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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 167 - 309

and insert:

$350,000 ~~$200,000~~ or any claim or judgment, or portions of a claim or judgment ~~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 $500,000 ~~$300,000~~. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this section ~~act~~ up to

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$350,000 ~~$200,000~~ or $500,000. Any ~~$300,000, 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.

(b) Notwithstanding the limited waiver of sovereign immunity in paragraph (a) ~~provided herein~~, the state or an agency or subdivision of the state ~~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 of the state may ~~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 $350,000 ~~$200,000~~ or $500,000 ~~$300,000~~ waiver in paragraph (a) ~~provided above~~.

(c) 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.

(d) ~~(b)~~ A municipality has a duty to allow the municipal law enforcement agency to respond appropriately to protect persons and property during a riot or an unlawful assembly based on the availability of adequate equipment to its municipal law enforcement officers and relevant state and federal laws. If the governing body of a municipality or a person authorized by the governing body of the municipality breaches that duty, the municipality is civilly liable for any damages, including damages arising from personal injury, wrongful death, or property damages proximately caused by the municipality's breach

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of duty. The sovereign immunity recovery limits in paragraph (a) do not apply to an action under this paragraph.

(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, county, or the Florida Space Authority, presents the ~~such~~ claim in writing to the Department of Financial Services, within 18 months ~~3 years~~ after the ~~such~~ claim accrues and the Department of Financial Services or the appropriate agency denies the claim in writing; except that, if:

1. The ~~Such~~ claim is for contribution pursuant to s. 768.31, it must 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 final ~~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 her or him, to discharge the common liability; or

2. The ~~Such~~ action arises from a violation of s. 794.011 involving a victim who was younger than 16 years of age at the time of the act, the claimant may present the claim in writing at any time. This subparagraph applies to any action other than an action that would have been time barred on or before October 1, 2026 ~~is for wrongful death, the claimant must present the claim in writing to the Department of Financial Services within 2 years after the claim accrues~~.

(b) For purposes of this section, the requirements of notice to the agency and denial of the claim pursuant to

paragraph (a) are conditions precedent to maintaining an action but may ~~shall~~ not be deemed to be elements of the cause of action and do ~~shall~~ not affect the date on which the cause of action accrues.

(c) The claimant shall also provide to the agency the claimant's date and place of birth and social security number if the claimant is an individual, or a federal identification number if the claimant is not an individual. The claimant shall also state the case style, tribunal, the nature and amount of all adjudicated penalties, fines, fees, victim restitution fund, and other judgments in excess of $200, whether imposed by a civil, criminal, or administrative tribunal, owed by the claimant to the state, its agency, officer or subdivision. If there exists no prior adjudicated unpaid claim in excess of $200, the claimant shall so state.

(d) For purposes of this section, complete, accurate, and timely compliance with the requirements of paragraph (c) must ~~shall~~ occur before ~~prior to~~ settlement payment, close of discovery, or commencement of trial, whichever is earlier ~~sooner~~; provided the ability to plead setoff is not precluded by the delay. This setoff applies ~~shall apply~~ only against that part of the settlement or judgment payable to the claimant, minus claimant's reasonable attorney ~~attorney's~~ fees and costs. Incomplete or inaccurate disclosure of unpaid adjudicated claims due the state, or~~,~~ its agency, officer, or subdivision, may be excused by the court upon a showing by the preponderance of the evidence of the claimant's lack of knowledge of an adjudicated claim and reasonable inquiry by, or on behalf of, the claimant to obtain the information from public records. Unless the

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appropriate agency had actual notice of the information required to be disclosed by paragraph (c) in time to assert a setoff, an unexcused failure to disclose shall, upon hearing and order of court, cause the claimant to be liable for double the original undisclosed judgment and, upon further motion, the court shall enter judgment for the agency in that amount. Except as provided otherwise in this subsection, the failure of the Department of Financial Services or the appropriate agency to make final disposition of a claim within 4 ~~6~~ months after it is filed shall be deemed a final denial of the claim for purposes of this section. For purposes of this subsection, in medical malpractice actions and in wrongful death actions, the failure of the Department of Financial Services or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim. The statute of limitations ~~for medical malpractice actions and wrongful death actions~~ is tolled as to all prospective defendants for the period of time taken by the Department of Financial Services or the appropriate agency to deny the claim. ~~The provisions of~~ This subsection does ~~do~~ not apply to ~~such~~ claims that ~~as~~ may be asserted by counterclaim pursuant to s. 768.14.

(7) In actions brought pursuant to this section, process must ~~shall~~ be served upon the head of the agency concerned and also, except as to a defendant municipality, county, or the Florida Space Authority, upon the Department of Financial Services.~~; and~~ The department or the agency served has ~~concerned shall have~~ 30 days within which to file responsive pleadings ~~plead thereto~~.

(8) An ~~No~~ attorney may not charge, demand, receive, or

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collect, for services rendered, fees in excess of 25 percent of any funds recovered as a result of judgment or settlement.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 5 - 23

and insert:

and subdivisions for tort claims; revising exceptions relating to instituting actions on tort claims against the state or one of its agencies or subdivisions; revising the period after which the failure of certain entities to make final disposition of a claim shall be deemed a final denial of the claim for certain purposes; revising the statute of limitations for tort