

ENROLLED

HB 135, Engrossed 1

2005 Legislature

1 A bill to be entitled
2 An act relating to liability of providers of streetlights;
3 creating s. 768.1382, F.S.; providing definitions;
4 including certain security or area lights within the
5 definition of the term "streetlight"; limiting liability
6 of a streetlight provider for injury or death or property
7 damage affected or caused by a malfunctioning streetlight;
8 providing procedures for notice and repair of
9 malfunctioning streetlights as a condition for limited
10 liability; providing that noncompliance with such
11 procedures does not create a presumption of negligence;
12 limiting liability of a public utility or electric utility
13 that discontinues service to a streetlight under certain
14 circumstances; limiting liability of a public utility or
15 electric utility for the design, layout, quantity, or
16 placement of streetlights or level of illumination
17 resulting from the proper operation of a streetlight or
18 series of streetlights; prohibiting certain findings of
19 fault of an entity not a party to litigation; providing
20 for conflict, effect, and application; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 768.1382, Florida Statutes, is created
26 to read:

27 768.1382 Streetlights, security lights, and other similar
28 illumination; limitation on liability.--

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29 (1) As used in this section, the term:
 30 (a) "Actual notice" means notification to the streetlight
 31 provider that is acknowledged by the streetlight provider in
 32 accordance with its designated procedures by any person of an
 33 inoperative or malfunctioning streetlight using the designated
 34 procedures specified by the streetlight provider and containing
 35 at least the following information:

36 1. Identification of the streetlight location with such
 37 specificity that the location of the streetlight can be
 38 identified by the streetlight provider.

39 2. A description of the nature of the malfunction or
 40 failure of illumination of the streetlight.

41 3. Appropriate contact information, as available,
 42 sufficient for the streetlight provider to contact the person
 43 making the notification, such as the name and address,
 44 electronic mail address, or phone number of the person making
 45 the notification.

46 (b) "Designated procedures" means the procedures
 47 designated by a streetlight provider to provide actual notice as
 48 defined in paragraph (a).

49 (c) "Person" means any legal or natural person as defined
 50 in s. 1.01(3).

51 (d) "Streetlight" means any streetlight, any outdoor
 52 security light, or any outdoor area light that is owned or
 53 maintained by or for a streetlight provider. The term
 54 "streetlight" does not include any customer-owned or customer-
 55 maintained streetlights, outdoor security lights, or outdoor
 56 area lights of any type, regardless of their location.

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57 (e) "Streetlight provider" means the state or any of the
58 state's officers, agencies, or instrumentalities, any political
59 subdivision as defined in s. 1.01, any public utility as defined
60 in s. 366.02(1), or any electric utility as defined in s.
61 366.02(2).

62 (2) A streetlight provider is not liable and may not be
63 held liable for any civil damages for personal injury, wrongful
64 death, or property damage affected or caused by the malfunction
65 or failure of illumination of such streetlight, regardless of
66 whether the malfunction or failure of illumination is alleged or
67 demonstrated to have contributed in any manner to the personal
68 injury, wrongful death, or property damage, unless the provider
69 failed to comply with the provisions of subsection (3).

70 (3) In order for any streetlight provider to have the
71 benefit of the limitation on liability as set forth in
72 subsection (2), the streetlight provider must have complied with
73 the following:

74 (a) The streetlight provider must disclose its designated
75 procedures for providing actual notice of an inoperative or
76 malfunctioning streetlight to its customers through annual
77 inserts in its customers' bills. The streetlight provider must
78 disclose its designated procedures for providing actual notice
79 of an inoperative or malfunctioning streetlight to the general
80 public, and to its customers if bill inserts are not used, in an
81 annual notice paid for by the streetlight provider and published
82 in the relevant newspapers of general circulation.

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83 (b) A streetlight provider must repair any inoperative or
84 malfunctioning streetlight within 60 days after receiving actual
85 notice that the streetlight is inoperative or malfunctioning.

