

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: SB 2566

SPONSOR: Senator Webster and others

SUBJECT: Negligence

DATE: April 11, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siebert	Cooper	CM	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides that, when a person slips and falls on a “transitory foreign substance” in a retail establishment, the injured person must prove the retail establishment had knowledge of the condition and that the condition existed for a sufficient time for the retail establishment to have taken action to remedy the condition. This bill also provides for the apportionment of damages if an unnamed person commits an intentional tort or a criminal act from which the litigation arises.

This bill creates section 768.0755, amends section 768.81, and repeals section 768.0710 of the Florida Statutes.

II. Present Situation:

Premise Liability Generally

The term “premises liability” refers to a situation where an individual is injured on property, or “premises” owned or maintained by someone else. The property owner or party responsible for maintaining the property may be held legally responsible for that person’s injuries if the injuries were the result of a dangerous condition that existed on the property.

In Florida, the status of the person injured determines the duty of care required by the property owner. A property owner owes a duty to undiscovered trespassers to refrain from intentional misconduct, but owes no duty to warn of dangerous conditions.¹ For discovered trespassers, property owners must refrain from gross negligence or intentional misconduct and must warn the

¹ Section 768.075(3), F.S.

discovered trespasser of dangerous conditions that are known to the property owner but are not readily observable by others.²

Property owners in Florida owe a different standard of care to persons who are invited on the property. “Invitees” are visitors who enter the property with an objectively reasonable belief that they have been invited or are otherwise welcome on the property.³

Current law requires that the person or entity in possession or control of a business premises must maintain the premises in a reasonably safe condition.⁴ This duty includes reasonable efforts to keep the premises free from transitory foreign objects or substances that it is foreseeable might cause loss, injury or damage.⁵ In a civil action for damages as a result of a transitory foreign object or substance, the person filing the claim has the burden of proof that there was a duty owed to the claimant, there was a failure to exercise reasonable care, and the failure to exercise reasonable care was the legal cause of the loss, injury, or damage.⁶

The law further provides that actual or constructive notice of the transitory foreign object or substance is not a required element of proof to the claim. The genesis of this law enacted in 2002 arose due to a Florida Supreme Court ruling in a case involving a grocery store shopper who slipped and fell on a piece of banana lying on the floor.⁷ In *Owens v. Publix Supermarkets*, the Supreme Court changed Florida common law precedent in slip and fall cases by shifting the burden to the business owner to establish that he or she exercised reasonable care under the circumstances and by eliminating the requirement that the business invitee establish that the owner had constructive knowledge of the existence of the transitory foreign object.⁸

Comparative Negligence

The comparative negligence rule provides that the plaintiff’s damages will be reduced or prohibited based on the percentage of fault attributed to the plaintiff. In Florida, current law provides that the recovery by a plaintiff will be diminished by the proportion of the plaintiff’s fault attributable to the injury.⁹ Also, when there are multiple parties that are liable for the injury, the judgment against each liable party should be in proportion to each party’s fault contributable to the injury.¹⁰

If plaintiff is also at fault, each defendant is responsible as follows:

- Defendant 10 percent or less at fault = no joint liability.
- Defendant 10 percent to 25 percent at fault = joint liability limited to \$200,000.
- Defendant 25 percent to 50 percent at fault = joint liability limited to \$500,000.

² *Id.*

³ Section 768.075(3)(a)1., F.S.

⁴ Section 768.0710 (1), F.S.

⁵ *Id.*

⁶ Section 768.0710(3), F.S.

⁷ *Owens v. Publix Supermarkets, Inc.*, 802 So.2d 315, 317 (Fla. 2001).

⁸ *Id.* at 331-332.

⁹ Section 768.81(2), F.S.

¹⁰ Section 768.81(3), F.S.

- Defendant more than 50 percent at fault = joint liability limited to \$1,000,000.¹¹

If plaintiff is not at fault, each defendant is responsible as follows:

- Defendant 10 percent or less at fault = no joint liability.
- Defendant 10 percent to 25 percent at fault = joint liability limited to \$500,000.
- Defendant 25 percent to 50 percent at fault = joint liability limited to \$1,000,000.
- Defendant more than 50 percent at fault = joint liability limited to \$2,000,000.¹²

Currently, the provisions for apportioning damages do not apply to actions based upon an intentional tort.

III. Effect of Proposed Changes:

Section 1 creates s. 768.0755, F.S., to provide that if a person slips and falls on a “transitory foreign substance” in a retail establishment, the injured party must prove that the retail establishment had actual or constructive knowledge of the condition and that the condition existed for a sufficient length of time that the retail establishment should have been aware of the substance. Constructive knowledge may be proven by circumstantial evidence showing that the dangerous condition existed for such a length of time that in the exercise of ordinary care, the retail establishment should have known about the dangerous condition or the condition occurred regularly and was therefore foreseeable. These changes restore current law to pre-*Owens* standards.

Section 2 amends s. 768.81, F.S., to provide in any action in which the comparative negligence rule applies that the trier of fact must determine if liability exists on the part of the unnamed person who committed the intentional tort or criminal act from which the litigation arose. If liability exists, the trier of fact must apportion fault accordingly.

This section also provides that claims for negligent security, which is when the defendant is sued for failing to prevent or reduce the likelihood of an intentional tort, are included under the section that provides for comparative fault in negligence cases.

This section also provides that actions in which an intentional tortfeasor is sued and wishes to apportion fault to a negligent tortfeasor are not included in s. 768.81, F.S.

Section 3 repeals s. 768.0710, F.S., relating to the duty of an establishment to maintain the premises in a reasonably safe condition for the safety of the business invitees, which includes reasonable efforts to keep the premises free from transitory foreign objects or substances that might foreseeably give rise to loss, injury, or damage.

Section 4 reenacts s. 25.077, F.S., to incorporate the amendments made to s. 768.81, F.S.

Section 5 provides an effective date of July 1, 2005.

¹¹ *Id.*

¹² *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If enacted, the bill could have a significant negative impact on future plaintiffs and a significant positive impact on businesses. However, the exact impact cannot be determined at this time.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
