

1 A bill to be entitled
2 An act relating to civil justice reform; creating s.
3 46.100, F.S.; providing for dismissal of actions based on
4 fraudulent or deceptive activity; providing for recovery
5 of damages and attorney fees and costs in certain actions;
6 amending s. 324.021, F.S.; repealing the dangerous
7 instrumentality doctrine; providing for liability for
8 personal injuries under certain circumstances; deleting
9 provisions specifying ownership of motor vehicles for
10 certain purposes; deleting provisions specifying
11 application of certain limits of liability; amending s.
12 624.155, F.S.; limiting actions against an insurer to
13 insureds; specifying a duty to cooperate with an insurer
14 in asserting a demand for settlement; specifying certain
15 activities as a defense in certain actions; revising
16 certain time periods relating to notices in certain
17 actions; revising notice requirements; providing for
18 preemption of specified civil remedies; specifying effect
19 of certain judgments; specifying a criterion for burden of
20 proof in actions against an insurer; limiting insurer
21 liability for failure to pay policy limits under certain
22 circumstances; authorizing parties to request certain
23 court orders relating to unnecessary delay; providing
24 requirements for amending witness lists; limiting
25 admissibility of certain evidence; specifying
26 considerations for a trier of fact in certain actions;
27 providing construction relating to assigning causes of
28 action; amending s. 768.0710, F.S.; limiting liability for

29 damages to a claimant resulting from intentional or
30 criminal acts; creating s. 768.1254, F.S.; providing
31 definitions; creating s. 768.1255, F.S.; providing general
32 rules for product liability actions against product
33 sellers; specifying criteria for liability of a product
34 seller as a manufacturer; amending s. 768.1256, F.S.;
35 deleting a rebuttable presumption provision in product
36 liability actions; creating s. 768.1382, F.S.; limiting
37 liability of certain public and private entities providing
38 street lights, security lights, or other similar
39 illumination; providing that certain entities do not owe a
40 duty to the public to provide, operate, or maintain
41 illumination; providing exceptions; prohibiting certain
42 findings of fault or responsibility of an entity not a
43 party to litigation; amending s. 768.28, F.S.; limiting
44 the liability of law enforcement officers or sheriffs and
45 employing law enforcement agencies for civil damages for
46 injury or death from pursuing fleeing persons under
47 certain circumstances; amending s. 768.76, F.S.; requiring
48 a jury to be informed of the amount of certain benefits
49 paid or available for payment from collateral sources;
50 amending s. 768.79, F.S.; specifying absence of
51 restrictions on certain settlement or release agreements;
52 limiting attorney fees under certain circumstances;
53 amending s. 768.81, F.S.; deleting exceptions to a
54 requirement for liability based on percentage of fault
55 instead of joint and several liability; expanding
56 application of provisions to additional negligence cases;

57 | revising a nonapplication provision; providing
58 | severability; providing applicability; providing an
59 | effective date.

60 |

61 | WHEREAS, it is the intent of the Legislature to protect the
62 | right of the citizen to access the courts while protecting jobs
63 | by limiting the liability of citizens, governmental agencies,
64 | and businesses, and

65 | WHEREAS, civil lawsuits and counterclaims, often involving
66 | millions of dollars, have been and are being filed against
67 | countless citizens, governmental agencies, and businesses in
68 | this state where those citizens, governmental agencies, and
69 | business ought not be held liable, and

70 | WHEREAS, such lawsuits and counterclaims are often filed
71 | against citizens, governmental agencies, and businesses with the
72 | most amount of money and ability to pay large settlements, and

73 | WHEREAS, such lawsuits and counterclaims put the citizens,
74 | governmental agencies, and businesses of this state through
75 | great and needless expense, harassment, and interruption of
76 | their duties, and

77 | WHEREAS, such lawsuits and counterclaims have increased
78 | significantly over the last 30 years and have become a threat to
79 | the employment security and public safety of the citizens of
80 | this state, and

81 | WHEREAS, the following changes to the manner in which civil
82 | actions are conducted will ensure that citizens continue to have
83 | a right of access to courts and that jobs in this state will be
84 | protected by ensuring that citizens, governmental agencies, and

85 businesses will not be held liable when they ought not be, and

86 WHEREAS, the Legislature acknowledges that the civil
87 justice system is a very complex system which touches upon many
88 areas, and, in order to accomplish the aforementioned goals, any
89 reforms to this system must be broad, comprehensive, and all-
90 inclusive, and

91 WHEREAS, it is the intent of the Legislature to accomplish
92 these goals by reforming the civil justice system of this state
93 and that the Legislature believes the changes made by this act
94 are thus needed, and

95 WHEREAS, section 13 of Article X of the State Constitution
96 grants the Legislature the authority to waive sovereign
97 immunity, and

98 WHEREAS, in 1973, the Legislature, exercising that
99 authority, adopted s. 768.28, Florida Statutes, and

100 WHEREAS, it has been the intent of the Legislature that
101 such waiver provisions be strictly construed, and

102 WHEREAS, it has been brought to the Legislature's attention
103 that court interpretations have provided that law enforcement
104 agencies may be liable for the actions of a person fleeing from
105 a law enforcement officer even though the officer has no control
106 over the actions of the person fleeing, and

