

Amendment No. 5a (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Warner offered the following:

**Amendment (with title amendment)**

On page 30, line 12, through page 35, line 2,  
remove from the bill:

All of said lines

and insert in lieu thereof: doctrine of joint and several liability. However, the doctrine of joint and several liability shall not apply to that portion of economic damages in excess of \$200,000.

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

(b) In order to allocate any or all fault to a nonparty and include the named or unnamed nonparty on the

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1 verdict form for purposes of apportioning damages, a defendant  
2 must prove at trial, by a preponderance of the evidence, the  
3 fault of the nonparty in causing the plaintiff's injuries.

4 (4) APPLICABILITY.--

5 (a) This section applies to negligence cases. For  
6 purposes of this section, "negligence cases" includes, but is  
7 not limited to, civil actions for damages based upon theories  
8 of negligence, strict liability, products liability,  
9 professional malpractice whether couched in terms of contract  
10 or tort, or breach of warranty and like theories. In  
11 determining whether a case falls within the term "negligence  
12 cases," the court shall look to the substance of the action  
13 and not the conclusory terms used by the parties.

14 (b) This section does not apply to any action brought  
15 by any person to recover actual economic damages resulting  
16 from pollution, ~~to any action based upon an intentional tort,~~  
17 or to any cause of action as to which application of the  
18 doctrine of joint and several liability is specifically  
19 provided by chapter 403, chapter 498, chapter 517, chapter  
20 542, or chapter 895.

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

26 (5)(6) Notwithstanding anything in law to the  
27 contrary, in an action for damages for personal injury or  
28 wrongful death arising out of medical malpractice, whether in  
29 contract or tort, when an apportionment of damages pursuant to  
30 this section is attributed to a teaching hospital as defined  
31 in s. 408.07, the court shall enter judgment against the

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1 teaching hospital on the basis of such party's percentage of  
2 fault and not on the basis of the doctrine of joint and  
3 several liability.

4 Section 1. Paragraph (b) of subsection (9) of section  
5 324.021, Florida Statutes, is amended, and paragraph (c) is  
6 added to that subsection, to read:

7 324.021 Definitions; minimum insurance required.--The  
8 following words and phrases when used in this chapter shall,  
9 for the purpose of this chapter, have the meanings  
10 respectively ascribed to them in this section, except in those  
11 instances where the context clearly indicates a different  
12 meaning:

13 (9) OWNER; OWNER/LESSOR.--

14 (b) Owner/lessor.--Notwithstanding any other provision  
15 of the Florida Statutes or existing case law:7

16 1. The lessor, under an agreement to lease a motor  
17 vehicle for 1 year or longer which requires the lessee to  
18 obtain insurance acceptable to the lessor which contains  
19 limits not less than \$100,000/\$300,000 bodily injury liability  
20 and \$50,000 property damage liability or not less than  
21 \$500,000 combined property damage liability and bodily injury  
22 liability, shall not be deemed the owner of said motor vehicle  
23 for the purpose of determining financial responsibility for  
24 the operation of said motor vehicle or for the acts of the  
25 operator in connection therewith; further, this subparagraph  
26 ~~paragraph~~ shall be applicable so long as the insurance meeting  
27 these requirements is in effect. The insurance meeting such  
28 requirements may be obtained by the lessor or lessee,  
29 provided, if such insurance is obtained by the lessor, the  
30 combined coverage for bodily injury liability and property  
31 damage liability shall contain limits of not less than \$1

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1 million and may be provided by a lessor's blanket policy.

2       2. The lessor, under an agreement to rent or lease a  
3 motor vehicle for a period of less than 1 year, shall be  
4 deemed the owner of the motor vehicle for the purpose of  
5 determining liability for the operation of the vehicle or the  
6 acts of the operator in connection therewith only up to  
7 \$100,000 per person and up to \$300,000 per incident for bodily  
8 injury and up to \$50,000 for property damage. If the lessee or  
9 the operator of the motor vehicle is uninsured or has any  
10 insurance with limits less than \$500,000 combined property  
11 damage and bodily injury liability, the lessor shall be liable  
12 for up to an additional \$500,000 in economic damages only  
13 arising out of the use of the motor vehicle. The additional  
14 specified liability of the lessor for economic damages shall  
15 be reduced by amounts actually recovered from the lessee, from  
16 the operator, and from any insurance or self-insurance  
17 covering the lessee or operator. Nothing in this subparagraph  
18 shall be construed to affect the liability of the lessor for  
19 its own negligence.

20       3. The owner who is a natural person and loans a motor  
21 vehicle to any permissive user shall be liable for the  
22 operation of the vehicle or the acts of the operator in  
23 connection therewith only up to \$100,000 per person and up to  
24 \$300,000 per incident for bodily injury and up to \$50,000 for  
25 property damage. If the permissive user of the motor vehicle  
26 is uninsured or has any insurance with limits less than  
27 \$500,000 combined property damage and bodily injury liability,  
28 the owner shall be liable for up to an additional \$500,000 in  
29 economic damages only arising out of the use of the motor  
30 vehicle. The additional specified liability of the owner for  
31 economic damages shall be reduced by amounts actually

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1 recovered from the permissive user and from any insurance or  
2 self-insurance covering the permissive user. Nothing in this  
3 subparagraph shall be construed to affect the liability of the  
4 owner for his or her own negligence.

5 (c) Application.--The limits on liability in  
6 subparagraphs (b)2. and (b)3. do not apply to an owner of  
7 motor vehicles that are used for commercial activity in the  
8 owner's ordinary course of business, other than a rental  
9 company that rents or leases motor vehicles. For purposes of  
10 this paragraph, the term "rental company" includes only an  
11 entity that is engaged in the business of renting or leasing  
12 motor vehicles to the general public and that rents or leases  
13 a majority of its motor vehicles to persons with no direct or  
14 indirect affiliation with the rental company. The term also  
15 includes a motor vehicle dealer that provides temporary  
16 replacement vehicles to its customers for up to 10 days.

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

20 And the title is amended as follows:

21 On page 4, line 1 through line 16,  
22 remove from the title of the bill:

23 All of said lines

24  
25 and insert in lieu thereof:

26 based on the amount of damages; providing for the allocation  
27 of fault to a nonparty; requiring that such fault must be  
28 proved by a preponderance of the evidence; amending s.  
29 324.021, F.S.; providing the lessor of a motor vehicle under  
30 certain rental agreements shall be deemed the owner of the  
31 vehicle for the purpose of determining liability for the

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1 operation of the vehicle within certain limits; providing for  
 2 the liability of the owner of a motor vehicle who loans the  
 3 vehicle to certain users; providing for application; providing  
 4 for severability; providing an effective date.

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