

By the Committee on Financial Services and Representatives
Safley and Bainter

1 A bill to be entitled
2 An act relating to liability reform; creating
3 the "Florida Accountability and Individual
4 Responsibility (FAIR) Liability Act"; amending
5 s. 95.031, F.S., relating to computation of
6 time for purposes of statutes of limitations;
7 revising limitations with respect to
8 commencement of actions for product liability
9 or fraud; providing for applicability of
10 certain provisions; creating s. 768.291, F.S.;
11 limiting vicarious liability for ownership of
12 property under specified circumstances when the
13 property is insured; providing that an owner of
14 personal property does not have a duty to warn
15 a user of the property as to certain defects;
16 creating s. 768.36, F.S.; providing a defense
17 based on the influence of alcohol or drugs
18 which may be asserted in any civil action
19 against a plaintiff under specified
20 circumstances when the plaintiff was more than
21 50 percent at fault for the plaintiff's harm as
22 a result of alcohol or drug influence; barring
23 recovery for damages by a person who trespasses
24 under certain circumstances; providing an
25 exception; creating s. 768.37, F.S.; providing
26 a defense based on the intentional tort
27 committed by a third party; amending s. 768.72,
28 F.S.; providing for limitations upon claims for
29 punitive damages; providing evidentiary
30 standard for proof by plaintiff of reasonable
31 basis for punitive damages; providing for

1 review; requiring determinations to be
2 supported as specified in the record; providing
3 for hearing on motion to amend complaint to
4 assert claim for punitive damages; providing
5 for certain issues to be tried separately;
6 providing for applicability of certain
7 provisions; amending s. 768.73, F.S., relating
8 to limitations on punitive damages; making such
9 limitations applicable to civil actions other
10 than contract actions; providing limitations
11 upon punitive damages based on vicarious
12 liability; requiring certain findings for, and
13 providing for reduction of, subsequent punitive
14 damage awards under specified circumstances;
15 revising guidelines for payment and
16 distribution of punitive damage awards;
17 providing for applicability of certain
18 provisions; amending s. 768.81, F.S.; revising
19 provisions relating to comparative fault with
20 respect to applicability of doctrine of joint
21 and several liability; providing a directive to
22 the Division of Statutory Revision; creating s.
23 772.12, F.S.; creating the "Drug Dealer
24 Liability Act"; providing that persons injured
25 by a drug dealer may recover treble damages and
26 reasonable attorney's fees and court costs;
27 providing for minimum damages; providing for
28 recovery of damages, court costs, and fees from
29 the parents or legal guardian of an
30 unemancipated minor under certain
31 circumstances; providing conditions under which

1 a defendant may recover attorney's fees and
2 court costs; providing for severability;
3 providing an effective date.
4

5 WHEREAS, s. 1, Art. III of the State Constitution vests
6 the Legislature with the authority to create laws in light of
7 the public interest, and

8 WHEREAS, s. 1, Art. V of the State Constitution enables
9 courts to adjudicate cases by applying the laws enacted by the
10 Legislature to the facts of those cases, and

11 WHEREAS, after the State Constitution was adopted, the
12 Legislature enacted s. 2.01, Florida Statutes, to provide the
13 courts of this state with the authority to refer to the common
14 law in adjudicating cases, and

15 WHEREAS, the common law consisted of case holdings
16 rendered by English courts prior to the Revolution of 1776 or
17 by the territorial courts before the Legislature was empowered
18 to create the laws of the state or common law principles
19 existing at the time a territory became a state, and

20 WHEREAS, the purpose of s. 2.01, Florida Statutes, was
21 to permit the courts to continue to apply the common law that
22 was in existence at the time of statehood and develop it in
23 the interest of the public policy of the state unless it was
24 abrogated or altered by the Legislature, and

25 WHEREAS, the Legislature finds that there is an
26 overpowering public necessity to eliminate perpetual liability
27 for defective products because such perpetual liability places
28 an undue burden on manufacturers, increases costs to
29 consumers, and unreasonably restricts economic growth, and
30 that the statute of repose provided in this act provides a
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1 reasonable time for exposure to liability for manufacturing a
2 product, NOW, THEREFORE,

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

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6 Section 1. Sections 1 through 8 of this act may be
7 cited as the "Florida Accountability and Individual
8 Responsibility (FAIR) Liability Act."

