HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1513 CS Civil Justice Reform
SPONSOR(S): Brown
TIED BILLS: **IDEN./SIM. BILLS:** HB 1315

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	5 Y, 2 N	Garner	Everhart
2) Judiciary Committee	9 Y, 4 N, w/CS	Hogge	Hogge
3) State Administration Council	6 Y, 2 N, w/CS	Garner	Bussey
4)			
5)			

SUMMARY ANALYSIS

HB 1513 revises current law relating to venue, product liability, and comparative fault as follows:

Venue. The bill modifies the statutory venue provisions as follows: in the case of actions against domestic corporations, by replacing venue based on the county in which a corporation has an office for transacting business with the county in which its principal office is located; and in the case of foreign corporations, by replacing venue based on the county in which the corporation has an agent or other representative with the county in which its registered agent for service of process resides.

Product Liability. The bill prohibits a person from bringing a civil action against a product seller based on a claim that the product contained a defect which proximately caused injury to that person unless the seller: manufactured, produced, or designed the product; altered, modified, assembled, or failed to maintain the product in a manner that caused harm to the claimant; had actual knowledge of a manufacturing defect which proximately caused the person's harm; or knew, or in the exercise of reasonable care, should have known, that the product was recalled prior to sale. However, even if none of the exceptions apply, the bill permits an action to be brought against a product seller if the state cannot exercise personal jurisdiction over the manufacturer.

Comparative Fault. The bill repeals joint and several liability for the purpose of apportioning economic damages in favor of a comparative fault approach.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility

The bill reduces the ability of plaintiffs to hold persons or entities accountable for damages that were not, in fact, caused by those persons or entities. It does this by limiting products liability to those entities that were actually at fault for the injury to the plaintiff.

B. EFFECT OF PROPOSED CHANGES:

Venue

Present Situation

Venue deals with the place of suit: the particular location in which a court with jurisdiction over a matter may hear a case.

In Florida, venue in actions against corporations is set forth in s. 47.051, F.S. In suits against domestic corporations, suit may be brought in the county in which the:

- corporation has an office for transacting its "customary business";
- cause of action accrued; or
- property in litigation is located.

In suits against foreign corporations, suit may be brought in a country in which the:

- corporation has an agent or other representative;
- cause of action accrued; or
- property in litigation is located.

Proposed Changes

HB 1513 would modify the statutory venue provisions as follows: in the case of actions against domestic corporations, by replacing venue based on the county in which a corporation has an office for transacting business with the county in which its principal office is located; and in the case of foreign corporations, by replacing venue based on the county in which the corporation has an agent or other representative with the county in which its registered agent for service of process resides.

Product Liability

Present Situation

Product Liability Generally

The basic rule in products liability law, and the one that is applied by courts in Florida, is that a manufacturer is strictly liable for the harm proximately caused by those of its products shown to have

been defective and unreasonably dangerous when sold new by the manufacturer.[1] This basic rule generally applies to all other commercial sellers in the chain of distribution, including wholesalers,[2] and retailers.[3]

Product liability law originally required the plaintiff to show the defendant's negligence. Negligence, however, is difficult to prove in defective product cases. Typically, the manufacturer will have better access to inspection records and quality control information. Further, inspection and quality control may meet the "reasonable person" standard, since no manufacturing process is, or can be, made foolproof. A plaintiff may also have difficulty showing that the product was defective at all, or that the defect was present when the product left the manufacturer.

Throughout the history of products liability law, courts have employed a number of devices to modify the plaintiffs' burden. First, courts began to rely on the law of implied warranty, which imposes strict liability upon the seller of a product. Warranty theory, a mixture of tort and contract principles, requires the seller to produce a product free of injury-causing defects. However, implied warranty claims could only lie against the injured plaintiff's immediate seller because actions based on breach of warranty required privity, that is, a contractual relationship between the injured buyer and the seller.

