

HB 0573

2004

A bill to be entitled

An act relating to negligence; creating s. 768.0706, F.S.; establishing a presumption of fulfilling a duty to provide adequate security from criminal acts by persons on certain commercial real property; providing conditions for the presumption; providing for immunity from liability on property in an enterprise zone; providing an exception to the establishment of the presumption; amending s. 768.81, F.S.; revising a comparative fault applicability provision to expand the definition of "negligence cases" to include civil actions for damages based upon intentional torts; deleting a provision excluding actions based upon intentional torts; reenacting s. 25.077, F.S., relating to reporting of negligence cases, to incorporate the amendment to s. 768.81, F.S., in a reference thereto; providing applicability; providing an effective date.

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

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

768.0706 Adequate security; presumption; immunity from liability; exception.--

(1) A presumption exists that a person or organization owning or controlling an interest in commercial real property, other than a convenience store, has fulfilled any duty to provide adequate security for invitees, guests, and other members of the public against criminal acts that occur on the premises and that are committed by third parties who are not

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30 employees or agents of the person or organization owning or
31 controlling the interest in commercial real property if, as a
32 matter of law, a judge determines that at least six of the
33 following eight conditions are met:

34 (a) Signs are prominently posted in the parking lot and
35 other public places on the premises indicating the hours of
36 normal business operations and the general security measures
37 provided.

38 (b) The parking lot, public walkways, and public building
39 entrances and exits are illuminated at an intensity of at least
40 2 foot-candles per square foot at 18 inches above the surface of
41 the ground, pavement, or walkway.

42 (c) Crime prevention training, with a curriculum approved
43 by a local law enforcement agency or the Department of Legal
44 Affairs, is provided to all nonmanagement employees. To meet the
45 requirements of this paragraph, existing employees must receive
46 training within 12 months after the effective date of this
47 section and new employees must receive training within 120 days
48 after being hired. No person shall be liable for ordinary
49 negligence due to implementing the approved curriculum if the
50 training was actually provided. Under no circumstances shall the
51 state or the local law enforcement agency be held liable for the
52 contents of the approved curriculum.

53 (d) Security cameras covering public entrances and exits
54 to buildings and at least half the area of the parking lot are
55 installed, maintained, and monitored. Cameras shall operate
56 during business hours and for at least 30 minutes after closing.

57 (e) An emergency call box linked to law enforcement, a
58 private security agency, or a security guard or other agent on

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59 the premises is maintained and available within 150 feet of any
60 location in the parking lot or other public place on the
61 premises.

62 (f) A licensed security guard is on duty and is either
63 monitoring security cameras or patrolling the premises with such
64 frequency that each area of the parking lot and public spaces is
65 observed by the guard at no longer than 15-minute intervals.

66 (g) Fencing is installed and maintained which surrounds
67 parking lots and structures and limits pedestrian entry onto the
68 premises via public walkways.

69 (h) A public address system is installed and maintained
70 which is capable of reaching all areas of the premises regularly
71 frequented by the public.

72 (2) Persons or organizations owning or controlling an
73 interest in commercial real property that is located in an
74 enterprise zone designated under s. 290.0065 are immune from
75 liability in connection with criminal acts that occur on the
76 premises and that are committed by third parties who are not
77 employees or agents of the person or organization owning or
78 controlling an interest in commercial real property if such
79 persons or organizations meet at least six of the eight
80 conditions listed in subsection (1) and do not engage in gross
81 negligence that permits or invites the occurrence of the
82 criminal act.

83 (3) Failure to implement a sufficient number of the
84 conditions listed in subsection (1) shall not create a
85 presumption of liability.

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

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88 768.81 Comparative fault.--

89 (4) APPLICABILITY.--

90 (a) This section applies to negligence cases. For purposes
 91 of this section, the term "negligence cases" includes, but is
 92 not limited to, civil actions for damages based upon intentional
 93 torts, including, but not limited to, those involving criminal
 94 conduct, or theories of negligence, strict liability, products
 95 liability, professional malpractice whether couched in terms of
 96 contract or tort, or breach of warranty and like theories. In
 97 determining whether a case falls within the term "negligence
 98 cases," the court shall look to the substance of the action and
 99 not the conclusory terms used by the parties.

100 (b) This section does not apply to any action brought by
 101 any person to recover actual economic damages resulting from
 102 ~~pollution, to any action based upon an intentional tort,~~ or to
 103 any cause of action as to which application of the doctrine of
 104 joint and several liability is specifically provided by chapter
 105 403, chapter 498, chapter 517, chapter 542, or chapter 895.

106 Section 3. For the purpose of incorporating the amendment
 107 to section 768.81, Florida Statutes, in a reference thereto,
 108 section 25.077, Florida Statutes, is reenacted to read:

109 25.077 Negligence case settlements and jury verdicts; case
 110 reporting.--Through the state's uniform case reporting system,
 111 the clerk of court shall report to the Office of the State
 112 Courts Administrator, beginning in 2003, information from each
 113 settlement or jury verdict and final judgment in negligence
 114 cases as defined in s. 768.81(4), as the President of the Senate
 115 and the Speaker of the House of Representatives deem necessary
 116 from time to time. The information shall include, but need not

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117 be limited to: the name of each plaintiff and defendant; the
118 verdict; the percentage of fault of each; the amount of economic
119 damages and noneconomic damages awarded to each plaintiff,
120 identifying those damages that are to be paid jointly and
121 severally and by which defendants; and the amount of any
122 punitive damages to be paid by each defendant.

123 Section 4. This act shall take effect October 1, 2004, and
124 shall apply to claims filed on or after that date.