9 Section 2. Subsection (2) of section 95.031, Florida
10 Statutes, is amended to read:

11 95.031 Computation of time.--Except as provided in
12 subsection (2) and in s. 95.051 and elsewhere in these
13 statutes, the time within which an action shall be begun under
14 any statute of limitations runs from the time the cause of
15 action accrues.

16 (2) Actions for products liability and fraud under s.
17 95.11(3) must be begun within the period prescribed in this
18 chapter, with the period running from the time the facts
19 giving rise to the cause of action were discovered or should
20 have been discovered with the exercise of due diligence,
21 instead of running from any date prescribed elsewhere in s.
22 95.11(3), but in any event no later than 12 years after the
23 product leaves the possession and control of the manufacturer
24 or an action for fraud under s. 95.11(3) must be begun within
25 12 years after the date of the commission of the alleged
26 fraud, whichever is later, regardless of the date the defect
27 in the product or the fraud was or should have been
28 discovered. Any action that would be barred under the 1997
29 amendments to this section and that would not have been barred
30 under prior law may be commenced before June 1, 1998, and, if
31 it is not commenced by that date, the action shall be barred.

1 Section 3. Section 768.291, Florida Statutes, is
2 created to read:

3 768.291 Vicarious liability based on ownership of
4 property.--

5 (1) Notwithstanding any other provision of the Florida
6 Statutes or existing case law, the owner of personal property
7 shall not be deemed the owner of such personal property for
8 the purpose of determining vicarious liability for the
9 operation or use of such personal property or for the acts of
10 the operator or user in connection therewith, provided such
11 use or operation is covered by insurance containing limits not
12 less than \$100,000/\$300,000 bodily injury liability and
13 \$50,000 property damage liability or not less than \$500,000
14 combined property damage liability and bodily injury liability
15 covering use or operation of such personal property.

16 (2) An owner of personal property does not have a duty
17 to warn a user of the property as to either:

18 (a) Any defect which is, or should be, apparent to an
19 ordinary user of the property; or

20 (b) Any defect which is not known to the owner of the
21 property.

22 Section 4. Section 768.36, Florida Statutes, is
23 created to read:

24 768.36 Alcohol or drug defense.--

25 (1) As used in this section, the term "alcohol or
26 drug":

27 (a) Means alcohol, including distilled spirits, wine,
28 malt beverages, and intoxicating liquors, or any drug or
29 chemical substance set forth in s. 877.111, or any substance
30 controlled under chapter 893.

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1 (b) Does not include any drug or medication obtained
2 by the plaintiff pursuant to a prescription as defined in s.
3 893.02, or any medication that is authorized pursuant to state
4 or federal law for general distribution and use without a
5 prescription in the treatment of human diseases, ailments, or
6 injuries.

7 (2) In any civil action, a defendant may assert as a
8 defense that he or she is not liable to the plaintiff if the
9 plaintiff was under the influence of any alcohol or drug to
10 the extent that the person's normal faculties were impaired
11 or, if the person had a blood or breath alcohol level of 0.08
12 percent or higher, and the plaintiff, as a result of the
13 influence of such alcohol or drug, was more than 50 percent at
14 fault for such plaintiff's harm.

15 (3) Any person who trespasses upon or enters the
16 property of another without actual consent of the property
17 owner, or any person who commits a crime against a person or
18 property of another, or any person who enters the property of
19 another while legally intoxicated or under the influence of an
20 unlawful drug, may not recover any damages for loss or injury
21 to his or her person or property unless that person can prove
22 by clear and convincing evidence that his or her culpability
23 was less than the person from whom recovery is sought.