Courts also employed the doctrine of res ipsa loquitur to allow plaintiffs to reach the jury on the issue of product defect. The doctrine of res ipsa loquitur enables an injured party to reach the jury with nothing more than circumstantial evidence. Under the doctrine's most accepted formulation, the following conditions are necessary: (1) the event must be one that would not ordinarily occur without someone's negligence; (2) the accident must be caused by an agency or instrumentality within the defendant's exclusive control; and (3) the plaintiff must be without voluntary action or contribution in causing the accident.[4] The application of res ipsa loquitur to product liability cases was problematic, however, because the exclusive control requirement could never be met; the product was always out of the defendant's hands and often had passed through several other entities before reaching the plaintiff.

Courts eventually shed these theories and began to impose strict liability in tort on all parties within the chain of distribution -- including manufacturers, wholesalers, distributors, and retailers, among others. The imposition of strict liability in common law was justified by the judiciary through a number of rationales: (1) those who mass-produce consumer goods are best able to absorb the cost of injuries associated with those goods since they can pass those costs on to consumers; (2) placing liability on manufacturers without fault increases the incentive for manufacturers to produce safer products; (3) requiring the plaintiff to demonstrate defendant's negligence in causing the defect imposes an intolerably high evidentiary burden; (4) plaintiffs are typically incapable of protecting themselves against defective products and should not go uncompensated when injury they could neither have foreseen nor prevented actually occurs.[5]

Some legal commentators have pointed out that "[w]hen applied to non-manufacturing sellers, the rationales for imposing strict liability weaken. Although many wholesalers and retailers are generally able to absorb the cost of injuries caused by defective products better than the average consumer, this rationale for imposing strict liability offers no principled limitations. If the goal is to pin the cost on the entity best able to bear it, there is no reason why any sufficiently well-heeled corporate defendant

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[1] See generally Restatement (Second) of Torts § 402A (1965); Prosser, The Assault upon the Citadel (Strict Liability to the Consumer), 69 Yale L.J. 1099 (1960); Wade, On the Nature of Strict Tort Liability for Products, 44 Miss. L.J. 825 (1973).

[2] See, e.g., Canifax v. Hercules Powder Co., 237 Cal. App. 2d 44, 50-52, 46 Cal. Rptr. 552, 556-59 (1965) (wholesaler); Cottom v. McGuire Funeral Serv., Inc., 262 A.2d 807, 809-10 (D.C. 1970) (retailer and wholesaler); Keener v. Dayton Elec. Mfg. Co., 445 S.W.2d 362, 365 (Mo. 1969) (wholesaler); Walker v. Decora, Inc., 225 Tenn. 504, 514-15, 471 S.W.2d 778, 782-83 (1971) (distributor); Dippel v. Sciano, 37 Wis. 2d 443, 462, 155 N.W.2d 55, 64-65 (1967) (sales distributor).

[3] See Restatement (Second) of Torts § 402A, Comment f (1965).

[4] See generally Prosser and Keeton on The Law of Torts, § 39 at 244 (W. Keeton 5th ed. 1984).

[5] Escola v. Coca-Cola Bottling Co., 150 P.2d 436, 440-43 (1944).

should not have to pay plaintiff in other areas of tort as well. Conversely, if the plaintiff is a corporate entity and the defendant is an individual, this rationale suggests that the defendant not pay."[6]

"Another problem with imposing strict liability on non-manufacturers" says commentary, "is that the incentives to market safer products may not work as well in their case. The argument in favor of imposing strict liability on all parties within the chain of a product's distribution has been that sellers can exert pressure on those manufacturers with whom they regularly deal and whose products are defective, by discontinuing, or imposing conditions on, further dealings. The problem with this argument is its critical dependence on several questionable assumptions: (1) manufacturers who most frequently pay tort judgments are turning out products that are less safe; (2) non-manufacturing sellers have sufficient knowledge to exert the desired pressure; and (3) non-manufacturing sellers have sufficient market power and choice to make their decisions count."[7]

"The final problem in imposing strict liability on all parties within the chain of a product's distribution is that typically the supplier has not caused the defect that injures the plaintiff; the defect has occurred during the manufacture of the product."[8]

