and condemning school property as prescribed in chapter 235 and as follows:

(d) *Insurance of school property.*— <<-\*\*\*->>Carry insurance on every school building in all school plants including contents, boilers, and machinery, except buildings of three classrooms or less which are of frame construction and located in a tenth class public protection zone as defined by the Florida Inspection and Rating Bureau; and on all school buses and other property under the control of the school board or title to which is vested in the school board, except as exceptions may be authorized under regulations of the state board.

<<-\*\*\*->>

FL ST § 240.213

Section 2. Section 240.213, Florida Statutes, is amended to read:

240.213. Board authorized to secure liability insurance

(1) The Board of Regents is authorized to secure, or otherwise provide as a self-insurer, or by a combination thereof, comprehensive general liability insurance, including professional liability for health care and veterinary sciences, for:

- (a) The board.
- (b) The students and faculty of any university within the State University System.
- (c) The officers, employees, or agents of the board.
- (d) The professional practitioners practicing a profession within, or by virtue of employment by, any university in the State University System.
- (e) Any of the universities in the State University System or subdivisions thereof.

The Board of Regents is authorized to delegate to the universities, as appropriate, the authority to secure any liability insurance for the above.

<<.-\*\*\*.->>

<<+(2)+>> <<.-\*\*\*.->>In the event the Board of Regents adopts a self-insurance program, the Administration Commission is authorized pursuant to s. 215.32 to establish the necessary <<.-\*\*\*.->>trust funds in the State Treasury. Such trust funds shall be administered in accordance with rules established by the Board of Regents.

<<+(3)+>> <<.-\*\*\*.->>There shall be no funds appropriated directly to any insurance trust fund. The Executive Office of the Governor, upon request of the Board of Regents, is authorized to transfer to any insurance trust fund any funds appropriated in the General Appropriation Act or other acts of the Legislature for the purposes of this section. The Board of Regents is further authorized to accept any payments, receipts, gifts, or donations made for the purposes of this section and deposit such funds in the appropriate insurance trust fund.

<<+(4) NO SELF-INSURANCE PROGRAM ADOPTED BY THE BOARD OF REGENTS MAY SUE OR BE SUED. THE FLORIDA BOARD OF REGENTS SHALL PAY, OUT OF THE ASSETS OF A TRUST FUND ESTABLISHED PURSUANT TO THIS SECTION, ANY CLAIM OR JUDGMENT FOR WHICH THE SELF-INSURANCE TRUST FUNDS WERE CREATED AND WHICH IS RENDERED AGAINST THE BOARD. THE CLAIMS FILES OF ANY SUCH PROGRAM ARE PRIVILEGED AND CONFIDENTIAL, ARE NOT PUBLIC RECORDS UNDER CHAPTER 119, AND ARE ONLY FOR THE USE OF THE PROGRAM IN FULFILLING ITS DUTIES, PROVIDED THAT THIS EXEMPTION FROM PUBLIC RECORDS REQUIREMENTS IS SUBJECT TO THE OPEN GOVERNMENT SUNSET REVIEW ACT IN ACCORDANCE WITH S. 119.14. ANY SELF-INSURANCE TRUST FUND AND REVENUES GENERATED BY THAT FUND SHALL ONLY BE USED TO PAY CLAIMS AND ADMINISTRATION EXPENSES.+>>

(5) The Board of Regents is authorized and empowered to make such rules as may be necessary to carry out the provisions of this section, including the delegation of authority, other than rulemaking authority, to appropriate levels of administration within the State University System.

FL ST § 768.28

Section 3. Subsection (5) of section 768.28, Florida Statutes, 1986 Supplement, is amended to read:

768.28. Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$100,000 or \$200,000, as the case may be,

and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. <<+ NOTWITHSTANDING THE LIMITED WAIVER OF SOVEREIGN IMMUNITY PROVIDED HEREIN, THE STATE OR AN AGENCY OR SUBDIVISION THEREOF MAY AGREE, WITHIN THE LIMITS OF INSURANCE COVERAGE PROVIDED, TO SETTLE A CLAIM MADE OR A JUDGMENT RENDERED AGAINST IT WITHOUT FURTHER ACTION BY THE LEGISLATURE, BUT THE STATE OR AGENCY OR SUBDIVISION THEREOF SHALL NOT BE DEEMED TO HAVE WAIVED ANY DEFENSE OF SOVEREIGN IMMUNITY OR TO HAVE INCREASED THE LIMITS OF ITS LIABILITY AS A RESULT OF ITS OBTAINING INSURANCE COVERAGE FOR TORTIOUS ACTS IN EXCESS OF THE \$100,000 OR \$200,000 WAIVER PROVIDED ABOVE.+>> The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

FL ST §§ 30.55, 286.28

Section 4. <<+SECTIONS 30.55 AND 286.28, FLORIDA STATUTES, ARE HEREBY REPEALED.+>>

Section 5. This act shall take effect upon becoming a law and shall apply to all causes of action then pending or thereafter filed, but shall not apply to any cause of action to which a final judgment has been rendered or in which the jury has returned a verdict unless such judgment or verdict has been or shall be reversed.

Approved by the Governor June 30, 1987.

