

CHAMBER ACTION

1 The State Administration Council 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; providing a definition; creating s.  
9 768.1259, F.S.; defining the term "seller"; prohibiting  
10 commencing or maintaining a civil claim or action against  
11 a seller under certain circumstances; specifying criteria  
12 for actions for product liability of a seller; amending s.  
13 768.81, F.S.; deleting exceptions to a requirement for  
14 liability based on percentage of fault instead of joint  
15 and several liability; providing applicability; providing  
16 an effective 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

24 | such corporation has its principal office, ~~or usually keeps, an~~  
 25 | ~~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 the county in which its  
 29 | registered agent for service of process resides ~~a county where~~  
 30 | ~~such corporation has an agent or other representative~~, where the  
 31 | cause of action accrued, or where the property in litigation is  
 32 | located. For purposes of this section, the term "principal  
 33 | office" means the office in the state in which the principal  
 34 | executive office is located.

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 a claim that the  
 44 | product contained a defect which proximately caused injury to  
 45 | that person unless the seller:

46 | (a) Manufactured, produced, or designed the product;

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

49 | (c) Had actual knowledge of a manufacturing defect which  
 50 | proximately caused the person's harm; or

51        (d) Knew, or, in the exercise of reasonable care, should  
 52 have known, that the product was recalled prior to sale and the  
 53 defect identified in the recall proximately cause the injury  
 54 complained of.

55        (3) Notwithstanding subsection (2), the seller of a  
 56 product is subject to an action for product liability if the  
 57 manufacturer of the product is not subject to personal  
 58 jurisdiction in this state or if the manufacturer is insolvent.

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

61        768.81 Comparative fault.--

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

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

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

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

74        ~~3. For any defendant found at least 25 percent but not~~  
 75 ~~more than 50 percent at fault, joint and several liability shall~~  
 76 ~~not apply to that portion of economic damages in excess of~~  
 77 ~~\$500,000.~~

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

81  
 82 ~~For any defendant under subparagraph 2., subparagraph 3., or~~  
 83 ~~subparagraph 4., the amount of economic damages calculated under~~  
 84 ~~joint and several liability shall be in addition to the amount~~  
 85 ~~of economic and noneconomic damages already apportioned to that~~  
 86 ~~defendant based on that defendant's percentage of fault.~~

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

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

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

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

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

101  
 102 ~~For any defendant under subparagraph 2., subparagraph 3., or~~  
 103 ~~subparagraph 4., the amount of economic damages calculated under~~  
 104 ~~joint and several liability shall be in addition to the amount~~

HB 1513 CS

2005  
CS

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

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

111 (a)~~(d)~~ In order to allocate any or all fault to a  
 112 nonparty, a defendant must affirmatively plead the fault of a  
 113 nonparty and, absent a showing of good cause, identify the  
 114 nonparty, if known, or describe the nonparty as specifically as  
 115 practicable, either by motion or in the initial responsive  
 116 pleading when defenses are first presented, subject to amendment  
 117 any time before trial in accordance with the Florida Rules of  
 118 Civil Procedure.

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

124 Section 4. This act shall take effect upon becoming a law  
 125 and shall apply to causes of action that accrue on or after the  
 126 effective date.