

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: Judiciary Committee

BILL: CS/SB 2566

SPONSOR: Judiciary Committee, Senator Webster and others

SUBJECT: Negligence

DATE: April 25, 2005

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Siebert</u> | <u>Cooper</u> | <u>CM</u> | Favorable |
| 2. | <u>Cibula</u> | <u>Maclure</u> | <u>JU</u> | Fav/CS |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This committee substitute 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 actual or constructive knowledge of the condition, in that the condition existed for a sufficient time for the retail establishment to have taken action to remedy the condition. This committee substitute also creates a presumption that a business has provided adequate security against criminal acts in a parking lot committed by third parties. To receive the benefit of the presumption, a business must take and maintain specific security measures in a reasonable, non-negligent manner.

This committee substitute creates sections 768.0755 and 812.18, Florida Statutes. The committee substitute also repeals section 768.0710, Florida Statutes.

II. Present Situation:

Premises 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 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 statute provides that the plaintiff’s damages will be reduced based on the percentage of fault attributed to the plaintiff.⁹ Also, when there are multiple parties that are liable for the injury, the judgment against each liable party, with some exceptions, should be in proportion to each party’s fault contributable to the injury.¹⁰

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

- Defendant 10 percent or less at fault, then that defendant has no joint liability.

¹ Section 768.075(3)(b), F.S.

² *Id.*

³ Section 768.075(3)(a)1., F.S.

⁴ Section 768.0710(1), F.S.

⁵ *Id.*

⁶ Section 768.0710(2), 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 is more than 10 percent but less than 25 percent at fault, the joint liability of the defendant is limited to \$200,000 of the economic damages.
- Defendant is 25 percent but not more than 50 percent at fault, then the joint liability of the defendant is limited to \$500,000 of the economic damages.
- Defendant is more than 50 percent at fault, then the joint liability of that defendant is limited to \$1,000,000 of the economic damages.¹¹

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

- Defendant is less than 10 percent at fault, then the defendant has no joint liability.
- Defendant is 10 percent but less than 25 percent at fault, then the joint liability of the defendant is limited to \$500,000 of the economic damages.
- Defendant is 25 percent but not more than 50 percent at fault, then the joint liability of the defendant is limited to \$1,000,000 of the economic damages.
- Defendant is more than 50 percent at fault, then the joint liability of the defendant is limited to \$2,000,000 of the economic damages.¹²

In actions alleging negligent security, the damages for negligent security may not be reduced under the comparative negligence statute by fault attributable to an intentional tortfeasor.¹³

III. Effect of Proposed Changes:

This committee substitute 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 actual or constructive knowledge of the condition, in that the condition existed for a sufficient time for the retail establishment to have taken action to remedy the condition. In effect, the committee substitute restores premises liability law for slip and fall cases in retail establishments to the law as it existed prior to the Florida Supreme Court’s opinion in *Owens v. Publix Supermarkets*, 802 So. 2d 315 (Fla. 2001).

This committee substitute also creates a presumption that a business, owning or controlling a parking lot with 150 or more spaces, has provided adequate security against criminal acts in a parking lot committed by third parties. To receive the benefit of the presumption, a business must take and maintain specific security measures in a reasonable non-negligent manner. The security measures include:

- Posting signs stating the businesses hours of operations and advising that the premises are monitored by video cameras;
- Providing sufficient illumination;
- Providing training to employees on safety and security issues;
- Operating security cameras;
- Using security guards to monitor security cameras or patrol the premises as determined by a security assessment;

¹¹ *Id.*

¹² *Id.*

¹³ *Merrill Crossings Assoc. v. McDonald*, 705 So. 2d 560 (Fla. 1998).

- Maintaining fencing; and
- Conducting a security assessment that is available through discovery.

The committee substitute takes effect on July 1, 2005.

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:

The committee substitute makes establishing liability on retailers in slip-and-fall cases more difficult for plaintiffs. The committee substitute also creates a potential safe harbor for businesses to avoid liability for negligent security.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The committee substitute is ambiguous as to whether the safe harbor from liability for criminal acts by a third party applies to acts committed only in parking lots or parking lots and adjacent areas. Section 812.18(1), F.S., appears to create a safe harbor for both acts occurring in a parking lot and adjacent areas. Section 812.18(2), F.S., appears to limit the safe harbor to acts occurring in parking lots. The Legislature may wish to clarify the locations to which the safe harbor applies.

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.
