

By the Committee on Judiciary and Senator Lee

308-1641-99

1 A bill to be entitled
2 An act relating to civil actions; creating s.
3 768.096, F.S.; providing an employer with a
4 presumption against negligent hiring under
5 specified conditions in an action for civil
6 damages resulting from an intentional tort
7 committed by an employee; amending s. 768.095,
8 F.S.; revising the conditions under which an
9 employer is immune from civil liability for
10 disclosing information regarding an employee to
11 a prospective employer; creating s. 768.071,
12 F.S.; providing limitations on premises
13 liability for a person or organization owning
14 or controlling an interest in a business
15 premises; providing for a presumption against
16 liability; providing conditions for the
17 presumption; amending s. 768.075, F.S.;
18 modifying the conditions under which a person
19 or organization owning or controlling an
20 interest in real property is liable for a
21 trespasser's injury or death; providing
22 definitions; providing for the avoidance of
23 liability to discovered and undiscovered
24 trespassers under described circumstances;
25 providing immunity from certain liability
26 arising out of the attempt to commit or the
27 commission of a felony; creating s. 768.36,
28 F.S.; prohibiting a plaintiff from recovering
29 damages if plaintiff is more than a specified
30 percentage at fault due to the influence of
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1 alcoholic beverages or drugs; providing for
2 severability; providing an effective date.

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

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6 Section 1. Section 768.096, Florida Statutes, is
7 created to read:

8 768.096 Employer presumption against negligent
9 hiring.--

10 (1) In a civil action for the death of, or injury or
11 damage to, a third person caused by the intentional tort of an
12 employee, such employee's employer is presumed not to have
13 been negligent in hiring such employee if, before hiring the
14 employee, the employer conducted a background investigation of
15 the prospective employee and the investigation did not reveal
16 any information that reasonably demonstrated the unsuitability
17 of the prospective employee for the particular work to be
18 performed or for the employment in general. A background
19 investigation under this section must include:

20 (a) Obtaining a criminal background investigation on
21 the prospective employee under subsection (2);

22 (b) Making a reasonable effort to contact references
23 and former employers of the prospective employee concerning
24 the suitability of the prospective employee for employment;

25 (c) Requiring the prospective employee to complete a
26 job application form that includes questions concerning
27 whether he or she has ever been convicted of a crime,
28 including details concerning the type of crime, the date of
29 conviction and the penalty imposed, and whether the
30 prospective employee has ever been a defendant in a civil

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1 action for intentional tort, including the nature of the
2 intentional tort and the disposition of the action;

3 (d) Obtaining, with written authorization from the
4 prospective employee, a check of the driver's license record
5 of the prospective employee if such a check is relevant to the
6 work the employee will be performing and if the record can
7 reasonably be obtained; and

8 (e) Interviewing the prospective employee.

9 (2) To satisfy the criminal-background-investigation
10 requirement of this section, an employer must request and
11 obtain from the Department of Law Enforcement a check of the
12 information as reported and reflected in the Florida Crime
13 Information Center system as of the date of the request.

14 (3) The election by an employer not to conduct the
15 investigation specified in subsection (1) does not raise any
16 presumption that the employer failed to use reasonable care in
17 hiring an employee.

18 Section 2. Section 768.095, Florida Statutes, is
19 amended to read:

20 768.095 Employer immunity from liability; disclosure
21 of information regarding former or current employees.--An
22 employer who discloses information about a former or current
23 employee ~~employee's job performance~~ to a prospective employer
24 of the former or current employee upon request of the
25 prospective employer or of the former or current employee is
26 ~~presumed to be acting in good faith and, unless lack of good~~
27 ~~faith is shown by clear and convincing evidence, is immune~~
28 from civil liability for such disclosure or its consequences
29 ~~unless it is shown by clear and convincing evidence. For~~
30 ~~purposes of this section, the presumption of good faith is~~
31 ~~rebutted upon a showing that the information disclosed by the~~

1 former or current employer was knowingly false ~~or deliberately~~
2 ~~misleading, was rendered with malicious purpose,~~ or violated
3 any civil right of the former or current employee protected
4 under chapter 760.

5 Section 3. Section 768.071, Florida Statutes, is
6 created to read:

7 768.071 Limitation on premises liability.--

8 (1) A person or organization owning or controlling an
9 interest in a business premises is not liable for civil
10 damages sustained by invitees, guests, or other members of the
11 public which are caused by criminal acts that occur on the
12 premises and which are committed by third parties who are not
13 employees or agents of such person or organization, if the
14 person or organization owning or controlling the interest in a
15 business premises maintains a reasonably safe premises in
16 light of the foreseeability of the occurrence of the
17 particular criminal act.