107 WHEREAS, the intent of the Legislature is to provide that
108 law enforcement officers and their employing agencies should
109 have no liability for injuries caused by the person fleeing the
110 officer in a pursuit, and

111 WHEREAS, law enforcement officers perform a valuable
112 function in protecting the public from harm and must, of

113 necessity, from time to time, apprehend those who violate the
 114 law and who, through flight from apprehension, place members of
 115 the public at risk, and

116 WHEREAS, the Legislature finds it necessary to balance the
 117 risks of harm to the public with the need to apprehend persons
 118 as long as the apprehension and pursuit are accomplished within
 119 proper and rational bounds, and law enforcement operates with
 120 due care, and

121 WHEREAS, it is the intent of the Legislature to overrule
 122 the decision in City of Pinellas Park v. Brown, 604 So.2d 1222
 123 (Fla. 1992), NOW, THEREFORE,

124

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

126

127 Section 1. Section 46.100, Florida Statutes, is created to
 128 read:

129 46.100 Dismissal due to fraud.--

130 (1) In any civil action, the defendant shall be entitled
 131 to dismissal upon a motion for dismissal with evidence
 132 demonstrating that the plaintiff engaged in any fraudulent or
 133 deceptive activity in any aspect of the lawsuit which is the
 134 subject of the damages sought from the defendant. Such motion
 135 for motion for dismissal shall be granted based on a
 136 preponderance of the evidence. The judge shall rule on such
 137 motions in a timely manner.

138 (2) A defendant prevailing in such action under subsection
 139 (1) may recover compensatory, consequential, and punitive
 140 damages subject to the requirements and limitations of part II

141 of chapter 768 and attorney's fees and costs incurred in
 142 litigating a cause of action against any person convicted of, or
 143 who, regardless of adjudication of guilt, pleads guilty or nolo
 144 contendere to insurance fraud under s. 817.234, associated with
 145 a claim for damages or other benefits.

146 Section 2. Subsection (9) of section 324.021, Florida
 147 Statutes, is amended to read:

148 324.021 Definitions; minimum insurance required.--The
 149 following words and phrases when used in this chapter shall, for
 150 the purpose of this chapter, have the meanings respectively
 151 ascribed to them in this section, except in those instances
 152 where the context clearly indicates a different meaning:

153 (9) DANGEROUS INSTRUMENTALITY DOCTRINE REPEALED OWNER;
 154 OWNER/LESSOR.--The dangerous instrumentality doctrine is
 155 repealed. A person or entity that negligently entrusts the use
 156 of a vehicle to a third party may be liable for any personal
 157 injuries that occur as a result of the negligent operation of
 158 the vehicle by the third party if the entrusting party knew or
 159 had reason to know that the third party would use the vehicle in
 160 such a manner as to create an unreasonable risk of harm to
 161 others.

162 ~~(a) Owner.--A person who holds the legal title of a motor~~
 163 ~~vehicle; or, in the event a motor vehicle is the subject of an~~
 164 ~~agreement for the conditional sale or lease thereof with the~~
 165 ~~right of purchase upon performance of the conditions stated in~~
 166 ~~the agreement and with an immediate right of possession vested~~
 167 ~~in the conditional vendee or lessee, or in the event a mortgagor~~
 168 ~~of a vehicle is entitled to possession, then such conditional~~

169 ~~vendee or lessee or mortgagor shall be deemed the owner for the~~
 170 ~~purpose of this chapter.~~

171 ~~(b) Owner/lessor. -- Notwithstanding any other provision of~~
 172 ~~the Florida Statutes or existing case law:~~

173 ~~1. The lessor, under an agreement to lease a motor vehicle~~
 174 ~~for 1 year or longer which requires the lessee to obtain~~
 175 ~~insurance acceptable to the lessor which contains limits not~~
 176 ~~less than \$100,000/\$300,000 bodily injury liability and \$50,000~~
 177 ~~property damage liability or not less than \$500,000 combined~~
 178 ~~property damage liability and bodily injury liability, shall not~~
 179 ~~be deemed the owner of said motor vehicle for the purpose of~~
 180 ~~determining financial responsibility for the operation of said~~
 181 ~~motor vehicle or for the acts of the operator in connection~~
 182 ~~therewith; further, this subparagraph shall be applicable so~~
 183 ~~long as the insurance meeting these requirements is in effect.~~
 184 ~~The insurance meeting such requirements may be obtained by the~~
 185 ~~lessor or lessee, provided, if such insurance is obtained by the~~
 186 ~~lessor, the combined coverage for bodily injury liability and~~
 187 ~~property damage liability shall contain limits of not less than~~
 188 ~~\$1 million and may be provided by a lessor's blanket policy.~~

