

Amendment No. 3d (for drafter's use only)

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

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13 **Amendment (with title amendment)**

14 On page 19, line 1, through page 22, line 17,
15 remove from the bill:

16 All of said lines

17

18 and insert in lieu thereof:

19

20 (2)(a) An action ~~Actions~~ for ~~products liability~~ and
21 ~~fraud under s. 95.11(3)~~ and an action founded upon a violation
22 of chapter 517 must be begun within the period prescribed in
23 this chapter, with the period running from the time the facts
24 giving rise to the cause of action were discovered or should
25 have been discovered with the exercise of due diligence,
26 instead of running from any date prescribed elsewhere in s.
27 95.11(3), but in any event an action for fraud under s.
28 95.11(3) and an action founded upon a violation of chapter 517
29 must be begun within 12 years after the date of the commission
30 of the alleged fraud or commission of the alleged violation of
31 chapter 517, regardless of the date the fraud or violation of

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1 chapter 517 was or should have been discovered.

2 (b) An action for products liability under s.
3 95.11(3), must be begun within the period prescribed in this
4 chapter, with the period running from the date that the facts
5 giving rise to the cause of action were discovered, or should
6 have been discovered with the exercise of due diligence,
7 rather than running from any other date prescribed elsewhere
8 in s. 95.11(3) except as provided within this subsection.
9 Under no circumstances may a claimant commence an action for
10 products liability, including a wrongful death action or any
11 other claim arising from personal injury or property damage
12 caused by a product, to recover for harm allegedly caused by a
13 product with an expected useful life of 10 years or less, if
14 the harm was caused by exposure to or use of the product more
15 than 12 years after delivery of the product to its first
16 purchaser or lessee who was not engaged in the business of
17 selling or leasing the product or of using the product as a
18 component in the manufacture of another product. All products,
19 except those included within subparagraphs 1 or 2, are
20 conclusively presumed to have an expected useful life of 10
21 years or less.

22 1. Aircraft used in commercial or contract carrying of
23 passengers or freight, vessels of more than 100 gross tons,
24 railroad equipment used in commercial or contract carrying of
25 passengers or freight, and improvements to real property,
26 including elevators and escalators, are not subject to the
27 statute of repose provided within this subsection.

28 2. Any product not listed in subparagraph 1, which the
29 manufacturer specifically warranted, through express
30 representation or labeling, as having an expected useful life
31 exceeding 10 years, has an expected useful life commensurate

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1 with the time period indicated by the warranty or label. Under
2 such circumstances, no action for products liability may be
3 brought after the expected useful life of the product, or more
4 than 12 years after delivery of the product to its first
5 purchaser or lessee who was not engaged in the business of
6 selling or leasing the product or of using the product as a
7 component in the manufacture of another product, whichever is
8 later.

9 (c) The repose period prescribed within paragraph (b)
10 does not apply if the claimant was exposed to or used the
11 product within the repose period, but an injury caused by such
12 exposure or use did not manifest itself until after expiration
13 of the repose period.

14 (d) The repose period prescribed within paragraph (b)
15 is tolled for any period during which the manufacturer had
16 actual knowledge that the product was defective in the manner
17 alleged by the claimant, but failed to disclose the defect
18 where a duty to disclose existed, or took affirmative steps to
19 conceal the defect. Any claim of concealment under this
20 section shall be made with specificity, and must be based upon
21 substantial factual and legal support. Maintaining the
22 confidentiality of trade secrets does not constitute
23 concealment under this section. Discarding records or
24 documents pursuant to a regular document disposal program does
25 not constitute concealment under this section unless the
26 manufacturer, at the time of disposal, had actual knowledge
27 that the records or documents contained information pertaining
28 to a product defect.

29 Section 11. Any action for products liability which
30 would not have been barred under section 95.031(2), Florida
31 Statutes, prior to the amendments to that section made by this

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1 act may be commenced before July 1, 2003 and, if it is not
2 commenced by that date and is barred by the amendments to
3 section 95.031(2), Florida Statutes, made by this act, it
4 shall be barred.

5 Section 12. Section 90.407 Florida Statutes, is
6 amended to read:

7 90.407 Subsequent remedial measures.--Evidence of
8 measures taken after an injury or harm caused by an event,
9 which measures if taken before the event it occurred would
10 have made the event injury or harm less likely to occur, is
11 not admissible to prove negligence, the existence of a product
12 defect, or culpable conduct in connection with the event. This
13 rule does not require the exclusion of evidence of subsequent
14 remedial measures when offered for another purpose, such as
15 proving ownership, control, or the feasibility of
16 precautionary measures, if controverted, or impeachment.