18 (2) A person or organization owning or controlling an
19 interest in a business premises, other than a convenience
20 store, who substantially complies with at least six of the
21 requirements specified in paragraphs (a)-(i) is presumed to
22 have fulfilled any duty to provide adequate security for
23 invitees, guests, and other members of the public against
24 criminal acts that occur in common areas, in parking areas, or
25 on portions of the premises not occupied by buildings or
26 structures and that are committed by third parties who are not
27 employees or agents of the person or organization owning or
28 controlling the interest in a business premises.

29 (a) Signs must be prominently posted in the parking
30 area and other public-access points on the premises indicating
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1 the hours of normal business operations and the general
2 security measures provided.

3 (b) The parking area, public walkways, and public
4 building entrances and exits must be illuminated at an
5 intensity of at least 2 foot-candles per square foot at 18
6 inches above the surface of the ground, pavement, or walkway
7 or, if zoning requirements do not permit such levels of
8 illumination, to the highest intensity permitted.

9 (c) Crime prevention training, with a curriculum
10 approved by the local law enforcement agency or the Department
11 of Legal Affairs, must be provided to all nonmanagement
12 on-site employees. Persons employed at the business premises
13 before October 1, 1999, must receive training by October 1,
14 2000, and persons employed at the business premises on or
15 after October 1, 1999, must receive training within 120 days
16 after hiring. A person is not liable for ordinary negligence
17 due to implementing the approved curriculum as long as the
18 training was actually provided. The state or the local law
19 enforcement agency may not be held liable for the contents of
20 the approved curriculum.

21 (d) Security cameras must be installed and maintained,
22 and must be monitored or recorded, covering public entrances
23 and exits to buildings and at least half the parking lot.
24 Cameras must operate during business hours and for at least 30
25 minutes after closing.

26 (e) An emergency call box, or an alarm system linked
27 to a law enforcement agency, a private security agency, or a
28 security guard or other agent on the premises, must be
29 maintained and available within 150 feet of any location in
30 the parking lot or other public place on the premises.

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1 (f) A licensed security guard or law enforcement
2 officer is on duty at the time of the criminal occurrence and
3 is either monitoring surveillance cameras or patrolling the
4 premises with such frequency that the parking area and common
5 areas are observed by the guard at not more than 15-minute
6 intervals.

7 (g) Perimeter fencing must be installed and maintained
8 which surrounds parking areas and structures and directs
9 pedestrian entry onto the premises.

10 (h) Landscaping must be maintained that does not
11 substantially obstruct the view of security personnel or
12 cameras, and landscaping adjacent to areas frequented by the
13 public must be maintained in a manner that provides no hiding
14 place sufficient to conceal an adult person.

15 (i) A public address system must be installed and
16 maintained that is capable of reaching portions of the
17 premises regularly frequented by the public.

18 (3) The owner or operator of a convenience store
19 business premises which substantially implements the
20 applicable security measures listed in ss. 812.173 and 812.174
21 is presumed not to be liable for criminal acts that occur on
22 the premises and which are committed by third parties who are
23 not employees or agents of the owner or operator of the
24 convenience store business premises.

25 (4) Failure to implement a sufficient number of the
26 measures listed in subsection (2) or ss. 812.173 and 812.174
27 does not create a presumption of liability and no inference
28 may be drawn from such failure or from the substance of
29 measures listed within this section.

30 Section 4. Section 768.075, Florida Statutes, is
31 amended to read:

1 768.075 Immunity from liability for injury to
2 trespassers on real property.--

3 (1) A person or organization owning or controlling an
4 interest in real property, or an agent of such person or
5 organization, shall not be held liable for any civil damages
6 for death of or injury or damage to a trespasser upon the
7 property ~~resulting from or arising by reason of the~~
8 ~~trespasser's commission of the offense of trespass as~~
9 ~~described in s. 810.08 or s. 810.09,~~ when such trespasser was
10 under the influence of alcoholic beverages with a
11 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such
12 trespasser was under the influence of any chemical substance
13 set forth in s. 877.111, when such trespasser was illegally
14 under the influence of any substance controlled under chapter
15 893, or if the trespasser is affected by any of the aforesaid
16 substances to the extent that her or his normal faculties are
17 impaired. ~~For the purposes of this section, voluntary~~
18 ~~intoxication or impediment of faculties by use of alcohol or~~
19 ~~any of the aforementioned substances shall not excuse a party~~
20 ~~bringing an action or on whose behalf an action is brought~~
21 ~~from proving the elements of trespass.~~ However, the person or
22 organization owning or controlling the interest in real
23 property shall not be immune from liability if gross
24 negligence or intentional ~~willful and wanton~~ misconduct on the
25 part of such person or organization or agent thereof is a
26 proximate cause of the death of or injury or damage to the
27 trespasser.