Filed in Office Secretary of State June 30, 1987.

FL LEGIS 87-134

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End of Document

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2010 Fla. Sess. Law Serv. Ch. 2010-26 (C.S.S.B. 2060) (WEST)

FLORIDA 2010 SESSION LAW SERVICE

Twenty-First Legislature, Second Regular Session

Additions are indicated by **Text**; deletions by  
Text .

Chapter 2010-26

C.S.S.B. No. 2060

TORTS--CLAIMS--SOVEREIGN IMMUNITY, LIABILITY, AND STATUTE OF LIMITATIONS

An act relating to sovereign immunity; amending s. 768.28, F.S.; increasing the statutory limits on liability for tort claims against the state and its agencies and subdivisions; providing for application of the act to claims arising on or after the effective date; providing an effective date.

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

Section 1. Subsection (5) of section 768.28, Florida Statutes, is amended to read:

<< FL ST § 768.28 >>

**768.28. Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs**

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of ~~\$200,000~~ ~~\$100,000~~ or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of ~~\$300,000~~ ~~\$200,000~~ . However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to ~~\$200,000~~ ~~\$100,000~~ or ~~\$300,000~~ ~~\$200,000~~ , as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the ~~\$200,000~~ ~~\$100,000~~ or ~~\$300,000~~ ~~\$200,000~~ waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

Section 2. This act shall take effect October 1, 2011, and applies to claims arising on or after that date.

Approved by the Governor April 27, 2010.

Filed in Office Secretary of State April 27, 2010.

# FLORIDA STATUTES

## 1953

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in all courts and in all administrative boards, commissions and agencies, of this state, and when received in evidence such certificates may be impeached only by positive documentary evidence or the testimony of not less than two witnesses.

**History.**—Comp. §§1, 2, ch. 26550, 1951.  
cf.—Chapter 92, Evidence other than by deposition.

**455.06 Motor vehicle liability insurance; authority of counties, state agencies and certain political subdivisions to purchase.—**

(1) The public officers in charge or governing bodies, as the case may be, of every county, county board of public instruction, governmental unit, department, board or bureau of the State of Florida, including tax or other districts, political subdivisions and public and quasi-public corporations, other than incorporated cities and towns, of the several counties and the state, all hereinafter referred to as political subdivisions, which political subdivisions in the performance of their necessary functions own or lease and operate motor vehicles upon the public highways or streets of the cities and towns of the state, are hereby authorized, in their discretion, to secure and provide for such respective political subdivisions insurance to cover liability for damages on account of bodily injury, or death resulting therefrom, to any person, or to cover liability for damage to the property of any person, or both, arising from and in connection with the operation of any such motor vehicles; and to pay the premiums therefor from any general funds appropriated or made available for the necessary and regular expense of operations of such respective political subdivisions, without the necessity of specific appropriation or speci-

fication of expense with respect thereto. Provided, that in those instances where by general law provision has been made for the public officer in charge or governing body of any such political subdivision to provide such insurance, this act shall not be construed to impair any such previous acts but shall be construed as cumulative thereto.

(2) In consideration of the premium at which such insurance may be written, it shall be a part of any insurance contract providing said coverage that the insurer shall not be entitled to the benefit of the defense of governmental immunity of any such political subdivisions of the state in any suit instituted against any such political subdivision as herein provided, or in any suit brought against the insurer to enforce collection under such an insurance contract; and that the immunity of said political subdivision against any liability described in subsection (1) hereof as to which such insurance coverage has been provided, and suit in connection therewith, are waived to the extent and only to the extent of such insurance coverage; provided, however, no attempt shall be made in the trial of any action against a political subdivision to suggest the existence of any insurance which covers the whole or in part any judgment or award which may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of said judgment or award to a sum equal to the applicable limit set forth in the policy.

(3) The provisions hereof shall not apply to Marion county.

**History.**—Comp. §§ 1-3, ch. 28220, 1953.

# Official FLORIDA STATUTES 1963

*Prepared by*  
**Statutory Revision Department**

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to public health and the practice of medicine, surgery, chiropractic, naturopathy, nursing and midwifery shall rest upon all law enforcement officers of the state and the counties thereof and upon the state board of health acting through its duly appointed agents.

History.—S.L. ch. 93016, 1945.  
Note.—Formerly §485.04.

#### 455.05 Certificate by administrative board as evidence.—

(1) A certificate by the board of medical examiners, board of osteopathic medical examiners, board of chiropractic examiners, board of naturopathic examiners, board of optometry, board of examiners for nurses, board of pharmacy or board of dental examiners, of this state, or by any officer or member thereof, or by any secretary or assistant secretary thereof, bearing the seal of such board (when said board has a seal), certifying that the records of the said board evidence, or fail to evidence, the issuance of any license or other authority to practice medicine, osteopathy, chiropractic, naturopathy, optometry, nursing, pharmacy, or dentistry in this state, to a named person, shall be prima facie evidence of such fact and the authority, or want of authority, of such person to practice in this state under the authority of chapters 458, 459, 460, 462, 463, 464, 465 or 466, or any amendment or amendments thereof or thereto.