24 Section 5. Section 768.37, Florida Statutes, is
25 created to read:

26 768.37 Liability for intentional tort committed by a
27 third party.--In any civil action, the doctrine of vicarious
28 liability shall not be used to impose liability against a
29 defendant for any civil damages sustained by a claimant when
30 the claimant's harm was caused by an intentional tort
31 committed by a third party.

1 Section 6. Section 768.72, Florida Statutes, is
2 amended to read:

3 768.72 Pleading in civil actions; claim for punitive
4 damages.--

5 (1) In any civil action, no claim for punitive damages
6 shall be permitted unless the claimant proves by clear and
7 convincing ~~there is a reasonable showing by~~ evidence in the
8 record or proffered by the claimant that ~~which would provide a~~
9 reasonable basis exists for recovery of such damages.

10 Certiorari may be granted to review both the procedure of the
11 trial court and the sufficiency of the evidence considered by
12 the finder of fact to find a reasonable basis for punitive
13 damages. In determining whether there exists a reasonable
14 basis for punitive damages in any civil action, the record
15 must establish that punitive damages are not disallowed as a
16 matter of law; in this regard, if the compensatory damages
17 sought are economic losses only, except in cases of fraud, no
18 claim for punitive damages shall be permitted. A defendant may
19 be held liable for punitive damages only if the trier of fact
20 finds, based on clear and convincing evidence, that the
21 defendant was guilty of intentional misconduct. "Intentional
22 misconduct" means the defendant had actual knowledge of the
23 wrongfulness of its conduct and the high probability that
24 injury to the claimant would result and, despite that
25 knowledge, intentionally pursued that course of conduct,
26 resulting in personal injury.The claimant may move to amend
27 his complaint to assert a claim for punitive damages as
28 allowed by the rules of civil procedure. The rules of civil
29 procedure shall be liberally construed so as to allow the
30 claimant discovery of evidence which appears reasonably
31 calculated to lead to admissible evidence on the issue of

1 punitive damages. No discovery of financial worth shall
2 proceed until after the pleading concerning punitive damages
3 is permitted. The hearing on the motion to amend the complaint
4 to assert a claim for punitive damages shall be held at least
5 30 days before the scheduled trial date to give the defendant
6 time to prepare to rebut the claim, and to engage in necessary
7 discovery concerning the claim.

8 (2) Upon motion of a defendant, the issues of
9 liability for compensatory damages and the amount of
10 compensatory damages, if any, shall be tried separately from
11 the issues of liability for punitive damages and the amount of
12 punitive damages, if any. Evidence relating solely to
13 punitive damages shall not be admissible until the trier of
14 fact has determined that such defendant is liable for more
15 than nominal compensatory damages and has determined the
16 amount of compensatory damages. The same trier of fact that
17 tried the issues relating to compensatory damages shall try
18 the issues relating to punitive damages.

19 (3) The provisions of the 1997 amendments to this
20 section are remedial in nature and shall be applied to all
21 civil actions filed after October 1, 1997.

22 Section 7. Section 768.73, Florida Statutes, is
23 amended to read:

24 768.73 Punitive damages; limitation.--

25 (1)(a) In any civil action, other than a contract
26 action based on negligence, strict liability, products
27 liability, misconduct in commercial transactions, professional
28 liability, or breach of warranty, and involving willful,
29 wanton, or gross misconduct, the judgment for the total amount
30 of punitive damages awarded to a claimant may not exceed three
31 times the amount of compensatory damages awarded to each

1 person entitled thereto by the trier of fact, except as
2 provided in paragraph (b). However, this subsection does not
3 apply to any class action.

4 (b) If any award for punitive damages exceeds the
5 limitation specified in paragraph (a), the award is presumed
6 to be excessive and the defendant is entitled to remittitur of
7 the amount in excess of the limitation unless the claimant
8 demonstrates to the court by clear and convincing evidence
9 that the award is not excessive in light of the facts and
10 circumstances which were presented to the trier of fact.