189 ~~2. The lessor, under an agreement to rent or lease a motor~~
 190 ~~vehicle for a period of less than 1 year, shall be deemed the~~
 191 ~~owner of the motor vehicle for the purpose of determining~~
 192 ~~liability for the operation of the vehicle or the acts of the~~
 193 ~~operator in connection therewith only up to \$100,000 per person~~
 194 ~~and up to \$300,000 per incident for bodily injury and up to~~
 195 ~~\$50,000 for property damage. If the lessee or the operator of~~
 196 ~~the motor vehicle is uninsured or has any insurance with limits~~

197 ~~less than \$500,000 combined property damage and bodily injury~~
 198 ~~liability, the lessor shall be liable for up to an additional~~
 199 ~~\$500,000 in economic damages only arising out of the use of the~~
 200 ~~motor vehicle. The additional specified liability of the lessor~~
 201 ~~for economic damages shall be reduced by amounts actually~~
 202 ~~recovered from the lessee, from the operator, and from any~~
 203 ~~insurance or self-insurance covering the lessee or operator.~~
 204 ~~Nothing in this subparagraph shall be construed to affect the~~
 205 ~~liability of the lessor for its own negligence.~~

206 ~~3. The owner who is a natural person and loans a motor~~
 207 ~~vehicle to any permissive user shall be liable for the operation~~
 208 ~~of the vehicle or the acts of the operator in connection~~
 209 ~~therewith only up to \$100,000 per person and up to \$300,000 per~~
 210 ~~incident for bodily injury and up to \$50,000 for property~~
 211 ~~damage. If the permissive user of the motor vehicle is uninsured~~
 212 ~~or has any insurance with limits less than \$500,000 combined~~
 213 ~~property damage and bodily injury liability, the owner shall be~~
 214 ~~liable for up to an additional \$500,000 in economic damages only~~
 215 ~~arising out of the use of the motor vehicle. The additional~~
 216 ~~specified liability of the owner for economic damages shall be~~
 217 ~~reduced by amounts actually recovered from the permissive user~~
 218 ~~and from any insurance or self-insurance covering the permissive~~
 219 ~~user. Nothing in this subparagraph shall be construed to affect~~
 220 ~~the liability of the owner for his or her own negligence.~~

221 ~~(c) Application.--~~

222 ~~1. The limits on liability in subparagraphs (b)2. and 3.~~
 223 ~~do not apply to an owner of motor vehicles that are used for~~
 224 ~~commercial activity in the owner's ordinary course of business,~~

225 ~~other than a rental company that rents or leases motor vehicles.~~
 226 ~~For purposes of this paragraph, the term "rental company"~~
 227 ~~includes only an entity that is engaged in the business of~~
 228 ~~renting or leasing motor vehicles to the general public and that~~
 229 ~~rents or leases a majority of its motor vehicles to persons with~~
 230 ~~no direct or indirect affiliation with the rental company. The~~
 231 ~~term also includes a motor vehicle dealer that provides~~
 232 ~~temporary replacement vehicles to its customers for up to 10~~
 233 ~~days.~~

234 ~~2. Furthermore, with respect to commercial motor vehicles~~
 235 ~~as defined in s. 627.732, the limits on liability in~~
 236 ~~subparagraphs (b)2. and 3. do not apply if, at the time of the~~
 237 ~~incident, the commercial motor vehicle is being used in the~~
 238 ~~transportation of materials found to be hazardous for the~~
 239 ~~purposes of the Hazardous Materials Transportation Authorization~~
 240 ~~Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is~~
 241 ~~required pursuant to such act to carry placards warning others~~
 242 ~~of the hazardous cargo, unless at the time of lease or rental~~
 243 ~~either:~~

244 ~~a. The lessee indicates in writing that the vehicle will~~
 245 ~~not be used to transport materials found to be hazardous for the~~
 246 ~~purposes of the Hazardous Materials Transportation Authorization~~
 247 ~~Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or~~

248 ~~b. The lessee or other operator of the commercial motor~~
 249 ~~vehicle has in effect insurance with limits of at least~~
 250 ~~\$5,000,000 combined property damage and bodily injury liability.~~

251 Section 3. Subsections (1), (3), and (8) of section
 252 624.155, Florida Statutes, are amended, and subsections (9),
 253 (10), (11), and (12) are added to said section, to read:

254 624.155 Civil remedy.--

255 (1) An insured ~~Any person~~ may bring a civil action against
 256 an insurer when such person is damaged:

257 (a) By a violation of any of the following provisions by
 258 the insurer:

- 259 1. Section 626.9541(1)(i), (o), or (x);
- 260 2. Section 626.9551;
- 261 3. Section 626.9705;
- 262 4. Section 626.9706;
- 263 5. Section 626.9707; or
- 264 6. Section 627.7283.