(2) Such certificates shall be admissible in all courts and in all administrative boards, commissions and agencies, of this state, and when received in evidence such certificates may be impeached only by positive documentary evidence or the testimony of not less than two witnesses.

History.—Comp. §§1, 2, ch. 26550, 1951.  
cf.—Chapter 92, Evidence other than by deposition.

#### 455.06 Liability insurance; authority of counties, state agencies and certain political subdivisions to purchase.—

(1) The public officers in charge, or governing bodies as the case may be, of every county, county board of public instruction, governmental unit, department, board or bureau of the state, including tax or other districts, political subdivisions and public and quasi-public corporations, other than incorporated cities and towns, of the several counties and the state, all hereinafter referred to as political subdivisions, which political subdivisions in the performance of their necessary functions own or lease and operate motor vehicles upon the public highways or streets of the

cities and towns of the state or elsewhere, or own or lease and operate watercraft or aircraft, or own or lease buildings or properties or perform operations in the state or elsewhere are hereby authorized in their discretion, to secure and provide for such respective political subdivisions, insurance to cover liability for damages on account of bodily or personal injury, or death resulting therefrom, to any person, or to cover liability for damage to the property of any person or both, arising from or in connection with the operation of any such motor vehicles, watercraft or aircraft, or from the ownership or operation of any such buildings or property or any other such operations, whether from accident or occurrence; and to pay the premiums therefor from any general funds appropriated or made available for the necessary and regular expense of operations of such respective political subdivisions, without the necessity of specific appropriation or specification of expense with respect thereto. Provided, that in those instances where by general law provision has been made for the public officer in charge or governing body of any such political subdivision to provide such insurance, this section shall not be construed to impair any such previous acts but shall be construed as cumulative thereto.

(2) In consideration of the premium at which such insurance may be written, it shall be a part of any insurance contract providing said coverage that the insurer shall not be entitled to the benefit of the defense of governmental immunity of any such political subdivisions of the state in any suit instituted against any such political subdivision as herein provided, or in any suit brought against the insurer to enforce collection under such an insurance contract; and that the immunity of said political subdivision against any liability described in subsection (1) hereof as to which such insurance coverage has been provided, and suit in connection therewith, are waived to the extent and only to the extent of such insurance coverage; provided, however, no attempt shall be made in the trial of any action against a political subdivision to suggest the existence of any insurance which covers the whole or in part any judgment or award which may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of said judgment or award to a sum equal to the applicable limit set forth in the policy.

History.—§§1-3, ch. 28220, 1953; (1) by §1, ch. 67-176; (1) by §1, ch. 59-342; (3) r. §1, ch. 59-76; (1) §1, ch. 63-400.



# Official FLORIDA STATUTES 1973

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(2) No such board shall require citizenship as a condition for licensure if an applicant has otherwise successfully met the requirements for licensure. However, any board listed in §455.01 which requires a declaration of intention to become a citizen as a condition of applying for examination may, by board action, revoke a license issued to a noncitizen if it becomes apparent to the board that the noncitizen does not intend to become a citizen.

(3) Any complaints concerning the violation of this section shall be processed in accordance with the provisions of the administrative procedure act, chapter 120.

History.—§§1-3, ch. 72-125.

**455.02 Members of armed forces in good standing with administrative boards.**—Any member of the armed forces of the United States now or hereafter on active duty who, at the time of his becoming such a member was in good standing with any administrative board of the state and was entitled to practice or engage in his profession or vocation in the state, shall be kept in good standing by such administrative board, without registering, paying dues or fees or performing any other act on his part to be performed, as long as he is a member of the armed forces of the United States on active duty and for a period of six months after his discharge from active duty as a member of the armed forces of the United States.

History.—§2, ch. 21885, 1943.  
Note.—Formerly §485.02.

**455.03 Dispensing with examination of war veterans whose business, occupation or profession was interrupted by military service.**—No examination or test to determine qualifications or eligibility shall be required by any veteran of the military services of the United States under any statute of the state, or any rule or regulation of any governmental agency, state, county or municipal, as a condition precedent to the right of such veteran to engage again in this state in any business, or pursue any occupation or profession, which such veteran was required to terminate, suspend or abandon by reason of his enlistment or draft into any branch of the military service of the United States subsequent to the enactment by the United States of the selective service act; and upon payment of current license fees and taxes imposed by law upon persons engaged in such business, occupation or profession, there shall be delivered to such veterans upon application therefor, the necessary permits, certificates and licenses to resume and engage in the business, occupation or profession in which such veteran was lawfully engaged prior to his abandonment or discontinuance thereof by reason of such military service; provided, that persons dishonorably discharged from such military service shall not be entitled to the benefits of this section.

History.—§1, ch. 22014, 1945.  
Note.—Formerly §405.03.

**455.04 Enforcement of law relating to public health; practice of medicine, etc.**—The responsibility for the enforcement of the laws relating to public health and the practice of medicine, surgery, chiropractic, naturopathy, nursing and midwifery shall rest upon all law enforcement officers of the state and the counties thereof and upon the division of health of the department of health and rehabilitative services, acting through its duly appointed agents.

History.—§1, ch. 23016, 1945; §119, 35, ch. 69-106.  
Note.—Formerly §485.04.