28 (2) A person or organization owning or controlling an
29 interest in real property, or an agent of such person or
30 organization, is not liable for any civil damages for the
31 death of or injury or damage to any discovered or undiscovered

1 trespasser, except as provided in paragraphs (3)(a), (b), and
2 (c), and regardless of whether the trespasser was intoxicated
3 or otherwise impaired.

4 (3)(a) As used in this subsection, the term:

5 1. "Invitation" means that the visitor entering the
6 premises has an objectively reasonable belief that he or she
7 has been invited or is otherwise welcome on that portion of
8 the real property where injury occurs.

9 2. "Discovered trespasser" means a person who enters
10 real property without invitation, either express or implied,
11 and whose actual physical presence was detected, within 24
12 hours preceding the accident, by the person or organization
13 owning or controlling an interest in real property or to whose
14 actual physical presence the person or organization owning or
15 controlling an interest in real property was alerted by a
16 reliable source within 24 hours preceding the accident. The
17 status of a person who enters real property shall not be
18 elevated to that of an invitee, unless the person or
19 organization owning or controlling an interest in real
20 property has issued an express invitation to enter the
21 property or has manifested a clear intent to hold the property
22 open to use by persons pursuing purposes such as those pursued
23 by the person whose status is at issue.

24 3. "Undiscovered trespasser" means a person who enters
25 property without invitation, either express or implied, and
26 whose actual physical presence was not detected, within 24
27 hours preceding the accident, by the person or organization
28 owning or controlling an interest in real property.

29 (b) To avoid liability to undiscovered trespassers, a
30 person or organization owning or controlling an interest in
31 real property must refrain from intentional misconduct, but

1 has no duty to warn of dangerous conditions. To avoid
2 liability to discovered trespassers, a person or organization
3 owning or controlling an interest in real property must
4 refrain from gross negligence or intentional misconduct, and
5 must warn the trespasser of dangerous conditions that are
6 known to the person or organization owning or controlling an
7 interest in real property but that are not readily observable
8 by others.

9 (c) This subsection shall not be interpreted or
10 construed to alter the common law as it pertains to the
11 "attractive nuisance doctrine."

12 (4) A person or organization owning or controlling an
13 interest in real property, or an agent of such person or
14 organization, shall not be held liable for negligence that
15 results in the death of, injury to, or damage to a person who
16 is attempting to commit a felony or who is engaged in the
17 commission of a felony on the property.

18 Section 5. Section 768.36, Florida Statutes, is
19 created to read:

20 768.36 Alcohol or drug defense.--

21 (1) As used in this section, the term:

22 (a) "Alcoholic beverage" means distilled spirits and
23 any beverage that contains 0.5 percent or more alcohol by
24 volume as determined in accordance with s. 561.01(4)(b).

25 (b) "Drug" means any chemical substance set forth in
26 s. 877.111 or any substance controlled under chapter 893. The
27 term does not include any drug or medication obtained pursuant
28 to a prescription as defined in s. 893.02 which was taken in
29 accordance with the prescription, or any medication that is
30 authorized under state or federal law for general distribution
31 and use without a prescription in treating human diseases,

1 ailments, or injuries and that was taken in the recommended
2 dosage.

3 (2) In any civil action, a plaintiff may not recover
4 any damages for loss or injury to his or her person or
5 property if the trier of fact finds that, at the time the
6 plaintiff was injured:

7 (a) The plaintiff was under the influence of any
8 alcoholic beverage or drug to the extent that the plaintiff's
9 normal faculties were impaired or the plaintiff had a blood or
10 breath alcohol level of 0.08 percent or higher; and

11 (b) As a result of the influence of such alcoholic
12 beverage or drug the plaintiff was more than 50 percent at
13 fault for his or her own harm.

14 Section 6. If any provision of this act or the
15 application thereof to any person or circumstance is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the act which can be given effect without the
18 invalid provision or application, and to this end the
19 provisions of this act are declared severable.

20 Section 7. This act shall take effect October 1, 1999.

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22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
23 COMMITTEE SUBSTITUTE FOR
24 SB 376

25 This CS removes a requirement in section 768.075, F.S.,
26 relating to proof of the elements of trespass, to conform with
27 the bill's expansion of the property owners' immunity from
28 liability to include all trespassers who are intoxicated not
29 just those found guilty of criminal trespass.
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