265 (b) By the commission of any of the following acts by the
 266 insurer:

- 267 1. Not attempting in good faith to settle claims when,
 268 under all the circumstances, it could and should have done so,
 269 had it acted fairly and honestly toward its insured and with due
 270 regard for her or his interests and the interests of all other
 271 policyholders. However, both the insured and any person
 272 asserting any demand for such settlement owes a similar duty to
 273 the insurer to cooperate fully with the insurer, and it shall be
 274 a defense to any action under this section if the court finds
 275 that the insured or other person demanding settlement:

- 276 a. Failed to cooperate fully in facilitating the
 277 settlement;

278 b. Imposed or adhered to time limits or other conditions
 279 on settlement without at that time demonstrating to the insurer
 280 valid reasons that such time limits or other conditions were
 281 reasonable and necessary and that such reasons were totally
 282 unrelated to the possibility of obtaining damages under this
 283 section; or

284 c. Lacked authority to make the demand or to accept the
 285 amount demanded in full settlement of all claims, including
 286 liens, arising from the occurrence;

287 2. Making claims payments to insureds or beneficiaries not
 288 accompanied by a statement setting forth the coverage under
 289 which payments are being made; or

290 3. Except as to liability coverages, failing to promptly
 291 settle claims, when the obligation to settle a claim has become
 292 reasonably clear, under one portion of the insurance policy
 293 coverage in order to influence settlements under other portions
 294 of the insurance policy coverage.

295
 296 Notwithstanding the provisions of the above to the contrary, a
 297 person pursuing a remedy under this section need not prove that
 298 such act was committed or performed with such frequency as to
 299 indicate a general business practice.

300 (3)(a) As a condition precedent to bringing an action
 301 under this section, the department and the authorized insurer
 302 must have been given 90 ~~60~~ days' written notice of the
 303 violation. If the department returns a notice for lack of
 304 specificity, the 90-day ~~60-day~~ time period shall not begin until
 305 a proper notice is filed.

306 (b) The notice shall be on a form provided by the
307 department and shall state with specificity the following
308 information, and such other information as the department may
309 require:

310 1. The statutory provision, including the specific
311 language of the statute, which the authorized insurer allegedly
312 violated.

313 2. The specific facts and circumstances giving rise to the
314 violation, including facts and circumstances pertinent to each
315 factor stated in subsection (10) and the identity of all parties
316 who have made claims against the insured for the occurrence
317 giving rise to the claim and any documentation pertaining to
318 such claims.

319 3. The name of any individual involved in the violation.

320 4. Reference to specific policy coverage and language that
321 is relevant to the violation, if any. If the person bringing the
322 civil action is a third party claimant, she or he shall not be
323 required to reference the specific policy language if the
324 authorized insurer has not provided a copy of the policy to the
325 third party claimant pursuant to written request.

326 5. A statement that the notice is given in order to
327 perfect the right to pursue the civil remedy authorized by this
328 section.

329 6. A detailed description of the specific dollar amounts
330 that are due and unpaid under each available coverage and how
331 such amounts are calculated and of any other actions requested
332 to cure the violation.

333 (c) Within 30 ~~20~~ days of receipt of the notice, the
 334 department shall ~~may~~ return any notice that does not provide the
 335 specific information required by this section, and the
 336 department shall indicate the specific deficiencies contained in
 337 the notice. A determination by the department to return a notice
 338 for lack of specificity shall be exempt from the requirements of
 339 chapter 120.

340 (d) No action shall lie if, within 90 ~~60~~ days after filing
 341 notice, the damages are paid or the circumstances giving rise to
 342 the violation are corrected.

343 (e) The authorized insurer that is the recipient of a
 344 notice filed pursuant to this section shall report to the
 345 department on the disposition of the alleged violation.

346 (f) The applicable statute of limitations for an action
 347 under this section shall be tolled for a period of 95 ~~65~~ days by
 348 the mailing of the notice required by this subsection or the
 349 mailing of a subsequent notice required by this subsection.

350 (8) The civil remedy specified in this section preempts
 351 all ~~does not preempt any~~ other remedies and causes remedy or
 352 cause of action for extra-contractual damages for failure to
 353 settle under an insurance contract provided for pursuant to any
 354 other statute or pursuant to the common law of this state. ~~Any~~
 355 ~~person may obtain a judgment under either the common-law remedy~~
 356 ~~of bad faith or this statutory remedy, but shall not be entitled~~
 357 ~~to a judgment under both remedies.~~ This section shall not be
 358 construed to create a common-law cause of action. The damages
 359 recoverable pursuant to this section shall include, but not
 360 exceed, those actual damages which are a reasonably foreseeable

361 result of a specified violation of this section by the
 362 authorized insurer and may include an award or judgment in an
 363 amount that exceeds the policy limits. The rendition of a
 364 judgment against a liability insured shall not raise any
 365 presumption or inference that the violation will foreseeably
 366 result in actual damages, except to the extent it is proven that
 367 the insured has or is reasonably expected to have assets from
 368 which such judgment is expected to be paid. The satisfaction of
 369 a judgment rendered against an insurer pursuant to this
 370 subsection shall operate as the satisfaction of the underlying
 371 judgment against the insured.

372 (9) In all actions against an insurer relating to failure
 373 to settle claims for liability insurance coverage, the burden of
 374 proof shall be clear and convincing evidence of an unreasonable
 375 refusal to settle.

