

By Senator Bennett

21-938A-04

1 A bill to be entitled
2 An act relating to negligence actions; creating
3 s. 768.0706, F.S.; providing limitations on
4 premises liability for a person or organization
5 owning or controlling an interest in specified
6 commercial real property; creating a
7 presumption against liability; providing
8 conditions for the presumption; amending s.
9 768.81, F.S.; redefining the term "negligence
10 cases" for the purpose of apportioning damages
11 in actions involving comparative fault to
12 include actions for damages based upon the
13 commission of an intentional tort; providing an
14 effective date.

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

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18 Section 1. Section 768.0706, Florida Statutes, is
19 created to read:

20 768.0706 Limitation on premises liability; business
21 other than a convenience business.--

22 (1) If, as a matter of law, a judge determines that at
23 least six of the following eight provisions of this section
24 are met, there shall be a presumption that a person or
25 organization owning or controlling an interest in commercial
26 real property, other than a convenience store, has fulfilled
27 any duty to provide adequate security for invitees, guests,
28 and other members of the public against any criminal act that
29 occurs on the premises and that is committed by a third party
30 who is not an employee or agent of the person or organization

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1 owning or controlling the interest in commercial real
2 property:

3 (a) Signs are prominently posted in the parking lot
4 and other public places on the premises indicating the hours
5 of normal business operations and the general security
6 measures provided.

7 (b) The parking lot, public walkways, and public
8 building entrances and exits are illuminated at an intensity
9 of at least 2 foot-candles per square foot at 18 inches above
10 the surface of the ground, pavement, or walkway.

11 (c) Training in crime prevention, with a curriculum
12 approved by a local law enforcement agency or the Department
13 of Legal Affairs, is provided to all nonmanagement employees.
14 To satisfy the requirements of this paragraph, an individual
15 employed on October 1, 2004, must receive the training by
16 October 1, 2005. Any other employee must receive the training
17 within 120 days after employment. A person is not liable for
18 the ordinary negligence of an employee implementing the
19 approved curriculum if the employee has completed the
20 training. A state or local law enforcement agency is not
21 liable for the contents of an approved curriculum.

22 (d) Security cameras are installed, maintained, and
23 monitored which cover each public building entrance and exit
24 and at least one-half of the parking lot. Cameras must operate
25 during business hours and for at least 30 minutes after the
26 close of business.

27 (e) An emergency call box linked to a law enforcement
28 agency, a private security agency, or a security guard or
29 other agent on the premises is maintained and available within
30 150 feet of any location in the parking lot or other public
31 place on the premises.

1 (f) A licensed security guard is on duty at the time
2 of the criminal occurrence and is either monitoring
3 surveillance cameras or patrolling the premises with such
4 frequency that each area of the parking lot and other public
5 places on the premises are observed by the guard at not more
6 than 15-minute intervals.

7 (g) Fencing is installed and maintained which
8 surrounds the parking lot and buildings and limits pedestrian
9 entry onto the premises from public walkways.

10 (h) A public address system is installed and
11 maintained which is capable of reaching all public places on
12 the premises.

13 (2) A person or organization owning or controlling an
14 interest in commercial real property, other than a convenience
15 business, which is located in an enterprise zone designated
16 under s. 290.0065 is immune from liability in connection with
17 any criminal act that occurs on the premises and that is
18 committed by a third party who is not an employee or agent of
19 the person or organization owning or controlling the interest
20 in commercial property if the person or organization complies
21 with six or more of the eight conditions described in
22 paragraphs (1)(a)-(h) and if the person or organization does
23 not engage in gross negligence or intentional misconduct that
24 permits or invites the commission of the criminal act.

25 (3) For purposes of subsection (1) or subsection (2),
26 failure to implement six or more of the measures described in
27 paragraphs (1)(a)-(h) does not create a presumption of
28 liability.

29 Section 2. Subsection (4) of section 768.81, Florida
30 Statutes, is amended to read:

31 768.81 Comparative fault.--

1 (4) APPLICABILITY.--

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

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

20 Section 3. This act shall take effect October 1, 2004,
21 and applies to claims filed on or after that date.

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24 SENATE SUMMARY

25 Provides limitations on premises liability for a person
26 or organization owning or controlling an interest in
27 commercial real property other than a convenience
28 business. Creates a presumption against liability.
29 Provides conditions for the presumption. Revises the
30 definition of the term "negligence cases" for the purpose
31 of apportioning damages to include actions for damages
based upon the commission of an intentional tort.