**455.05 Certificate by administrative board as evidence.**—

(1) A certificate by the board of medical examiners, board of osteopathic medical examiners, board of chiropractic examiners, board of naturopathic examiners, board of optometry, board of examiners for nurses, board of pharmacy or board of dentistry, of this state, or by any officer or member thereof, or by any secretary or assistant secretary thereof, bearing the seal of such board (when said board has a seal), certifying that the records of the said board evidence, or fail to evidence, the issuance of any license or other authority to practice medicine, osteopathy, chiropractic, naturopathy, optometry, nursing, pharmacy, or dentistry in this state, to a named person, shall be prima facie evidence of such fact and the authority, or want of authority, of such person to practice in this state under the authority of chapters 458, 459, 460, 462, 463, 464, 465 or 466, or any amendment or amendments thereof or thereto.

(2) Such certificates shall be admissible in all courts and in all administrative boards, commissions and agencies, of this state, and when received in evidence such certificates may be impeached only by positive documentary evidence or the testimony of not less than two witnesses.

History.—§§1, 2, ch. 26550, 1951; §3, ch. 67-409.  
cf.—Chapter 92, Evidence other than by deposition.

**455.06 Liability insurance; authority of counties, state agencies and certain political subdivisions to purchase.**—

(1) The public officers in charge or governing bodies, as the case may be, of every county, district school board, governmental unit, department, board or bureau of the state, including tax or other districts, political subdivisions and public and quasi-public corporations, other than incorporated cities and towns, of the several counties and the state, all hereinafter referred to as political subdivisions, which political subdivisions in the performance of their necessary functions own or lease and operate motor vehicles upon the public highways or streets of the cities and towns of the state or elsewhere, or own or lease and operate watercraft or aircraft, or own or lease buildings or properties or perform operations in the state or elsewhere are hereby author-

ized, in their discretion, to secure and provide for such respective political subdivisions, their agents and employees while acting within the scope of their employment, insurance to cover liability for damages on account of bodily or personal injury or death resulting therefrom, to any person, or to cover liability for damage to the property of any person or both, arising from or in connection with the operation of any such motor vehicles, watercraft or aircraft or from the ownership or operation of any such buildings or property or livestock or any other such operations, whether from accident or occurrence; and to pay the premiums therefor from any general funds appropriated or made available for the necessary and regular expense of operations of such respective political subdivisions, without the necessity of specific appropriation or specification of expense with respect thereto. Provided, that in those instances where, by general law, provision has been made for the public officer in charge or governing body of any such political subdivision to provide such insurance, this section shall not be construed to impair any such previous acts but shall be construed as cumulative thereto.

(2) In consideration of the premium at which such insurance may be written, it shall be a part of any insurance contract providing said coverage that the insurer shall not be entitled to the benefit of the defense of governmental immunity of any such political subdivi-

sions of the state in any suit instituted against any such political subdivision as herein provided, or in any suit brought against the insurer to enforce collection under such an insurance contract; and that the immunity of said political subdivision against any liability described in subsection (1) hereof as to which such insurance coverage has been provided, and suit in connection therewith, are waived to the extent and only to the extent of such insurance coverage; provided, however, no attempt shall be made in the trial of any action against a political subdivision to suggest the existence of any insurance which covers the whole or in part any judgment or award which may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of said judgment or award to a sum equal to the applicable limit set forth in the policy.

**History.**—§11-3, ch. 28220, 1953; §1, ch. 57-176; §1, ch. 59-342; §1, ch. 59-76; §1, ch. 63-499; §1, ch. 67-39; §1, ch. 69-300; §1, ch. 71-230.

**455.07 Payment of per diem, mileage and other expense.**—Whenever the department of legal affairs is called upon to represent any administrative agency or regulatory board, the agency or regulatory board so represented shall pay the per diem, mileage and other reasonable expense of the representative of such department.

**History.**—§1, ch. 65-522; §11, 35, ch. 69-106.

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lent to the program established pursuant to subsection (1), then the program established by the said board or commission shall be in lieu of the program established pursuant to subsection (1).

**History.**—s. 2, ch. 74-105, ss. 1, 2, ch. 75-177

**Note.**—Paragraphs (1)(a) and (c) and subsections (2) and (3), as amended, take effect October 1, 1975.

**455.02 Members of Armed Forces in good standing with administrative boards.**—Any member of the Armed Forces of the United States now or hereafter on active duty who, at the time of his becoming such a member was in good standing with any administrative board of the state and was entitled to practice or engage in his profession or vocation in the state, shall be kept in good standing by such administrative board, without registering, paying dues or fees, or performing any other act on his part to be performed, as long as he is a member of the Armed Forces of the United States on active duty and for a period of 6 months after his discharge from active duty as a member of the Armed Forces of the United States.