376 (a) An insurer shall not be held liable for failure to pay
 377 its policy limits if the insurer tenders its policy limits by
 378 the earlier of:

379 1. The 210th day after service of the complaint in the
 380 negligence action upon the insured. The time period specified in
 381 this subparagraph shall be extended by an additional 60 days if
 382 the court finds in the action for a violation of this section
 383 that, at any time during such period and after the 150th day
 384 after service of the complaint in the underlying liability
 385 action, the claimant provided new information not previously
 386 provided to the insurer relating to the identity or testimony of
 387 any material witnesses or the identity of any additional
 388 claimants or defendants if such disclosure materially alters the

389 risk to the insured of an excess judgment; or

390 2. The 60th day after the conclusion of all of the
 391 following:

392 a. Depositions of all claimants named in the complaint or
 393 amended complaint.

394 b. Depositions of all defendants named in the complaint or
 395 amended complaint, including, in the case of a corporate
 396 defendant, deposition of a designated representative.

397 c. Depositions of all of the claimants' expert witnesses.

398 d. The initial disclosure of witnesses and production of
 399 documents.

400
 401 When there are multiple claimants seeking compensation from the
 402 same insured or multiple insureds or when there is a single
 403 claimant seeking compensation from multiple insureds for damages
 404 arising from the same occurrence, which compensation in the
 405 aggregate exceeds policy limits, the insurer of the insured or
 406 insureds shall not be held liable for extra-contractual damages
 407 for failure to pay its policy limits if the insurer makes a
 408 written offer of its policy limits within the time frame set
 409 forth in this subsection to all known potential claimants in
 410 exchange for releases of all claims against all insureds or
 411 tenders such limits to the court for apportionment to the
 412 claimants.

413 (b) Either party may request that the court enter an order
 414 finding that the other party has unnecessarily or
 415 inappropriately delayed any of the events specified in
 416 subparagraph (a)2. If the court finds that the claimant was

417 responsible for such unnecessary or inappropriate delay,
 418 subparagraph (a)1. shall not apply to the insurer's tendering of
 419 policy limits. If the court finds that the defendant or insurer
 420 was responsible for such unnecessary or inappropriate delay,
 421 subparagraph (a)2. shall not apply to the insurer's tendering of
 422 policy limits.

423 (c) If any party to an action alleging liability for acts
 424 covered by liability insurance amends its witness list after
 425 service of the complaint in such action, that party shall
 426 provide a copy of the amended witness list to the insurer of the
 427 defendant.

428 (d) The time limits specified in this subsection shall not
 429 be admissible as evidence that the insurer acted in violation of
 430 this section.

431 (10) When an insurer does not tender its policy limits to
 432 settle a liability insurance claim under subsection (9), the
 433 trier of fact, in determining whether an insurer has acted in
 434 violation of this section, shall consider only:

435 (a) The insurer's willingness to negotiate with the
 436 claimant in anticipation of settlement.

437 (b) The propriety of the insurer's methods of
 438 investigating and evaluating the claim.

439 (c) Whether the insurer timely informed the insured of an
 440 offer to settle within the limits of coverage, the right to
 441 retain personal counsel, and the risk of litigation.

442 (d) Whether the insured denied liability or requested that
 443 the case be defended after the insurer fully advised the insured
 444 as to the facts and risks.

445 (e) Whether the claimant imposed any condition, other than
 446 the tender of the policy limits, on the settlement of the claim.

447 (f) Whether the claimant provided all relevant information
 448 to the insurer on a timely basis.

449 (g) Whether and when other defendants in the case settled
 450 or were dismissed from the case.

451 (h) Whether there were multiple claimants seeking, in the
 452 aggregate, compensation in excess of policy limits from the
 453 defendant or the defendant's insurer.

454 (i) Whether the insured or claimant misrepresented
 455 material facts to the insurer or made material omissions of fact
 456 to the insurer.

457 (j) Other matters that constitute defenses or limitations
 458 to actions or damages that are specified in this section.

459 (11) An insurer that tenders policy limits shall be
 460 entitled to a release of its insured if the claimant accepts the
 461 tender.

462 (12) Nothing in this section shall be construed to
 463 prohibit an insured from assigning the cause of action to an
 464 injured third-party claimant for the insurer's failure to act
 465 fairly and honestly towards its insured and with due regard for
 466 the insured's interest.

467 Section 4. Section 768.0710, Florida Statutes, is amended
 468 to read:

469 ~~768.0710 Burden of proof in claims of negligence involving~~
 470 ~~transitory foreign objects or substances against persons or~~
 471 ~~entities in possession or control of business Premises liability~~
 472 ~~for commercial establishments.--~~

473 (1) When a person slips and falls on a transitory foreign
 474 substance in a retail establishment, the injured person must
 475 prove that the retail establishment had actual or constructive
 476 knowledge of the dangerous condition such that the condition
 477 existed for such a length of time that, in the exercise of
 478 ordinary care, the premises' owner should have known of the
 479 condition and taken action to remedy the condition. Constructive
 480 knowledge may be established by circumstantial evidence showing
 481 that:

482 (a) The dangerous condition existed for such a length of
 483 time that, in the exercise of ordinary care, the premises owner
 484 should have known of the condition; or