Nonetheless, courts have embraced the rationale as explained in Escola v. Coca-Cola Bottling Co.[9] that liability should be imposed on the retailer as well as on the manufacturer, because the manufacturer may not be amenable to suit and because the retailer is sometimes in a position to exert pressure on the manufacturer to strive toward greater product safety.[10] Although concern for the plaintiff's right to recover has led courts to hold retailers and others in the chain of distribution strictly liable, the potential unfairness of having the retailer pay for conduct more properly charged to the manufacturer has also led them to support the retailer's, distributor's and supplier's indemnity action against a manufacturer. Under the common law, an entity in the distribution chain that has been made accountable to the plaintiff in a products liability action can seek indemnity from another entity in that distribution chain as long as that entity is actually at fault.[11] For example, a wine retailer who was found strictly liable for injuries that a customer received in opening a latently defective wine bottle brought a third-party demand for indemnity against the intermediate sellers of the product. The court held that the wine seller had no common-law indemnity action against the intermediate sellers who, like the retailer, were not at fault.[12]

A number of statutes have been enacted in the United States that modify the common law liability of marketers participating in the chain of distribution. These statutes have been described in commentary in the following manner:

> Statutes that have been crafted to restrict an injured party's right to recover against ultimate sellers and suppliers generally have two components. First, the statutes relieve the seller or supplier of liability based on status as a "mere conduit," requiring instead that plaintiff make some showing that defendant had, or should have had, knowledge of the product defect. The statutes take one of three approaches to the degree of knowledge of the product defect required for liability. The most generous approach, from the seller's or supplier's point of view, frees a seller or supplier who does not have actual knowledge of the product defect. An intermediate approach is negligence-based, and establishes liability when the seller or supplier "knew or should have known" of the defect, or, more simply, when it acted with negligence. The least generous reform from the

[6] Culhane, J., Real and Imagined Effects of Statutes Restricting the Liability of Nonmanufacturing Sellers of Defective Products, Dickinson L. Rev. at 293 (Winter 1991).
[7] Id. at 294.
[8] Id. at 294.
[9] 150 P.2d 436, 440-43 (1944).
[10] Vandemark v. Ford Motor Co., 61 Cal. 2d 256, 262, 391 P.2d 168, 171, 37 Cal. Rptr. 896, 899 (1964).
[11] Costco Wholesale Corp. v. Tampa Wholesale Liquor Co., Inc., 573 So.2d 347 (Fla. 2nd DCA 1990).
[12] Id.

seller's or supplier's perspective relieves the seller or supplier of liability only when knowledge of the defect is presumptively impossible (or at least almost so), as when the product is in a sealed container.

The statutes' second component permits the plaintiff to retain the seller or supplier as a guarantor. Reflecting concerns expressed in Escola v. Coca-Cola Bottling Co. with leaving plaintiff without remedy, most jurisdictions permit the seller or supplier to be "transformed" into a manufacturer (thus subject to strict liability) when the manufacturer is unavailable to the plaintiff. The other, and little followed, alternative is to make the plaintiff bear the risk that the manufacturer will be unavailable.[13]

Proposed Changes

HB 1513 prohibits a person from bringing a civil action against a product seller based on a claim that the product contained a defect which proximately caused injury to that person, except when the seller:

- manufactured, produced, or designed the product;
- altered, modified, assembled, or failed to maintain the product in a manner that caused harm to the claimant;
- knew, or should have known, that the product was recalled prior to sale; or
- had actual knowledge of a manufacturing defect which proximately caused the person's harm.

However, even if none of the exceptions apply, the bill permits an action to be brought against a product seller if the state cannot exercise personal jurisdiction over the manufacturer.

Comparative Fault/Apportionment of Damages

Present Situation

At common law, the principle of joint and several liability requires that each defendant in a lawsuit is liable for the entire amount of the plaintiff's damages regardless of the degree of fault of any individual defendant. This is commonly called the "deep pocket" rule. This principle is applied to economic damages in tort actions in Florida (noneconomic damages are apportioned based on the comparative fault of the tortfeasors and the plaintiff). This principle applies even in cases where the primary or most responsible tortfeasor is bankrupt or otherwise judgment proof, as well as in cases where the plaintiff settles with one defendant, but subsequently is awarded a greater amount of damages. In such instances the settling defendant is still responsible for the difference between the settlement amount and the award. With joint and several liability, plaintiffs and their attorneys may search out the most financially viable defendant to bring a cause of action against.

