



662962

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

Senator Simmons moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 768.81, Florida Statutes, is amended to
read:

768.81 Comparative fault.—

(1) DEFINITIONS ~~DEFINITION~~.—As used in this section, the
term:

(a) "Economic damages" means past lost income and future
lost income reduced to present value; medical and funeral
expenses; lost support and services; replacement value of lost
personal property; loss of appraised fair market value of real



662962

14 property; costs of construction repairs, including labor,
15 overhead, and profit; and any other economic loss that ~~which~~
16 would not have occurred but for the injury giving rise to the
17 cause of action.

18 (b) "Negligence action" means, without limitation, a civil
19 action for damages based upon a theory of negligence, strict
20 liability, products liability, or professional malpractice,
21 whether couched in terms of contract, tort, or breach of
22 warranty and like theories. The substance of an action, not the
23 conclusory terms used by a party, determines whether an action
24 is a negligence action.

25 (c) "Products liability action" means a civil action based
26 upon a theory of strict liability, negligence, breach of
27 warranty, nuisance, or similar theories for damages caused by
28 the manufacture, construction, design, formulation,
29 installation, preparation, or assembly of a product. The term
30 includes an action alleging that injuries received by a claimant
31 in an accident were greater than the injuries the claimant would
32 have received but for a defective product. The substance of an
33 action, not the conclusory terms used by a party, determines
34 whether an action is a products liability action.

35 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence ~~an~~ action
36 ~~to which this section applies,~~ any contributory fault chargeable
37 to the claimant diminishes proportionately the amount awarded as
38 economic and noneconomic damages for an injury attributable to
39 the claimant's contributory fault, but does not bar recovery.

40 (3) APPORTIONMENT OF DAMAGES.—In a negligence action ~~cases~~
41 ~~to which this section applies,~~ the court shall enter judgment
42 against each party liable on the basis of such party's



662962

43 percentage of fault and not on the basis of the doctrine of
44 joint and several liability.

45 (a)1. In order to allocate any or all fault to a nonparty,
46 a defendant must affirmatively plead the fault of a nonparty
47 and, absent a showing of good cause, identify the nonparty, if
48 known, or describe the nonparty as specifically as practicable,
49 either by motion or in the initial responsive pleading when
50 defenses are first presented, subject to amendment any time
51 before trial in accordance with the Florida Rules of Civil
52 Procedure.

53 2.~~(b)~~ In order to allocate any or all fault to a nonparty
54 and include the named or unnamed nonparty on the verdict form
55 for purposes of apportioning damages, a defendant must prove at
56 trial, by a preponderance of the evidence, the fault of the
57 nonparty in causing the plaintiff's injuries.

58 (b) In a products liability action alleging that injuries
59 received by a claimant in an accident were greater than the
60 injuries the claimant would have received but for a defective
61 product, the trier of fact shall consider the fault of all
62 persons who contributed to the injuries when apportioning fault
63 between or among them. The court or other tribunal shall
64 consider, and in the event of a jury trial the jury shall be
65 instructed regarding, the distinction between causation of the
66 injury and causation of enhancement of the injury. The court or
67 other tribunal shall apply the rules of evidence as appropriate
68 regarding such distinction.

69 (4) APPLICABILITY.—

70 ~~(a) This section applies to negligence cases. For purposes~~
71 ~~of this section, "negligence cases" includes, but is not limited~~



662962

72 ~~to, civil actions for damages based upon theories of negligence,~~
73 ~~strict liability, products liability, professional malpractice~~
74 ~~whether couched in terms of contract or tort, or breach of~~
75 ~~warranty and like theories. In determining whether a case falls~~
76 ~~within the term "negligence cases," the court shall look to the~~
77 ~~substance of the action and not the conclusory terms used by the~~
78 ~~parties.~~

79 ~~(b)~~ This section does not apply to any action brought by
80 any person to recover actual economic damages resulting from
81 pollution, to any action based upon an intentional tort, or to
82 any cause of action as to which application of the doctrine of
83 joint and several liability is specifically provided by chapter
84 403, chapter 498, chapter 517, chapter 542, or chapter 895.

85 (5) MEDICAL MALPRACTICE.—Notwithstanding anything in law to
86 the contrary, in an action for damages for personal injury or
87 wrongful death arising out of medical malpractice, whether in
88 contract or tort, if when an apportionment of damages pursuant
89 to this section is attributed to a teaching hospital as defined
90 in s. 408.07, the court shall enter judgment against the
91 teaching hospital on the basis of such party's percentage of
92 fault and not on the basis of the doctrine of joint and several
93 liability.

94 Section 2. This act is remedial in nature and, to the
95 extent permitted by applicable law, shall apply retrospectively.

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

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

99 And the title is amended as follows:

100 Delete everything before the enacting clause



662962

101 and insert:

102 A bill to be entitled
103 An act relating to negligence; amending s. 768.81,
104 F.S.; defining the terms "negligence action" and
105 "products liability action"; requiring the trier of
106 fact to consider the fault of all persons who
107 contributed to an accident when apportioning damages
108 in a products liability action alleging an additional
109 or enhanced injury; requiring a court or other
110 tribunal or a jury to be instructed of the distinction
111 between causation of the injury and causation of
112 enhancement of the injury; providing for retroactive
113 application of the act; providing an effective date.