

By Representative Simmons

1 A bill to be entitled
2 An act relating to burden of proof in
3 negligence actions involving transitory foreign
4 objects; creating s. 768.0710, F.S.; providing
5 requirements with respect to the burden of
6 proof in claims against persons or entities in
7 possession or control of business premises;
8 providing for the application of the act;
9 providing an effective date.

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11 WHEREAS, on November 15, 2001, the Florida Supreme
12 Court decided the case of Owens v. Publix Supermarket, Inc.,
13 Case No. SC95667 & SC96235, and

14 WHEREAS, the Florida Legislature, in considering the
15 difficult issue of balancing rights and duties between
16 possessors of land and invitees upon that land, believes that
17 the concurring opinions by Justices Harding and Lewis in that
18 opinion more fully represent the interests of justice, NOW,
19 THEREFORE,

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

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23 Section 1. Section 768.0710, Florida Statutes, is
24 created to read:

25 768.0710 Burden of proof in claims of negligence
26 against persons or entities in possession or control of
27 business premises.--

28 (1) In any civil action for negligence arising out of
29 injury, death, or other loss to a business invitee as a result
30 of a dangerous condition involving a transitory foreign object
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1 on business premises, the claimant shall have the burden of
2 proving that:
3 (a) The person or entity in possession or control of
4 the business premises owed a duty to the claimant;
5 (b) The person or entity in possession or control of
6 the business premises failed to exercise reasonable care. This
7 includes proof that the dangerous condition presented an
8 unreasonable risk of harm that was reasonably foreseeable and,
9 subject to subsection (3), that the person or entity in
10 possession or control of the business premises either created
11 the dangerous condition or had actual or constructive notice
12 of the dangerous condition before the injury, death, or other
13 loss occurred, or that the mode of operation of the business
14 was such that the person or entity in possession or control of
15 the business premises failed to exercise reasonable care; and
16 (c) The dangerous condition was the proximate cause of
17 the injury, death, or other loss that occurred.
18 (2) The person or entity in possession or control of
19 the business premises owes a duty of reasonable care to
20 maintain the premises in a reasonably safe condition, which
21 includes a reasonable effort to keep the premises free from
22 transitory foreign objects that might reasonably give rise to
23 injury, death, or other loss.
24 (3) In the event that both the claimant and the person
25 or entity in possession or control of the business premises
26 fail to present any evidence as to whether constructive notice
27 of the dangerous condition existed, the claimant shall have
28 carried his or her burden of proof on this issue sufficient
29 for the issue to be left for determination by the fact finder.
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