

Bill No. HB 1931, 1st Eng.

Barcode 763998

CHAMBER ACTION

Senate

House

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Senator Webster moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 768.0755, Florida Statutes, is created to read:

768.0755 Premises liability for transitory foreign substances in a retail establishment.--If a person slips and falls on a transitory foreign substance in a retail establishment, the injured person must prove that the retail establishment had actual or constructive knowledge of the dangerous condition in that the condition existed for a sufficient length of time so that, in the exercise of ordinary care, the retail establishment should have known of the dangerous condition and taken action to remedy it. Constructive knowledge may be proven by circumstantial evidence showing that:

(1) The dangerous condition existed for such a length of time that in the exercise of ordinary care, the retail

Bill No. HB 1931, 1st Eng.

Barcode 763998

1 establishment should have known of the condition; or

2 (2) The condition occurred with regularity and was  
3 therefore foreseeable.

4 Section 2. Subsection (4) of section 768.81, Florida  
5 Statutes, is amended to read:

6 768.81 Comparative fault.--

7 (4) APPLICABILITY.--

8 (a) This section applies to negligence cases. For  
9 purposes of this section, the term "negligence cases"  
10 includes, but is not limited to, civil actions for damages  
11 based upon theories of negligence, including negligent  
12 security resulting in the commission of an intentional tort or  
13 criminal act; strict liability; products liability;  
14 professional malpractice whether couched in terms of contract  
15 or tort; or breach of warranty and like theories. In  
16 determining whether a case falls within the term "negligence  
17 cases," the court shall look to the substance of the action  
18 and not the conclusory terms used by the parties.

19 (b) This section does not apply to any action brought  
20 by any person to recover actual economic damages resulting  
21 from pollution, to any action in which an intentional  
22 tortfeasor seeks to apportion fault to a negligent tortfeasor  
23 ~~based upon an intentional tort~~, or to any cause of action as  
24 to which application of the doctrine of joint and several  
25 liability is specifically provided by chapter 403, chapter  
26 498, chapter 517, chapter 542, or chapter 895.

27 Section 3. Section 768.0710, Florida Statutes, is  
28 repealed.

29 Section 4. For the purpose of incorporating the  
30 amendment to section 768.81, Florida Statutes, in a reference  
31 thereto, section 25.077, Florida Statutes, is reenacted to

Bill No. HB 1931, 1st Eng.

Barcode 763998

1 read:

2           25.077 Negligence case settlements and jury verdicts;  
3 case reporting.--Through the state's uniform case reporting  
4 system, the clerk of court shall report to the Office of the  
5 State Courts Administrator, beginning in 2003, information  
6 from each settlement or jury verdict and final judgment in  
7 negligence cases as defined in s. 768.81(4), as the President  
8 of the Senate and the Speaker of the House of Representatives  
9 deem necessary from time to time. The information shall  
10 include, but need not be limited to: the name of each  
11 plaintiff and defendant; the verdict; the percentage of fault  
12 of each; the amount of economic damages and noneconomic  
13 damages awarded to each plaintiff, identifying those damages  
14 that are to be paid jointly and severally and by which  
15 defendants; and the amount of any punitive damages to be paid  
16 by each defendant.

17           Section 5. This act shall take effect July 1, 2005.

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20 ===== T I T L E   A M E N D M E N T =====

21 And the title is amended as follows:

22           Delete everything before the enacting clause

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24 and insert:

25           An act relating to negligence; creating s.  
26           768.0755, F.S.; providing that if a person  
27           slips and falls on a transitory foreign  
28           substance in a retail establishment, the  
29           injured person must prove that the retail  
30           establishment had knowledge of the condition in  
31           that the condition existed for a sufficient

Bill No. HB 1931, 1st Eng.

Barcode 763998

1 time for the retail establishment to have taken  
2 action to remedy the condition; providing that  
3 constructive knowledge may be proven by  
4 circumstantial evidence; amending s. 768.81,  
5 F.S.; redefining the term "negligence cases" as  
6 it relates to comparative fault to include  
7 claims for negligent security in which the  
8 defendant is sued for failing to prevent the  
9 commission of an intentional tort; providing  
10 that the apportionment of damages does not  
11 apply to any action in which an intentional  
12 tortfeasor is sued and seeks to apportion fault  
13 to a negligent tortfeasor; repealing s.  
14 768.0710, F.S., relating to the duty to  
15 maintain premises in a reasonably safe  
16 condition for the safety of business invitees;  
17 reenacting s. 25.077, F.S., relating to the  
18 duty of the clerk of court to report certain  
19 information concerning negligence cases, to  
20 incorporate the amendment made to s. 768.81,  
21 F.S., in a reference thereto; providing an  
22 effective date.

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