**History.**—s. 2, ch. 21885, 1943.

**Note.**—Former s. 485.02.

**455.03 Dispensing with examination of war veterans whose business, occupation, or profession was interrupted by military service.**—No examination or test to determine qualifications or eligibility shall be required by any veteran of the Military Services of the United States under any statute of the state, or any rule or regulation of any governmental agency, state, county, or municipal, as a condition precedent to the right of such veteran to engage again in this state in any business, or pursue any occupation or profession, which such veteran was required to terminate, suspend, or abandon by reason of his enlistment or draft into any branch of the Military Service of the United States subsequent to the enactment by the United States of the Selective Service Act; and upon payment of current license fees and taxes imposed by law upon persons engaged in such business, occupation, or profession, there shall be delivered to such veterans upon application therefor, the necessary permits, certificates, and licenses to resume and engage in the business, occupation, or profession in which such veteran was lawfully engaged prior to his abandonment or discontinuance thereof by reason of such military service; provided, that persons dishonorably discharged from such military service shall not be entitled to the benefits of this section.

**History.**—s. 1, ch. 22914, 1945.

**Note.**—Former s. 485.03.

**455.04 Enforcement of law relating to public health; practice of medicine, etc.**—The responsibility for the enforcement of the laws relating to public health and the practice of medicine, surgery, chiropractic, naturopathy, nursing, and midwifery shall rest upon all law enforcement officers of the state and the counties thereof and upon the [Department of Health and Rehabilitative Services,] acting through its duly appointed agents.

**History.**—s. 1, ch. 23016, 1945, ss. 19, 35, ch. 69-106.

**Note.**—Bracketed language substituted for "Division of Health of the Department of Health and Rehabilitative Services." See s. 3(3), ch. 75-48.

**Note.**—Former s. 485.04.

**455.05 Certificate by administrative board as evidence.**—

(1) A certificate by the Board of Medical Examiners, Board of Osteopathic Medical Examiners, Board of Chiropractic Examiners, Board of Naturopathic Examiners, Board of Optometry, Board of Examiners for Nurses, Board of Pharmacy, or Board of Dentistry, of this state, or by any officer or member thereof, or by any secretary or assistant secretary thereof, bearing the seal of such board, when said board has a seal, certifying that the records of the said board evidence, or fail to evidence, the issuance of any license or other authority to practice medicine, osteopathy, chiropractic, naturopathy, optometry, nursing, pharmacy, or dentistry in this state, to a named person, shall be prima facie evidence of such fact and the authority, or want of authority, of such person to practice in this state under the authority of chapters 458, 459, 460, 462, 463, 464, 465, or 466, or any amendment or amendments thereof or thereto.

(2) Such certificates shall be admissible in all courts and in all administrative boards, commissions, and agencies of this state, and when received in evidence, such certificates may be impeached only by positive documentary evidence or the testimony of not less than two witnesses.

**History.**—ss. 1, 2, ch. 26550, 1951, s. 3, ch. 67-309.

**cf.**—Chapter 92 Evidence other than by deposition.

**455.06 Liability insurance; authority of counties, state agencies, and certain political subdivisions to purchase.**

(1) The public officers in charge or governing bodies, as the case may be, of every county, district school board, governmental unit, department, board, or bureau of the state, including tax or other districts, political subdivisions, and public and quasi-public corporations, other than incorporated cities and towns, of the several counties and the state, all hereinafter referred to as political subdivisions, which political subdivisions in the performance of their necessary functions own or lease and operate motor vehicles upon the public highways or streets of the cities and towns of the state or elsewhere, own or lease and operate watercraft or aircraft, or own or lease buildings or properties or perform operations in the state or elsewhere are hereby authorized, in their discretion, to secure and provide for such respective political subdivisions, and their agents and employees while acting within the scope of their employment, insurance to cover liability for damages on account of bodily or personal injury or death resulting therefrom to any person, or to cover liability for damage to the property of any person or both, arising from or in connection with the operation of any such motor vehicles, watercraft, or aircraft, from the ownership or operation of any such buildings, property, or livestock, or any other such operations, whether from accident or occurrence; and to pay the premiums therefor from any general funds appropriated or made available for the necessary and regular expense of operations of such respective political subdivisions, without the necessity of specific appropriation or specification of expense with re-



spect thereto. Provided, that in those instances where, by general law, provision has been made for the public officer in charge or governing body of any such political subdivision to provide such insurance, this section shall not be construed to impair any such previous acts but shall be construed as cumulative thereto.

(2) In consideration of the premium at which such insurance may be written, it shall be a part of any insurance contract providing said coverage that the insurer shall not be entitled to the benefit of the defense of governmental immunity of any such political subdivisions of the state in any suit instituted against any such political subdivision as herein provided, or in any suit brought against the insurer to enforce collection under such an insurance contract; and that the immunity of said political subdivision against any liability described in subsection (1) as to which such insurance coverage has been provided, and suit in connection therewith, are waived to the extent and only to the extent of such insurance coverage; provided, however, no attempt shall be made in the trial of any action against a political subdivision to suggest the existence of any insurance which covers the whole or in part any judgment or award

which may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of said judgment or award to a sum equal to the applicable limit set forth in the policy.

**History.**—ss. 1-3, ch. 28220, 1953; s. 1, ch. 37-176; s. 1, ch. 59-342, s. 1, ch. 59-76; s. 1, ch. 63-499; s. 1, ch. 67-39; s. 1, ch. 69-300, s. 1, ch. 71-230.