485 (b) The condition occurred with regularity and was
 486 therefore foreseeable. ~~The person or entity in possession or~~
 487 ~~control of business premises owes a duty of reasonable care to~~
 488 ~~maintain the premises in a reasonably safe condition for the~~
 489 ~~safety of business invitees on the premises, which includes~~
 490 ~~reasonable efforts to keep the premises free from transitory~~
 491 ~~foreign objects or substances that might foreseeably give rise~~
 492 ~~to loss, injury, or damage.~~

493 (2) Notwithstanding any provision of this section, any
 494 person or entity in possession or control of a business premises
 495 is not liable for any damages to a claimant if such loss,
 496 injury, or damage to a business invitee is the result of the
 497 intentional or criminal acts of a third party. ~~In any civil~~
 498 ~~action for negligence involving loss, injury, or damage to a~~
 499 ~~business invitee as a result of a transitory foreign object or~~

500 ~~substance on business premises, the claimant shall have the~~
 501 ~~burden of proving that:~~

502 ~~(a) The person or entity in possession or control of the~~
 503 ~~business premises owed a duty to the claimant;~~

504 ~~(b) The person or entity in possession or control of the~~
 505 ~~business premises acted negligently by failing to exercise~~
 506 ~~reasonable care in the maintenance, inspection, repair, warning,~~
 507 ~~or mode of operation of the business premises. Actual or~~
 508 ~~constructive notice of the transitory foreign object or~~
 509 ~~substance is not a required element of proof to this claim.~~

510 ~~However, evidence of notice or lack of notice offered by any~~
 511 ~~party may be considered together with all of the evidence; and~~

512 ~~(c) The failure to exercise reasonable care was a legal~~
 513 ~~cause of the loss, injury, or damage.~~

514 Section 5. Section 768.1254, Florida Statutes, is created
 515 to read:

516 768.1254 Definitions.--As used in this section and ss.
 517 768.1255 and 768.1256:

518 (1) "Product liability action" means any civil claim or
 519 action for harm caused by a product, regardless of the theory on
 520 which the claim is based.

521 (2) "Harm" means death; personal injury; physical damage
 522 to property other than to the product itself; economic loss,
 523 including the loss of earnings or other benefits related to
 524 employment, medical expenses, lost support and services, funeral
 525 and burial costs, loss of business or employment opportunities,
 526 and medical monitoring, as permitted under applicable law; and
 527 noneconomic loss, including pain and suffering, mental anguish,

528 disfigurement, loss of capacity for the enjoyment of life,
529 emotional distress, loss of society and companionship, loss of
530 consortium, injury to reputation, humiliation, fear of future
531 injury, or increased risk of disease, as permitted under
532 applicable law. The term does not include direct, incidental, or
533 consequential pecuniary loss to, or resulting from damage to,
534 the product or nonphysical damage to property other than the
535 product.

536 (3) "Manufacturer" means any person who, in the course of
537 a business conducted for that purpose, designs, makes,
538 constructs, formulates, produces, fabricates, assembles,
539 packages, or labels any product or component part of a product
540 or engages another to do so. The term does not include
541 independent product designers whose services are contracted for
542 by the manufacturer if such designers are not otherwise engaged
543 in the business of selling products.

544 (4) "Person" means any individual, corporation, company,
545 association, firm, partnership, society, organization, joint
546 stock company, or any other entity.

547 (5) "Product" means any tangible personal property
548 distributed commercially.

549 (6) "Seller" means a person or entity, including a
550 retailer, distributor, wholesaler, or lessor, that is regularly
551 engaged in the selling or leasing of a product.

552 Section 6. Section 768.1255, Florida Statutes, is created
553 to read:

554 768.1255 General rule; seller liable as a manufacturer.--

555 (1) GENERAL RULE.--No product liability action may be
556 maintained or commenced against a product seller unless the
557 product seller:

558 (a) Made an express warranty as to the product and the
559 failure of the product to conform to that warranty caused the
560 person's harm;

561 (b) Produced, designed, designated, or provided the plans
562 or specifications for the manufacture or preparation of the
563 product;

564 (c) Altered, modified, assembled, failed to maintain,
565 packaged, labeled, or installed the product in a manner that
566 caused the person's harm;

567 (d) Violated a statutory or regulatory requirement when
568 the seller sold the product, including any violation of s.
569 768.125; or

570 (e) Negligently entrusted or supplied the product for the
571 use of another whom the product seller knew or should have known
572 would be likely to use the product in a manner that posed an
573 unreasonable risk of physical harm to the user or others.

574 (2) SELLER LIABLE AS A MANUFACTURER.--Notwithstanding
575 subsection (1), a product seller may be liable as a manufacturer
576 if:

577 (a) The manufacturer has no identifiable agent, facility,
578 or other presence in the United States;

579 (b) The manufacturer is not subject to service of process
580 in any state in which the action could have been brought and
581 service cannot be secured by a long-arm statute;

582 (c) The manufacturer is otherwise immune from suit; or

583 (d) The court determines that the person is or would be
 584 unable to enforce a judgment against the manufacturer. For
 585 purpose of this paragraph, the statute of limitations applicable
 586 to a claim asserting the liability of a product seller is tolled
 587 from the date of the filing of a complaint against the
 588 manufacturer to the date that judgment is entered against the
 589 manufacturer.

