

By Senators Brown-Waite, Wise and Sullivan

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A bill to be entitled
An act relating to premises liability actions;
creating s. 768.071, F.S.; establishing
requirements for meeting the burden of proof in
such actions; defining terms; providing an
effective date.

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

Section 1. Section 768.071, Florida Statutes, is
created to read:

768.071 Burden of proof in claims against persons in
possession or control of real property.--

(1) A person in possession or control of real property
owes a duty to business invitees or other persons lawfully on
such premises to exercise reasonable care to maintain the
premises in a reasonably safe condition, including a
reasonable effort to keep the premises free of any dangerous
condition that could reasonably give rise to injury or damage.

(2) In a negligence claim against such person by a
business invitee or other person lawfully on the premises for
damages resulting from an injury, death, or loss proximately
caused by a condition existing on the premises, the claimant
has the burden to prove, by a greater weight of the evidence,
in addition to all other elements of the cause of action,
that:

(a) The condition presented a reasonably foreseeable,
unreasonable risk of harm to the claimant.

(b) The defendant created the condition or had actual
or constructive notice of the condition before the injury
occurred.

1 (c) The defendant failed to exercise reasonable care.
2 In determining reasonable care, the absence of, or failure to
3 follow, any written or verbal internal operational procedure
4 is not by itself sufficient to prove failure to exercise
5 reasonable care. In determining reasonable care, the method of
6 operational or business practices of a defendant is simply an
7 element of the evidence to be considered and may not be the
8 basis of a separate theory of liability.

9 (3) As used in this section:

10 (a) The term "Business invitee" means a person invited
11 to enter onto or remain on the premises by the person in
12 possession or control of such premises for a purpose related
13 to the business dealings of that person.

14 (b) "Constructive notice" occurs when the condition
15 that caused a claimant's injury has existed on the premises
16 for such a length of time that the defendant should have known
17 the existence of the condition through the exercise of
18 reasonable care. Evidence of past events or occurrences not
19 related to a claimant's injury may not be used to prove
20 constructive notice. The claimant may use circumstantial
21 evidence to prove constructive notice, but may not stack an
22 inference drawn from circumstantial evidence on another
23 inference drawn from circumstantial evidence without having
24 proven the first inference to the exclusion of all other
25 reasonable inferences.

26 (4) This section does not affect any duty owed by a
27 person in possession or control of real property to any person
28 other than business invitees or other persons lawfully on the
29 premises.

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