**455.07 Payment of per diem, mileage, and other expense.**—Whenever the Department of Legal Affairs is called upon to represent any administrative agency or regulatory board, the agency or regulatory board so represented shall pay the per diem, mileage, and other reasonable expense of the representative of such department.

**History.**—s. 1, ch. 65-522; ss. 11, 35, ch. 69-106.

**455.08 Reports and records exempt from inspection.**—Investigative reports and records made or received by a board or agency in or representing the Department of Professional and Occupational Regulation shall be exempt from the provisions of s. 119.07, unless the board or agency has found probable cause to commence formal action.

**History.**—s. 1, ch. 75-225.

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**\*768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitation; exclusions.—**

(1) In accordance with §13, Art. X, state constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for 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 his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

(2) As used in this act, "state agencies or subdivisions" include the executive departments, the legislature, the judicial branch, and the independent establishments of the state; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities.

(3) Except for a municipality, the affected agency or subdivision may, at its discretion, request the assistance of the Department of Insurance in the consideration, adjustment, and settlement of any claim under this act.

(4) Subject to the provisions of this section, any state agency or subdivision of the state shall have the right of appealing any award, compromise, settlement, or determination to the court of appropriate jurisdiction.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period prior to judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$50,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state arising out of the same incident or occurrence, exceeds the sum of \$100,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$50,000 or \$100,000, as the case may be, and that portion of the judgment that exceeds these amounts may be reported to the legislature, but may be paid in part or in whole only by further act of the legislature.

(6) An action shall not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality, presents such claim in writing to the Depart-

ment of Insurance, within three years after such claim accrues and the Department of Insurance or the appropriate agency denies the claim in writing. The failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within six months after it is filed shall be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted by counterclaim pursuant to §768.14.

(7) In actions brought pursuant to this section, process shall be served upon the head of the agency concerned and also, except as to a defendant municipality, upon the Department of Insurance, and the department or the agency concerned shall have thirty days within which to plead thereto.

(8) No attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement.

(9) No officer or employee of the state or its subdivisions shall be held personally liable in tort for any injuries or damages suffered as a result of any act, event, or omission of such officer or employee in the scope of his employment unless such officer or employee acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(10) If the state or its agency or subdivision is insured against liability for damages for any negligent or wrongful act, omission, or occurrence for which action may be brought pursuant to this section, then the limitations of this act shall not apply to actions brought to recover damages therefor to the extent such policy of insurance shall provide coverage. Agencies or political subdivisions presenting homogenous risks may join together to purchase insurance protection or to provide other means of meeting obligations for damages as provided by this act.

(11) Laws allowing the state or its agencies or subdivisions to buy insurance are still in force and effect and are not restricted in any way by the terms of this act.

(12) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within four years after such claim accrues.

(13) No action may be brought against the state or any of its agencies or subdivisions by anyone who unlawfully participates in a riot, unlawful assembly, public demonstration, mob violence, or civil disobedience if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence, or civil disobedience. Nothing in this act shall abridge traditional immunities pertaining to statements made in court.

History.—§1, ch. 73-313.

\*Note.—Effective January 1, 1975.



**768.13 Good Samaritan Act; immunity from civil liability.—**

(1) This act shall be known and cited as the "Good Samaritan Act."

(2)(a) Any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent man would have acted under the same or similar circumstances.

(b) Any person licensed to practice medicine who gratuitously and in good faith renders emergency care or treatment in response to a "code blue" emergency within a hospital or trauma center shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as a reasonably prudent person licensed to practice medicine who would have acted under the same or similar circumstances.

(3) Any person, including those licensed to practice veterinary medicine, who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent man would have acted under the same or similar circumstances.

*History.—*ss. 1, 2, ch. 65-313, § 1, ch. 78-334, § 62, ch. 86-160.

**768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions.—**

(1) In accordance with s. 13, Art. X, State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for 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 his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. Any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued.

(2) As used in this act, "state agencies or subdivisions" include the executive departments, the Legisla-

ture, the judicial branch (including public defenders), and the independent establishments of the state; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities.

(3) Except for a municipality, the affected agency or subdivision may, at its discretion, request the assistance of the Department of Insurance in the consideration, adjustment, and settlement of any claim under this act.

(4) Subject to the provisions of this section, any state agency or subdivision shall have the right to appeal any award, compromise, settlement, or determination to the court of appropriate jurisdiction.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$100,000 or \$200,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality, presents such claim in writing to the Department of Insurance, within 3 years after such claim accrues and the Department of Insurance or the appropriate agency denies the claim in writing; except that, if such claim is for contribution pursuant to s. 768.31, it shall be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against him, to discharge the common liability. The failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 6 months after it is filed shall be deemed a final denial of the claim for purposes of this section. The provisions of this subsection do not apply to such claims as may be asserted by counterclaim pursuant to s. 768.14.

(b) For purposes of this section, the requirements of notice to the agency and denial of the claim are conditions precedent to maintaining an action but shall not be

deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues.

(7) In actions brought pursuant to this section, process shall be served upon the head of the agency concerned and also, except as to a defendant municipality, upon the Department of Insurance; and the department or the agency concerned shall have 30 days within which to plead thereto.