590 Section 7. Subsections (2) and (3) of section 768.1256,
 591 Florida Statutes, are amended to read:

592 768.1256 Government rules defense.--

593 ~~(2) In a product liability action as described in~~
 594 ~~subsection (1), there is a rebuttable presumption that the~~
 595 ~~product is defective or unreasonably dangerous and the~~
 596 ~~manufacturer or seller is liable if the manufacturer or seller~~
 597 ~~did not comply with the federal or state codes, statutes, rules,~~
 598 ~~regulations, or standards which:~~

599 ~~(a) Were relevant to the event causing the death or~~
 600 ~~injury;~~

601 ~~(b) Are designed to prevent the type of harm that~~
 602 ~~allegedly occurred; and~~

603 ~~(c) Require compliance as a condition for selling or~~
 604 ~~distributing the product.~~

605 (2)(3) This section does not apply to an action brought
 606 for harm allegedly caused by a drug that is ordered off the
 607 market or seized by the Federal Food and Drug Administration.

608 Section 8. Section 768.1382, Florida Statutes, is created
 609 to read:

610 768.1382 Street lights and other similar illumination;
 611 limitation on liability.--Neither the state, any of the state's
 612 officers, agencies, or instrumentalities, any political
 613 subdivision, as defined in s. 1.01, nor any electric utility, as
 614 defined in s. 366.02(2), that provides or operates or maintains
 615 street lights, security lights, or other similar illumination
 616 shall be held liable for any civil damages for injury or death
 617 affected or caused by the adequacy or failure of illumination of
 618 such lights, regardless of whether the adequacy or failure of
 619 illumination is alleged or demonstrated to have contributed in
 620 any manner to the injury or death, unless such liability was
 621 expressly assumed by written contract. No such entity that
 622 provides, operates, or maintains a manner of illumination as
 623 described in this section owes a duty to the public to provide,
 624 operate, or maintain the illumination in any manner, except that
 625 such a duty may be expressly assumed by written contract. In any
 626 civil action for damages arising out of personal injury or
 627 wrongful death when an entity's fault regarding the maintenance
 628 of street lights is at issue, if the entity responsible for
 629 maintaining the street lights is not a party to the litigation,
 630 the entity shall not be deemed or found in such action to be in
 631 any way at fault or responsible for the injury or death that
 632 gave rise to the damages.

633 Section 9. Paragraph (d) is added to subsection (9) of
 634 section 768.28, Florida Statutes, to read:

635 768.28 Waiver of sovereign immunity in tort actions;
 636 recovery limits; limitation on attorney fees; statute of

637 limitations; exclusions; indemnification; risk management
 638 programs.--

639 (9)

640 (d) No sheriff or law enforcement officer as defined in s.
 641 943.10(1), employed by any county, municipality, state agency,
 642 or any political subdivision of the state, or the employing
 643 agency as defined in s. 943.10(4), shall be held liable for any
 644 civil damages for injury or death effected or caused by a person
 645 fleeing from a sheriff or law enforcement officer when the
 646 pursuit of that person is conducted in a manner that did not
 647 involve willful or wanton disregard for the safety of persons or
 648 property on the part of the sheriff or law enforcement officer
 649 and the person fleeing is reasonably believed to have committed
 650 a felony violation of the laws of this state.

651 Section 10. Subsection (1) of section 768.76, Florida
 652 Statutes, is amended to read:

653 768.76 Collateral sources of indemnity.--

654 (1) In any action to which this part applies in which
 655 liability is admitted or is determined by the trier of fact and
 656 in which damages are awarded to compensate the claimant for
 657 losses sustained, the jury shall be informed of the total of all
 658 amounts which have been paid for the benefit of claimant or
 659 which are otherwise available to the claimant from all
 660 collateral sources, and the court shall reduce the amount of
 661 such award by the total of all amounts which have been paid for
 662 the benefit of the claimant, or which are otherwise available to
 663 the claimant, from all collateral sources; however, there shall
 664 be no reduction for collateral sources for which a subrogation

665 or reimbursement right exists. Such reduction shall be offset to
 666 the extent of any amount which has been paid, contributed, or
 667 forfeited by, or on behalf of, the claimant or members of the
 668 claimant's immediate family to secure her or his right to any
 669 collateral source benefit which the claimant is receiving as a
 670 result of her or his injury.

671 Section 11. Subsection (9) is added to section 768.79,
 672 Florida Statutes, to read:

673 768.79 Offer of judgment and demand for judgment.--

674 (9) Nothing in this section restricts the ability of
 675 parties to enter into any settlement agreements or release
 676 agreements discharging liability in exchange for an amount of
 677 consideration agreed to by the parties. If the parties reach
 678 such agreement without the assistance of their respective
 679 attorneys, an attorney fee shall be payable to the plaintiff's
 680 attorney for an amount not to exceed 25 percent of the agreed-
 681 upon consideration for the settlement and release, regardless of
 682 any other contractual arrangement for attorney fees that may
 683 exist.