11 (c) This subsection is not intended to prohibit an
12 appropriate court from exercising its jurisdiction under s.
13 768.74 in determining the reasonableness of an award of
14 punitive damages that is less than three times the amount of
15 compensatory damages.

16 (d) Punitive damages may be awarded against a person
17 based on vicarious liability only if:

18 1. The person intentionally participated in the
19 intentional misconduct; or

20 2. In the case of a corporation, the officers,
21 directors, or managers of the corporation intentionally
22 participated in or intentionally condoned the intentional
23 misconduct.

24 (e) Seventy-five percent of any punitive damages award
25 permitted under this subsection, after deduction of attorneys'
26 fees and other costs of litigation, shall be allocated as
27 follows:

28 1. With respect to an award made before the County
29 Court Article V Trust Fund is created by law, the full 75
30 percent shall be payable to the Public Medical Assistance
31 Trust Fund.

1 2. With respect to an award made after the County
2 Court Article V Trust Fund is created by law, 35 percentage
3 points of the 75 percent shall be payable to the County Court
4 Article V Trust Fund, and 40 percentage points of the 75
5 percent shall be payable to the Public Medical Assistance
6 Trust Fund.

7
8 The defendant shall pay the entire award to the clerk of the
9 court, who shall transmit the appropriate amounts to the
10 claimant and to the Comptroller.

11 (f) This section gives the state the right to share in
12 the proceeds of a punitive damages award, but does not make
13 the state a party in interest in the civil action.

14 (2)(a) Except as provided in paragraph (b), punitive
15 damages shall not be awarded against a defendant if that
16 defendant establishes, before trial, that punitive damages
17 have previously been awarded against that defendant in any
18 state or federal court in this state in any action alleging
19 harm from the same act or course of conduct for which the
20 claimant seeks compensatory damages. For purposes of a
21 product liability action, "the same act or course of conduct"
22 includes acts resulting in substantially the same
23 manufacturing defects, acts resulting in substantially the
24 same defects in design, or failure to warn of substantially
25 the same hazards, with respect to substantially similar units
26 of a product.

27 (b) In subsequent tort actions involving the same act
28 or course of conduct for which punitive damages have already
29 been awarded, if the court determines by clear and convincing
30 evidence that the amount of prior punitive damages awarded was
31 totally insufficient to punish that defendant's behavior, the

1 court may award subsequent punitive damages. In awarding
2 subsequent punitive damages, the court shall make specific
3 findings of fact in the record to support its conclusion. Any
4 subsequent punitive damage awards shall be reduced by the
5 amount of any earlier punitive damage awards rendered in state
6 or federal court in this state.

7 (3) The provisions of the 1997 amendments to this
8 section are remedial in nature and shall be applied to all
9 civil actions filed after October 1, 1997.

10 ~~(2) In any civil action, an award of punitive damages~~
11 ~~is payable as follows:~~

12 ~~(a) Sixty-five percent of the award is payable to the~~
13 ~~claimant.~~

14 ~~(b) If the cause of action was based on personal~~
15 ~~injury or wrongful death, 35 percent of the award is payable~~
16 ~~to the Public Medical Assistance Trust Fund; otherwise, 35~~
17 ~~percent of the award is payable to the General Revenue Fund.~~

18 ~~(4)(3)~~ (4) The clerk of the court shall transmit a copy of
19 the jury verdict to the State Treasurer by certified mail. In
20 the final judgment, the court shall order the percentages of
21 the award, payable as provided in paragraph (1)(e) ~~subsection~~
22 ~~(2)~~.