(8) No attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement.

(9)(a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of his employment or function. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

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

1. "Employee" includes any volunteer firefighter.

2. "Officer, employee, or agent" includes, but is not limited to, any public defender or his employee or agent, including, among others, an assistant public defender and an investigator.

(c) For purposes of the waiver of sovereign immunity only, a member of the Florida National Guard is not acting within the scope of state employment when performing duty under the provisions of Title 10 or Title 32 of the United States Code or other applicable federal law; and neither the state nor any individual may be named in any action under this chapter arising from the performance of such federal duty.

(10)(a) Health care providers or vendors, or any of their employees or agents, that have contractually agreed to act as agents of the Department of Corrections to provide health care services to inmates of the state correctional system shall be considered agents of the State of Florida, Department of Corrections, for the purposes of this section, while acting within the scope of and pursuant to guidelines established in said contract or by rule. The contracts shall provide for the in-

demnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

(b) This subsection shall not be construed as designating persons providing health care services to inmates as employees or agents of the state for the purposes of chapter 440.

(11) Laws allowing the state or its agencies or subdivisions to buy insurance are still in force and effect and are not restricted in any way by the terms of this act.

(12) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues, except that with respect to any action for contribution, the action must be commenced within the limitations provided in s. 768.31(4).

(13) No action may be brought against the state or any of its agencies or subdivisions by anyone who unlawfully participates in a riot, unlawful assembly, public demonstration, mob violence, or civil disobedience if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence, or civil disobedience. Nothing in this act shall abridge traditional immunities pertaining to statements made in court.

(14) The state and its agencies and subdivisions are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment, and claims bill which they may be liable to pay pursuant to this section. Agencies or subdivisions, and sheriffs, that are subject to homogeneous risks may purchase insurance jointly or may join together as self-insurers to provide other means of protection against tort claims, any charter provisions or laws to the contrary notwithstanding.

(15) This section, as amended by ch. 81-317, Laws of Florida, shall apply only to causes of actions which accrue on or after October 1, 1981.

(16) No provision of this section, or of any other section of the Florida Statutes, whether read separately or in conjunction with any other provision, shall be construed to waive the immunity of the state or any of its agencies from suit in federal court, as such immunity is guaranteed by the Eleventh Amendment to the Constitution of the United States, unless such waiver is explicitly and definitely stated to be a waiver of the immunity of the state and its agencies from suit in federal court. This subsection shall not be construed to mean that the state has at any time previously waived, by implication, its immunity, or that of any of its agencies, from suit in federal court through any statute in existence prior to June 24, 1984.

**History.**—s. 1, ch. 73-313, § 1, ch. 74-235, ss. 1, 2, 3, ch. 77-86, § 9, ch. 79-139, § 1, ch. 79-253, § 284, ch. 79-400, § 1, ch. 80-271, ss. 1, 2, ch. 81-317, § 1, ch. 83-44, § 1, ch. 83-257, § 1, ch. 84-29, § 1, ch. 84-335, § 21, ch. 86-183, § 1, ch. 86-184.

## PART II

### MEDICAL MALPRACTICE AND RELATED MATTERS

JUDICIARY COMMITTEE

STAFF SUMMARY

HB: HB 315 and 376

SPONSOR: Rep. Tucker &  
Martinez (31)  
Rep. Johnson  
(376)

SUBJECT: Claims against the state

1. WHAT PROBLEM EXISTS WHICH NECESSITATES THIS BILL?

At present the state, including counties, are immune from tort liability. Municipalities do not have this immunity. All claims against the state must be recovered through the claims bill process.

2. WHAT ARE THE PROBABLE CONSEQUENCES OF THIS BILL?

Under the provisions of both bills, sovereign immunity would be waived as far as the state, counties, etc., are concerned. The status of municipalities would remain the same. The main difference in the bills is that HB 315 provides that the Department of Education and Department of Insurance shall develop plans for a reserve fund to cover the general liability and physical plant damage. The provision in §4 is already in the law - §284.30-.42, 1972 Supp. HB 376 establishes the Florida casualty insurance retention trust fund. This type of fund exists now for the state but does not cover counties or other entities. HB 376 also creates a medical professional liability insurance retention trust fund.

3. DOES THIS BILL ACCOMPLISH THE DESIRED RESULT?

The both waive sovereign immunity but handle the insurance question in differing manners.

4. IS THIS BILL TECHNICALLY CORRECT IN FORM AND SUBSTANCE?

HB 315 - yes.

HB 376 - page 8, line 27, should probably be 1974.  
page 8, line 21, should probably be 1973.