86 (c) If a streetlight provider repairs the inoperative or
87 malfunctioning streetlight and the streetlight subsequently
88 again becomes inoperative or malfunctioning, the streetlight
89 provider shall repair such inoperative or malfunctioning
90 streetlight within 60 days after receiving actual notice that
91 the streetlight is again inoperative or malfunctioning
92 subsequent to the prior repair.

93 (d) After a streetlight provider receives actual notice,
94 investigates the report, and determines that the streetlight is
95 functioning properly, such information shall be noted in the
96 streetlight provider's business records. Upon receipt of any
97 subsequent actual notice that the streetlight is again
98 inoperative or malfunctioning, the streetlight provider shall
99 repair the streetlight within 60 days after receiving such
100 subsequent actual notice.

101 (e) If, upon investigation by the streetlight provider
102 after receiving actual notice of any event described in
103 paragraph (b), paragraph (c), or paragraph (d), the streetlight
104 provider determines that the nature of the repair or replacement
105 cannot be achieved within the 60-day period, the streetlight
106 provider shall make a determination as to the time in which it
107 can complete the corrective action and denote such time in its
108 business records. Except as provided in paragraph (f), a
109 streetlight provider under this paragraph may not take more than
110 180 days to complete the corrective action after receiving

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111 actual notice unless such longer delay is related to actions or
112 decisions made or required by the customer with the
113 responsibility for paying the utility bill for such streetlight
114 or related to a tornado, a severe weather event, or other
115 unforeseen event resulting in severe damage that does not give
116 rise to a declared state of emergency, in which case the
117 streetlight provider shall be subject to the time periods set
118 forth in paragraph (f).

119 (f) For a streetlight provider operating in a county
120 affected by a state of emergency declared by federal, state, or
121 local authorities, the time periods in paragraph (b), paragraph
122 (c), paragraph (d), or paragraph (e) shall be extended to 365
123 days after the cessation of the emergency or such longer period
124 of time that may be dictated by the circumstances or 60 days
125 after receiving actual notice that the streetlight is
126 inoperative or malfunctioning, whichever is later.

127 (4) Where the streetlight provider is a public utility or
128 an electric utility, the streetlight provider is not liable for
129 any civil damages for personal injury, wrongful death, or
130 property damage affected or caused by the failure of
131 illumination of such streetlights, regardless of whether the
132 failure of illumination is alleged or demonstrated to have
133 contributed in any manner to the personal injury, wrongful
134 death, or property damage, if the streetlight provider
135 disconnected electric or gas service to the streetlight upon the
136 streetlight customer's request or as a result of the streetlight
137 customer's failure to pay electric or gas bills when due or
138 other breach of the applicable streetlight agreement or upon

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139 termination of the applicable streetlight agreement. In no event
 140 shall a public utility or electric utility be liable or held
 141 liable for civil damages for personal injury, wrongful death, or
 142 property damage under any circumstance affected or caused by the
 143 design, layout, quantity, or placement of streetlights or level
 144 of illumination resulting from the proper operation of a
 145 streetlight or series of streetlights.

146 (5) In any civil action for damages arising out of
 147 personal injury, wrongful death, or property damage when a
 148 streetlight provider's fault regarding the provision or
 149 maintenance of streetlights is at issue, if the streetlight
 150 provider responsible for providing or maintaining the
 151 streetlights is immune from liability pursuant to this section
 152 or is not a party to the litigation, such streetlight provider
 153 may not be named on the jury verdict form or be deemed or found
 154 in such action to be in any way at fault or responsible for the
 155 injury or death or damage that gave rise to the damages.

156 (6) In no event shall a streetlight provider's
 157 noncompliance with the provisions of subsection (3) create a
 158 presumption of negligence on the part of the streetlight
 159 provider in any civil action for damages arising out of personal
 160 injury, wrongful death, or property damage.

161 (7) In the event that there is any conflict between this
 162 section and s. 768.81, or any other section of Florida Statutes,
 163 this section shall control. Further, nothing in this section
 164 shall impact or waive any provision of s. 768.28.

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165 Section 2. This act shall take effect upon becoming a law
166 and shall apply to causes of action that accrue on or after the
167 effective date.