23 ~~(5)(4)~~ (5) A settlement agreement entered into between the
24 original parties to the action after a verdict has been
25 returned must provide a proportionate share payable to the
26 fund specified in paragraph (1)(e)(2)(b). ~~For purposes of~~
27 ~~this subsection, a proportionate share is a 35-percent share~~
28 ~~of that percentage of the settlement amount which the punitive~~
29 ~~damages portion of the verdict bore to the total of the~~
30 ~~compensatory and punitive damages in the verdict.~~

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1 (6)~~(5)~~ The Department of Banking and Finance shall
2 collect or cause to be collected all payments due the state
3 under this section. Such payments are made to the Comptroller
4 and deposited in the appropriate fund specified in paragraph
5 (1)(e)~~subsection (2)~~.

6 (7)~~(6)~~ If the full amount of punitive damages awarded
7 cannot be collected, the claimant and the other recipient
8 designated pursuant to paragraph (1)(e)~~(2)(b)~~ are each
9 entitled to a proportional share of the punitive damages
10 collected.

11 (8)~~(7)~~ Claimant's attorney's fees, if payable from the
12 judgment, are, to the extent that they are based on the
13 punitive damages, calculated based only on the portion of the
14 judgment payable to the claimant as provided in paragraph
15 (1)(e)~~subsection (2)~~. Nothing herein limits the payment of
16 attorney's fees based upon the award of damages other than
17 punitive damages.

18 (9)~~(8)~~ The jury may neither be instructed nor informed
19 as to the provisions of this section.

20 Section 8. Section 768.81, Florida Statutes, is
21 amended to read:

22 768.81 Comparative fault.--

23 (1) DEFINITION.--As used in this section, "economic
24 damages" means past lost income and future lost income reduced
25 to present value; medical and funeral expenses; lost support
26 and services; replacement value of lost personal property;
27 loss of appraised fair market value of real property; costs of
28 construction repairs, including labor, overhead, and profit;
29 and any other economic loss which would not have occurred but
30 for the injury giving rise to the cause of action.

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1 (2) EFFECT OF CONTRIBUTORY FAULT.--In an action to
2 which this section applies, any contributory fault chargeable
3 to the claimant diminishes proportionately the amount awarded
4 as economic and noneconomic damages for an injury attributable
5 to the claimant's contributory fault, but does not bar
6 recovery.

7 (3) APPORTIONMENT OF DAMAGES.--In cases to which this
8 section applies, the court shall enter judgment against each
9 party liable on the basis of such party's percentage of fault
10 and not on the basis of the doctrine of joint and several
11 liability; provided that with respect to any party whose
12 percentage of fault equals or exceeds that of a particular
13 claimant, the court shall enter judgment with respect to
14 economic damages against that party on the basis of the
15 doctrine of joint and several liability.

16 (4) APPLICABILITY.--

17 (a) This section applies to negligence cases. For
18 purposes of this section, "negligence cases" includes, but is
19 not limited to, civil actions for damages based upon theories
20 of negligence, strict liability, products liability,
21 professional malpractice whether couched in terms of contract
22 or tort, or breach of warranty and like theories. In
23 determining whether a case falls within the term "negligence
24 cases," the court shall look to the substance of the action
25 and not the conclusory terms used by the parties.

26 (b) This section does not apply to any action brought
27 by any person to recover actual economic damages resulting
28 from pollution, to any action based upon an intentional tort,
29 or to any cause of action as to which application of the
30 doctrine of joint and several liability is specifically
31

1 provided by chapter 403, chapter 498, chapter 517, chapter
2 542, or chapter 895.

3 ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~
4 ~~LIABILITY. Notwithstanding the provisions of this section,~~
5 ~~the doctrine of joint and several liability applies to all~~
6 ~~actions in which the total amount of damages does not exceed~~
7 ~~\$25,000.~~

8 (5)(6) Notwithstanding anything in law to the
9 contrary, in an action for damages for personal injury or
10 wrongful death arising out of medical malpractice, whether in
11 contract or tort, when an apportionment of damages pursuant to
12 this section is attributed to a teaching hospital as defined
13 in s. 408.07, the court shall enter judgment against the
14 teaching hospital on the basis of such party's percentage of
15 fault and not on the basis of the doctrine of joint and
16 several liability.