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File with Clerk

The Committee on JUDICIARY met at 8:00 A.M. o'clock on Apr. 12, 1973, in Room 16H and considered ~~HB 315~~ Proposed Comm. Bill  
On motion, to report the bill ☐ FAVORABLE Substitute for  
☐ FAVORABLE WITH AMENDMENTS  
(number) HB 315  
☐ FAVORABLE WITH SUBSTITUTE + 37.6

the vote was:

YEA	MEMBER	NAY
✓	BASS	
✓	CHERRY	
✓	CRABTREE	
✓	GORDON	
✓	HABEN	
✓	JOHNSON	
✓	NUCKOLLS	
✓	REDMAN	
✓	REYNOLDS	
✓	RICHMOND	
✓	SACKETT	
✓	SMITH	
✓	SNOWDEN	

TOTAL YEAS ☒ 5[illegible]

TOTAL DAYS:

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~~COMMITTEE APPEARANCE RECORD~~

The following persons (other than legislators) appeared before the committee during consideration of this bill:

NAME	REPRESENTING	ADDRESS
Sam Rogers	Assoc. of Ins. Agents	
Hunt Wester	Fla. Ins. Dept.	
John McWhorter	Academy of Trial	
Burtaw Michaels	League of Cities	
Dan Magnuder	Fla. Sch. Bds. Assn.	
Wilson Wright	St. Assoc. of Co. Commrs.	
Ray Tipton	Fla. Schools Supts.	
Ranky Jordan	Dept. Health & Rehab Serv.	

## Florida Attorney General Advisory Legal Opinion

Number: AGO 76-41

Date: February 23, 1976

Subject: Tort liability and sovereign immunity

MUNICIPALITIES--TORT LIABILITY--EXTENT; EFFECT OF STATE'S WAIVER OF SOVEREIGN IMMUNITY

To: W. W. Caldwell, Jr., City Attorney, Fort Lauderdale

Prepared by: Gerald L. Knight, Assistant Attorney General

### QUESTION:

What effect, if any, does the state's waiver of sovereign immunity from tort liability contained in s. 768.28, F. S., have on the tort liability of municipalities?

### SUMMARY:

With the exception of immunity in the exercise of legislative, judicial, quasi-legislative, and quasi-judicial functions, municipalities possessed no aspect of the state's sovereign immunity from tort liability upon which the state's waiver of sovereign immunity contained in s. 768.28, F. S., and the statutory limitations applicable thereto, could operate.

By the enactment of s. 768.28, F. S. (Ch. 73-313, Laws of Florida, as amended by Ch. 74-235, Laws of Florida), the Florida Legislature waived the state's sovereign immunity from tort liability to the extent provided therein. See s. 768.28(1), which provides in part that "the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act"; s. 768.28(2), which defines the phrase "state agencies and subdivisions" to include municipalities; s. 768.28(5), which establishes the monetary limitations on the state's waiver; and s. 768.28(9), which precludes the personal liability of officers, employees, or agents of the state or its subdivisions for their negligent acts or omissions in the scope of their employment unless committed "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property."

In light of the enactment of s. 768.28, F. S., which became effective generally on January 1, 1975, you pose specific questions as to the authority for, or efficacy of, a municipality appealing a "claims bill" enacted by the Florida Legislature; the Florida Legislature directing a municipality to pay a judgment in excess of the monetary limitations established in s. 768.28(5); and a municipality purchasing insurance to

cover only that amount granted by a "claims bill" which is in excess of those monetary limitations. The following discussion, which is limited solely to a consideration of the effect, if any, of the state's waiver of sovereign immunity contained in s. 768.28 on the tort liability of municipalities under the doctrine of *respondeat superior*, should be dispositive of your questions.

In *Modlin v. City of Miami Beach*, 201 So.2d 70, 73 (Fla. 1967), the Florida Supreme Court attempted to clarify its earlier decision in *Hargrove v. Town of Cocoa Beach*, 96 So.2d 130 (Fla. 1957), as follows:

" . . . the *Hargrove* decision specifically reserved municipal tort immunity in the exercise of legislative, judicial, quasi-legislative, and quasi-judicial functions. Because private persons and corporations do not exercise legislative or judicial functions, this means that the tort liability of municipal corporations may now be equated with that of private corporations.

The *Hargrove* specification of the legislative and judicial functions as constituting the area of continuing immunity obviously implies that the performance of the executive or administrative function will constitute the area of potential liability. . . ."

This judicial language states the essential status of municipal tort immunity prior to the enactment of s. 768.28, F. S. That is, except with respect to those activities which could properly be designated legislative, judicial, quasi-legislative, and quasi-judicial, a municipality was liable in tort under the doctrine of *respondeat superior* for any injuries or damages suffered as a result of the acts, events, or omissions of action, whether negligent or intentional, committed by its officers, employees, or agents in the scope of their employment or function the same as any private corporation. See also *City of Miami v. Simpson*, 172 So.2d 435 (Fla. 1965); and *Fisher v. City of Miami*, 172 So.2d 455 (Fla. 1965). Therefore, I am of the opinion that with the exception of immunity in the exercise of legislative, judicial, quasi-legislative, and quasi-judicial functions [which immunity may still exist on other grounds, see *Rivello v. Cooper City*, 322 So.2d 602 (4 D.C.A. Fla., 1975), and *McNayr v. Kelly*, 184 So.2d 428 (Fla. 1966)], municipalities possessed no aspect of the state's sovereign immunity from tort liability upon which the waiver contained in s. 768.28, and the limitations specified therein, could operate. Cf. AGO 075-114. In sum, the state's waiver of sovereign immunity contained in s. 768.28 does not operate to limit in any substantive way the tort liability of municipalities under the doctrine of *respondeat superior*.