The Florida Legislature last addressed this issue in 1999 when it limited the amount of a judgment for which joint tortfeasors are liable based on joint and several liability. The following tiered approach was enacted:

If Plaintiff is also at fault, each defendant is responsible as follows:

- Defendant 10% or less at fault = no joint liability.
- Defendant 10% - 25% at fault = joint liability limited to $200,000.
- Defendant 25% - 50% at fault = joint liability limited to $500,000.

[13] Culhane, J., Real and Imagined Effects of Statutes Restricting the Liability of Nonmanufacturing Sellers of Defective Products, Dickinson L. Rev. at 295-297 (Winter 1991).

- Defendant more than 50% at fault = joint liability limited to $1,000,000.

If Plaintiff is NOT at fault, each defendant is responsible as follows:

- Defendant 10% or less at fault = no joint liability.
- Defendant 10% - 25% at fault = joint liability limited to $500,000.
- Defendant 25% - 50% at fault = joint liability limited to $1,000,000.
- Defendant more than 50% at fault = joint liability limited to $2,000,000.

See s. 768.81, F.S.

Proposed Changes

HB 1513 repeals joint and several liability in favor of the comparative fault method for apportioning noneconomic damages. Under this method, each defendant is responsible only for a prorated amount of the judgment based on the defendant's percentage of fault as determined by the finder of fact (jury or, in a non-jury action, judge).

Effective Date/Prospective Application

The bill provides that it shall take effect upon becoming law, but that its provisions shall apply only to those causes of action accruing on or after the effective date. A cause of action accrues on the date of the incident or occurrence of injury or damage to the plaintiff.

C. SECTION DIRECTORY:

Section 1. Amends s. 47.051, F.S., relating to venue in actions against corporations.

Section 2. Creates s. 768.1255, F.S., prohibiting product liability actions against product sellers except under certain circumstances.

Section 3. Amends s. 768.81, F.S., repealing the use of joint and several liability for the purpose of apportioning economic damages.

Section 4. Provides that the bill is effective upon becoming a law, and that the provisions are applicable in actions accruing on or after the effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

See FISCAL COMMENTS section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the bill's venue provisions, the term "principal office" is defined as the office in the state in which the principal executive office is located. This definition appears to be ambiguous. Section 607.01401(20), F.S., provides a definition of the term "principal office." That definition, contained in the chapter regulating corporations, defines the term "principal office" as "the office (in or out of this state) where the principal executive offices of a domestic or foreign corporation are located as designated in the articles of incorporation or other initial filing until an annual report has been filed, and thereafter as designated in the annual report." Reference in the bill to this definition of the term may provide more clarity to the public in interpreting where venue may lie for actions against domestic corporations.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 18, 2005, the Judiciary Committee amended HB 1513. The Committee Substitute for HB 1513 differs from the bill as filed in that the Committee Substitute limits the bill to three issues: venue in actions against corporations, liability of product sellers, and repeal of joint and several liability.

On April 20, 2005, the State Administration Council adopted two amendments to HB 1513 and then reported the bill favorable as amended with a council substitute. The first amendment to the bill provides that an action in Florida against a domestic corporation shall be brought, if based on the situs of the corporation, in the county where such corporation has its principal office. For the purposes of the section on venue (s. 47.051, F.S.), the term "principal office" is defined as the office in the state in which the principal executive office is located. In the case of a foreign corporation, the amendment requires that such action must be brought in the county in which the registered agent for service of process resides. The second amendment clarifies that only those actions against a product seller that are based on a claim that the product contained a defect which proximately caused injury to the claimant are barred except under certain circumstances. Prior to adoption of the amendment, the bill barred any action arising under any legal theory against the seller of a product, except

under certain circumstances. The second amendment also provides that such an action may be brought against the product seller if that seller had actual knowledge of a manufacturing defect which proximately caused the claimant's harm.