17 Section 9. Section 772.12, Florida Statutes, is
18 created to read:

19 772.12 Drug Dealer Liability Act.--

20 (1) This section may be cited as the "Drug Dealer
21 Liability Act."

22 (2) A plaintiff has a cause of action for threefold
23 the actual damages sustained and is entitled to minimum
24 damages in the amount of \$1,000 and reasonable attorney's fees
25 and court costs in the trial and appellate courts, if the
26 plaintiff proves by the greater weight of the evidence that:

27 (a) The plaintiff was injured because of the
28 defendant's actions that resulted in the defendant's
29 conviction for:

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31

1 1. A violation of s. 893.13, except for a violation of
2 s. 893.13(2)(a) or (b), (3), (5), (6)(a), (b), or (c), or (7);
3 or
4 2. A violation of s. 893.135; and
5 (b) The plaintiff was not injured by reason of his or
6 her participation in the same act or transaction that resulted
7 in the defendant's conviction for any offense described in
8 subparagraph (a)1.
9 (3) For purposes of this section, the term
10 "conviction" means a finding of guilt, with or without
11 adjudication of guilt, as a result of a jury verdict, nonjury
12 trial, or entry of a plea of guilty or nolo contendere.
13 (4) A plaintiff who has a cause of action under this
14 section may recover the damages allowed under this section
15 from the parent or legal guardian of an unemancipated minor
16 who is liable for the damages and who lives with his or her
17 parent or legal guardian, if the plaintiff proves by clear and
18 convincing evidence that the parent or legal guardian was
19 aware of or recklessly disregarded facts demonstrating that
20 the minor intended to commit the act giving rise to a cause of
21 action under this section. The parent or legal guardian of an
22 unemancipated minor is not liable under this section, under
23 any circumstance, for the actions of the minor, if the court
24 finds that the parent or legal guardian made a good-faith
25 effort to prevent the minor from engaging in the act giving
26 rise to a cause of action under this section.
27 (5) A defendant may recover reasonable attorney's fees
28 and court costs in the trial and appellate courts upon a
29 finding that there is a complete absence of a justiciable
30 issue of either law or fact raised by the complaint.
31

1 Section 10. Effect on existing laws.--The provisions
2 of this act are not intended to alter the law regarding
3 intrafamily tort immunity.

4 Section 11. If any provision of this act or the
5 application thereof to any person or circumstance is held
6 invalid, the invalidity shall not affect other provisions or
7 applications of the act which can be given effect without the
8 invalid provision or application, and to this end the
9 provisions of this act are declared severable.

10 Section 12. In preparing the next edition of the
11 Florida Statutes, the Division of Statutory Revision of the
12 Joint Legislative Management Committee shall change the
13 heading of chapter 768, Florida Statutes, to reflect the
14 provisions of this act.

15 Section 13. This act shall take effect October 1,
16 1997.

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HOUSE SUMMARY

Creates the "Florida Accountability and Individual Responsibility (FAIR) Liability Act." Revises guidelines for computation of time for purposes of statutes of limitations with respect to actions for products liability and fraud. Limits vicarious liability based on ownership of property. Provides a defense based on the influence of alcohol or drugs. Provides a defense based on the intentional tort committed by a third party. Provides limitations upon claims for punitive damages. Requires certain proof and determinations. Provides for certain issues to be tried in separate proceedings. Provides limitations upon punitive damages. Revises guidelines for payment and distribution of punitive damages awards. Revises provisions relating to comparative fault. Provides a directive to the Division of Statutory Revision.

Creates the "Drug Dealer Liability Act." Provides that persons injured by a drug dealer may recover treble damages and reasonable attorney's fees and court costs. Provides for minimum damages. Provides for recovery of damages, court costs, and fees from the parents or legal guardian of an unemancipated minor under certain circumstances. Provides conditions under which a defendant may recover attorney's fees and court costs.