17 Section 13. Section 768.1257 Florida Statutes, is
18 created to read:

19 768.1257. State-of-the-art defense for products
20 liability.--In an action based upon defective design, brought
21 against the manufacturer of a product, the finder of fact
22 shall consider the state of the art of scientific and
23 technical knowledge and other circumstances that existed at
24 the time of manufacture, not at the time of loss or injury.

25 Section 14. Paragraph (e) of subsection (4) of section
26 95.11, Florida Statutes is hereby repealed.

27 Section 15. Section 768.1256, Florida Statutes, is
28 created to read:

29 768.1256 Government rules defense.--In a products
30 liability action brought against a manufacturer or seller for
31 harm allegedly caused by a product, there is a rebuttable

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1 presumption that the product is not defective or unreasonably
2 dangerous and the manufacturer or seller is not liable if, at
3 the time the specific unit of the product was sold or
4 delivered to the initial purchaser or user, the aspect of the
5 product that allegedly caused the harm was in compliance with
6 product design, construction, or safety standards relevant to
7 the event causing the death or injury promulgated by a federal
8 or state statute or rule, such standards are designed to
9 prevent the type of harm that allegedly occurred, and
10 compliance with such standards is required as a condition for
11 selling or otherwise distributing the product.

12 Section 16, Section 768.0705, Florida Statutes, is
13 created to read:

14 768.0705 Limitation on premises liability.--

15 (1) Except as provided for in subsection (2) or in the
16 absence of an express contract to the contrary, a person or
17 organization owning or controlling an interest in a business
18 premises, including a convenience business that is in
19 compliance with ss. 812.173 and 812.174, may not be held
20 liable for civil damages sustained by invitees, licensees, or
21 trespassers, caused by criminal acts committed by third
22 parties who are not employees or agents of the person or
23 organization, which take place on portions of the property not
24 within an enclosed building.

25 (2) With respect to invitees and licensees, subsection
26 (1) does not apply if a person or organization owning or
27 controlling an interest in a business premises:

28 (a) Has actual knowledge that the perpetrator is on the
29 premises;

30 (b) Has reason to believe that the perpetrator will
31 commit a criminal act against an invitee or licensee on the

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1 premises; and
 2 (c) Has failed to take reasonable action under the
 3 circumstances to prevent the occurrence of the criminal act.
 4 (3) The owner or operator of a convenience business
 5 that substantially implements the applicable security measures
 6 listed in ss. 812.173 and 812.174 shall gain a presumption
 7 against liability in connection with criminal acts that occur
 8 on the premises and that are committed by third parties who
 9 are not employees or agents of the owner or operator of the
 10 convenience business.

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

14 And the title is amended as follows:

15 On page 2, line 9, through page 2, line 23,,
16 remove from the title of the bill:

17 All of said lines

18

19 and insert in lieu thereof:

20 reference; amending s. 95.031, F.S.; imposing a 12-year
 21 statute of repose on actions founded upon violations of
 22 chapter 517; imposing a 12-year statute of repose on actions
 23 brought to recover for harm caused by products with a
 24 specified expected useful life; exempting certain categories
 25 of products from the statute of repose; imposing variable
 26 repose periods based on specific warranties by the
 27 manufacturer; providing an exception for certain injuries;
 28 providing for tolling under particular circumstances;
 29 specifying the date by which certain actions must be brought
 30 or be otherwise barred by the statute of repose; amending s.
 31 90.407, F.S.; providing limitations on the admissibility of

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1 subsequent remedial measures; providing exceptions; creating
2 s.768.044, F.S.; requiring the finder of fact, in certain
3 product defect actions, to consider circumstances that existed
4 at the time of manufacture; amending s. 95.11, F.S.; deleting a
5 5 year limit on commencing actions founded on chapter 517;
6 creating s. 768.1256, F.S.; providing a government rules
7 defense with respect to certain products liability actions;
8 providing for a rebuttable presumption; creating s. 768.0705,
9 F.S.; providing limitations on premises liability for a person
10 or organization owning or controlling an interest in a
11 business premises; providing an exception; providing for a
12 presumption against liability for convenience businesses under
13 specified circumstances; amending s.

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