684 Section 12. Subsections (3) and (4) of section 768.81,
 685 Florida Statutes, are amended to read:

686 768.81 Comparative fault.--

687 (3) APPORTIONMENT OF DAMAGES.--In cases to which this
 688 section applies, the court shall enter judgment against each
 689 party liable on the basis of such party's percentage of fault
 690 and not on the basis of the doctrine of joint and several
 691 liability., ~~except as provided in paragraphs (a), (b), and (c):~~

692 ~~(a) Where a plaintiff is found to be at fault, the~~
693 ~~following shall apply:~~

694 ~~1. Any defendant found 10 percent or less at fault shall~~
695 ~~not be subject to joint and several liability.~~

696 ~~2. For any defendant found more than 10 percent but less~~
697 ~~than 25 percent at fault, joint and several liability shall not~~
698 ~~apply to that portion of economic damages in excess of \$200,000.~~

699 ~~3. For any defendant found at least 25 percent but not~~
700 ~~more than 50 percent at fault, joint and several liability shall~~
701 ~~not apply to that portion of economic damages in excess of~~
702 ~~\$500,000.~~

703 ~~4. For any defendant found more than 50 percent at fault,~~
704 ~~joint and several liability shall not apply to that portion of~~
705 ~~economic damages in excess of \$1 million.~~

706
707 ~~For any defendant under subparagraph 2., subparagraph 3., or~~
708 ~~subparagraph 4., the amount of economic damages calculated under~~
709 ~~joint and several liability shall be in addition to the amount~~
710 ~~of economic and noneconomic damages already apportioned to that~~
711 ~~defendant based on that defendant's percentage of fault.~~

712 ~~(b) Where a plaintiff is found to be without fault, the~~
713 ~~following shall apply:~~

714 ~~1. Any defendant found less than 10 percent at fault shall~~
715 ~~not be subject to joint and several liability.~~

716 ~~2. For any defendant found at least 10 percent but less~~
717 ~~than 25 percent at fault, joint and several liability shall not~~
718 ~~apply to that portion of economic damages in excess of \$500,000.~~

719 ~~3. For any defendant found at least 25 percent but not~~
720 ~~more than 50 percent at fault, joint and several liability shall~~
721 ~~not apply to that portion of economic damages in excess of \$1~~
722 ~~million.~~

723 ~~4. For any defendant found more than 50 percent at fault,~~
724 ~~joint and several liability shall not apply to that portion of~~
725 ~~economic damages in excess of \$2 million.~~

726
727 ~~For any defendant under subparagraph 2., subparagraph 3., or~~
728 ~~subparagraph 4., the amount of economic damages calculated under~~
729 ~~joint and several liability shall be in addition to the amount~~
730 ~~of economic and noneconomic damages already apportioned to that~~
731 ~~defendant based on that defendant's percentage of fault.~~

732 ~~(c) With respect to any defendant whose percentage of~~
733 ~~fault is less than the fault of a particular plaintiff, the~~
734 ~~doctrine of joint and several liability shall not apply to any~~
735 ~~damages imposed against the defendant.~~

736 (a)(d) In order to allocate any or all fault to a
737 nonparty, a defendant must affirmatively plead the fault of a
738 nonparty and, absent a showing of good cause, identify the
739 nonparty, if known, or describe the nonparty as specifically as
740 practicable, either by motion or in the initial responsive
741 pleading when defenses are first presented, subject to amendment
742 any time before trial in accordance with the Florida Rules of
743 Civil Procedure.

744 (b)(e) In order to allocate any or all fault to a nonparty
745 and include the named or unnamed nonparty on the verdict form
746 for purposes of apportioning damages, a defendant must prove at

747 trial, by a preponderance of the evidence, the fault of the
 748 nonparty in causing the plaintiff's injuries.

749 (4) APPLICABILITY.--

750 (a) This section applies to negligence cases. For purposes
 751 of this section, "negligence cases" includes, but is not limited
 752 to, civil actions for damages based upon theories of negligence,
 753 strict liability, products liability, professional malpractice
 754 whether couched in terms of contract or tort, or breach of
 755 warranty and like theories, including actions for negligence
 756 against any defendant for failure to prevent commission of an
 757 intentional tort by another. In determining whether a case falls
 758 within the term "negligence cases," the court shall look to the
 759 substance of the action and not the conclusory terms used by the
 760 parties.

761 (b) This section does not apply to any action brought by
 762 any person to recover actual economic damages resulting from
 763 pollution, to any action in which an intentional tortfeasor is
 764 sued and seeks to apportion fault to a negligent tortfeasor
 765 ~~based upon an intentional tort~~, or to any cause of action as to
 766 which application of the doctrine of joint and several liability
 767 is specifically provided by chapter 403, chapter 498, chapter
 768 517, chapter 542, or chapter 895.

769 Section 13. If any provision of this act or its
 770 application to any person or circumstance is held invalid, the
 771 invalidity does not affect other provisions or applications of
 772 this act which can be given effect without the invalid provision
 773 or application, and, to this end, the provisions of this act are
 774 declared severable.

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775 | Section 14. This act shall take effect upon becoming a law
776 | and shall apply to causes of action that accrue on or after the
777 | effective date.