

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; amending s. 768.075, F.S.; modifying
16 the conditions under which a person or
17 organization owning or controlling an interest
18 in real property is liable for a trespasser's
19 injury or death; providing definitions;
20 providing for the avoidance of liability to
21 discovered and undiscovered trespassers under
22 described circumstances; providing immunity
23 from certain liability arising out of the
24 attempt to commit or the commission of a
25 felony; creating s. 768.36, F.S.; prohibiting a
26 plaintiff from recovering damages if plaintiff
27 is more than a specified percentage at fault
28 due to the influence of alcoholic beverages or
29 drugs; creating s. 768.098, F.S.; providing a
30 limitation of liability for employee leasing
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1 under specified conditions; 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 Business premises liability; areas outside
8 enclosed buildings.--Notwithstanding any other provision of
9 law to the contrary, a person or organization owning or
10 controlling an interest in a business premises shall be liable
11 for civil damages for the death of, or injury or damage to, an
12 invitee or guest caused by a criminal act committed by a
13 person who is not an employee or agent of the business and
14 occurring on part of the business premises that is not within
15 an enclosed building only if the person or organization owning
16 or controlling an interest in the business premises
17 disregarded his or her duty to protect invitees or guests on
18 the property. For purposes of this section a person or
19 organization owning or controlling an interest in a business
20 premises may be found to have disregarded his or her duty to
21 protect invitees or guests only if the person or organization
22 owning or controlling an interest in the business premises
23 knew that a criminal act was likely to occur on the portions
24 of the property that are not within an enclosed building and
25 failed to take any corrective action which could have
26 prevented the injury.

27 Section 4. Section 768.075, Florida Statutes, is
28 amended to read:

29 768.075 Immunity from liability for injury to
30 trespassers on real property.--

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

26 (2) A person or organization owning or controlling an
27 interest in real property, or an agent of such person or
28 organization, is not liable for any civil damages for the
29 death of or injury or damage to any discovered or undiscovered
30 trespasser, except as provided in paragraphs (3)(a), (b), and
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1 (c), and regardless of whether the trespasser was intoxicated
2 or otherwise impaired.

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

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

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

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

28 (b) To avoid liability to undiscovered trespassers, a
29 person or organization owning or controlling an interest in
30 real property must refrain from intentional misconduct, but
31 has no duty to warn of dangerous conditions. To avoid

1 liability to discovered trespassers, a person or organization
2 owning or controlling an interest in real property must
3 refrain from gross negligence or intentional misconduct, and
4 must warn the trespasser of dangerous conditions that are
5 known to the person or organization owning or controlling an
6 interest in real property but that are not readily observable
7 by others.

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

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

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

19 768.36 Alcohol or drug defense.--

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

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

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

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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. Section 768.098, Florida Statutes, is
15 created to read:

16 768.098 Limitation of liability for employee
17 leasing.--

18 (1) An employer in a joint employment relationship
19 pursuant to s. 468.520 shall not be liable for the tortious
20 actions of another employer in that relationship, or for the
21 tortious actions of any jointly employed employee under that
22 relationship, provided that:

23 (a) The employer seeking to avoid liability pursuant
24 to this section did not authorize or direct the tortious
25 action;

26 (b) The employer seeking to avoid liability pursuant
27 to this section did not have actual knowledge of the tortious
28 conduct and fail to take appropriate action;

29 (c) The employer seeking to avoid liability pursuant
30 to this section did not have actual control over the day to
31 day job duties of the jointly employed employee who has

1 committed a tortious act nor actual control over the portion
2 of a job site at which or from which the tortious conduct
3 arose or at which and from which a jointly employed employee
4 worked, and that said control was assigned to the other
5 employer under the contract;

6 (d) The employer seeking to avoid liability pursuant
7 to this section is expressly absolved in the written contract
8 forming the joint employment relationship of control over the
9 day to day job duties of the jointly employed employee who has
10 committed a tortious act, and of the portion of the job site
11 at which or from which the tortious conduct arose or at which
12 and from which the jointly employed employee worked, and that
13 said control was assigned to the other employer under the
14 contract; and

15 (e) Complaints, allegations or incidents of any
16 tortious misconduct or workplace safety violations, regardless
17 of the source, are required to be reported to the employer
18 seeking to avoid liability pursuant to this section by all
19 other joint employers under the written contract forming the
20 joint employment relationship, and that the employer seeking
21 to avoid liability pursuant to this section did not fail to
22 take appropriate action as a result of receiving any such
23 report related to a jointly employed employee who has
24 committed a tortious act.

25 (2) An employer seeking to avoid liability pursuant to
26 this section shall not be presumed to have actual control over
27 the day to day job duties of the jointly employed employee who
28 has committed a tortious act, nor actual control over the
29 portion of a job site at which or from which that employee
30 worked, based solely upon the fact that the employee at issue
31 is a leased employee.

1 (3) This section shall not alter any responsibilities
2 of the joint employer who has actual control over the day to
3 day job duties of the jointly employed employee and who has
4 actual control over the portion of a job site at which or from
5 which the employee is employed, which arises from s. 768.096.

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

12 Section 8. This act shall take effect October 1, 1999.