

CHAMBER ACTION

1 The State Administration Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to negligence; creating s. 768.0755, F.S.;
7 providing that a person seeking damages for a slip and
8 fall on a transitory foreign substance in a commercial
9 establishment must prove that the commercial establishment
10 had actual knowledge of the condition or constructive
11 knowledge of the condition; defining "constructive
12 knowledge"; providing that constructive knowledge may be
13 proven by circumstantial evidence; amending s. 768.81,
14 F.S.; redefining the term "negligence cases" as it relates
15 to comparative fault to include claims for negligent
16 security in which the defendant is sued for failing to
17 prevent the commission of an intentional tort; providing
18 that the apportionment of damages does not apply to any
19 action in which an intentional tortfeasor is sued and
20 seeks to apportion fault to a negligent tortfeasor;
21 repealing s. 768.0710, F.S., relating to the duty to
22 maintain premises in a reasonably safe condition for the
23 safety of business invitees; reenacting s. 25.077, F.S.,

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24 relating to the duty of the clerk of court to report
 25 certain information concerning negligence cases, to
 26 incorporate the amendment made to s. 768.81, F.S., in a
 27 reference thereto; providing an effective date.

28

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

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31 Section 1. Section 768.0775, Florida Statutes, is created
 32 to read:

33 768.0775 Premises liability for transitory foreign
 34 substances in a commercial establishment.--If a person slips and
 35 falls on a transitory foreign substance in a commercial
 36 establishment, the injured person must prove that the commercial
 37 establishment had actual knowledge of the dangerous condition or
 38 had constructive knowledge of the dangerous condition in that
 39 the condition existed for a sufficient length of time that, in
 40 the exercise of ordinary care, the commercial establishment
 41 should have known of the dangerous condition and taken action to
 42 remedy it. Constructive knowledge may be proven by
 43 circumstantial evidence showing that the dangerous condition
 44 existed for such a length of time that in the exercise of
 45 ordinary care the commercial establishment should have known of
 46 the condition.

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

49 768.81 Comparative fault.--
 50 (4) APPLICABILITY.--

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51 (a) This section applies to negligence cases. For purposes
 52 of this section, the term "negligence cases" includes, but is
 53 not limited to, civil actions for damages based upon theories of
 54 negligence, including negligent security resulting in the
 55 commission of an intentional tort or criminal act; strict
 56 liability;; products liability;; professional malpractice
 57 whether couched in terms of contract or tort;; or breach of
 58 warranty and like theories. In determining whether a case falls
 59 within the term "negligence cases," the court shall look to the
 60 substance of the action and not the conclusory terms used by the
 61 parties.

62 (b) This section does not apply to any action brought by
 63 any person to recover actual economic damages resulting from
 64 pollution, to any action in which an intentional tortfeasor
 65 seeks to apportion fault to a negligent tortfeasor ~~based upon an~~
 66 ~~intentional tort~~, or to any cause of action as to which
 67 application of the doctrine of joint and several liability is
 68 specifically provided by chapter 403, chapter 498, chapter 517,
 69 chapter 542, or chapter 895.

70 Section 3. Section 768.0710, Florida Statutes, is
 71 repealed.

72 Section 4. For the purpose of incorporating the amendment
 73 to section 768.81, Florida Statutes, in a reference thereto,
 74 section 25.077, Florida Statutes, is reenacted to read:

75 25.077 Negligence case settlements and jury verdicts; case
 76 reporting.--Through the state's uniform case reporting system,
 77 the clerk of court shall report to the Office of the State
 78 Courts Administrator, beginning in 2003, information from each

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79 settlement or jury verdict and final judgment in negligence
80 cases as defined in s. 768.81(4), as the President of the Senate
81 and the Speaker of the House of Representatives deem necessary
82 from time to time. The information shall include, but need not
83 be limited to: the name of each plaintiff and defendant; the
84 verdict; the percentage of fault of each; the amount of economic
85 damages and noneconomic damages awarded to each plaintiff,
86 identifying those damages that are to be paid jointly and
87 severally and by which defendants; and the amount of any
88 punitive damages to be paid by each defendant.

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