

CHAMBER ACTION

1 The Judiciary Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to civil justice reform; amending s.
7 47.051, F.S.; revising procedures for bringing actions
8 against corporations; creating s. 768.1259, F.S.; defining
9 the term "seller"; prohibiting commencing or maintaining a
10 civil claim or action against a seller under certain
11 circumstances; specifying criteria for actions for product
12 liability of a seller; amending s. 768.81, F.S.; deleting
13 exceptions to a requirement for liability based on
14 percentage of fault instead of joint and several
15 liability; providing applicability; providing an effective
16 date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 47.051, Florida Statutes, is amended to
21 read:

22 47.051 Actions against corporations.--Actions against
23 domestic corporations shall be brought only in the county where

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24 such corporation has its principal place of, ~~or usually keeps,~~
 25 ~~an office for transaction of its customary~~ business, where the
 26 cause of action accrued, or where the property in litigation is
 27 located. Actions against foreign corporations doing business in
 28 this state shall be brought in their principal place of business
 29 ~~a county where such corporation has an agent or other~~
 30 ~~representative~~, where the cause of action accrued, or where the
 31 property in litigation is located. If venue against a foreign
 32 corporation is not otherwise available under this section, an
 33 action may be commenced where the plaintiff resided at the time
 34 of the accrual of the cause of action.

35 Section 2. Section 768.1259, Florida Statutes, is created
 36 to read:

37 768.1259 Protection from liability for sellers.--

38 (1) As used in this section, the term "seller" means a
 39 person who sells a product as a retailer, distributor, or
 40 wholesaler or who otherwise transfers a product to another for
 41 compensation.

42 (2) A person may not commence or maintain a civil claim or
 43 action against the seller of a product based on any legal theory
 44 that the product caused harm of any kind unless the seller:

45 (a) Manufactured, produced, or designed the product;

46 (b) Altered, modified, assembled, or failed to maintain
 47 the product in a manner that caused harm to the claimant; or

48 (c) Knew, or in the exercise of reasonable care, should
 49 have known, that the product was recalled prior to sale.

50 (3) Notwithstanding subsection (2), the seller of a
 51 product is subject to an action for product liability if the

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52 manufacturer of the product is not subject to personal
53 jurisdiction in this state.

54 Section 3. Subsection (3) of section 768.81, Florida
55 Statutes, is amended to read:

56 768.81 Comparative fault.--

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

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

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

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

69 ~~3. For any defendant found at least 25 percent but not~~
70 ~~more than 50 percent at fault, joint and several liability shall~~
71 ~~not apply to that portion of economic damages in excess of~~
72 ~~\$500,000.~~

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

76
77 ~~For any defendant under subparagraph 2., subparagraph 3., or~~
78 ~~subparagraph 4., the amount of economic damages calculated under~~
79 ~~joint and several liability shall be in addition to the amount~~

80 ~~of economic and noneconomic damages already apportioned to that~~
 81 ~~defendant based on that defendant's percentage of fault.~~

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

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

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

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

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

96
 97 ~~For any defendant under subparagraph 2., subparagraph 3., or~~
 98 ~~subparagraph 4., the amount of economic damages calculated under~~
 99 ~~joint and several liability shall be in addition to the amount~~
 100 ~~of economic and noneconomic damages already apportioned to that~~
 101 ~~defendant based on that defendant's percentage of fault.~~

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

106 ~~(a)(d)~~ In order to allocate any or all fault to a
 107 nonparty, a defendant must affirmatively plead the fault of a

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108 | nonparty and, absent a showing of good cause, identify the
109 | nonparty, if known, or describe the nonparty as specifically as
110 | practicable, either by motion or in the initial responsive
111 | pleading when defenses are first presented, subject to amendment
112 | any time before trial in accordance with the Florida Rules of
113 | Civil Procedure.

114 | (b)~~(e)~~ In order to allocate any or all fault to a nonparty
115 | and include the named or unnamed nonparty on the verdict form
116 | for purposes of apportioning damages, a defendant must prove at
117 | trial, by a preponderance of the evidence, the fault of the
118 | nonparty in causing the plaintiff's injuries.

119 | Section 4. This act shall take effect upon becoming a law
120 | and shall apply to causes of action that accrue on or after the
121 | effective date.