

By Senator Webster

9-1479A-05

1                                 A bill to be entitled  
2             An act relating to negligence; creating s.  
3             768.0755, F.S.; providing that if a person  
4             slips and falls on a transitory foreign  
5             substance in a retail establishment, the  
6             injured person must prove that the retail  
7             establishment had knowledge of the condition  
8             and that the condition existed for a sufficient  
9             time for the retail establishment to have taken  
10            action to remedy the condition; providing that  
11            constructive knowledge may be proven by  
12            circumstantial evidence; amending s. 768.81,  
13            F.S.; providing for the apportionment of  
14            damages if an unnamed person commits an  
15            intentional tort or a criminal act from which  
16            the litigation arises; redefining the term  
17            "negligence cases" to include claims for  
18            negligent security in which the defendant is  
19            sued for failing to prevent the commission of  
20            an intentional tort; providing that the  
21            apportionment of damages does not apply to any  
22            action in which an intentional tortfeasor is  
23            sued and seeks to apportion fault to a  
24            negligent tortfeasor; repealing s. 768.0710,  
25            F.S., relating to the duty to maintain premises  
26            in a reasonably safe condition for the safety  
27            of business invitees; reenacting s. 25.077,  
28            F.S., relating to the duty of the clerk of  
29            court to report certain information concerning  
30            negligence cases, to incorporate the amendment  
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1           made to s. 768.81, F.S., in a reference  
2           thereto; providing an effective date.  
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4 Be It Enacted by the Legislature of the State of Florida:  
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6           Section 1. Section 768.0755, Florida Statutes, is  
7 created to read:

8           768.0755 Premises liability for transitory foreign  
9 substances in a retail establishment.--If a person slips and  
10 falls on a transitory foreign substance in a retail  
11 establishment, the injured person must prove that the retail  
12 establishment had actual or constructive knowledge of the  
13 dangerous condition and that the condition existed for a  
14 sufficient length of time so that, in the exercise of ordinary  
15 care, the retail establishment should have known of the  
16 dangerous condition and taken action to remedy it.  
17 Constructive knowledge may be proven by circumstantial  
18 evidence showing that:

19           (1) The dangerous condition existed for such a length  
20 of time that in the exercise of ordinary care, the retail  
21 establishment should have known of the condition; or

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

24           Section 2. Subsections (3) and (4) of section 768.81,  
25 Florida Statutes, are amended to read:

26           768.81 Comparative fault.--

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

3 (a) Where a plaintiff is found to be at fault, the  
4 following shall apply:

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

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

11 3. For any defendant found at least 25 percent but not  
12 more than 50 percent at fault, joint and several liability  
13 shall not apply to that portion of economic damages in excess  
14 of \$500,000.

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

18  
19 For any defendant under subparagraph 2., subparagraph 3., or  
20 subparagraph 4., the amount of economic damages calculated  
21 under joint and several liability shall be in addition to the  
22 amount of economic and noneconomic damages already apportioned  
23 to that defendant based on that defendant's percentage of  
24 fault.

25 (b) Where a plaintiff is found to be without fault,  
26 the following shall apply:

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

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

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

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

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11 For any defendant under subparagraph 2., subparagraph 3., or  
12 subparagraph 4., the amount of economic damages calculated  
13 under joint and several liability shall be in addition to the  
14 amount of economic and noneconomic damages already apportioned  
15 to that defendant based on that defendant's percentage of  
16 fault.

17           (c) With respect to any defendant whose percentage of  
18 fault is less than the fault of a particular plaintiff, the  
19 doctrine of joint and several liability shall not apply to any  
20 damages imposed against the defendant.

21           (d) In order to allocate any or all fault to a  
22 nonparty, a defendant must affirmatively plead the fault of a  
23 nonparty and, absent a showing of good cause, identify the  
24 nonparty, if known, or describe the nonparty as specifically  
25 as practicable, either by motion or in the initial responsive  
26 pleading when defenses are first presented, subject to  
27 amendment any time before trial in accordance with the Florida  
28 Rules of Civil Procedure.

29           (e) In order to allocate any or all fault to a  
30 nonparty and include the named or unnamed nonparty on the  
31 verdict form for purposes of apportioning damages, a defendant

1 must prove at trial, by a preponderance of the evidence, the  
2 fault of the nonparty in causing the plaintiff's injuries.

3 (f) In any action to which this section applies, the  
4 trier of fact shall first determine if liability exists on the  
5 part of an unnamed person who committed an intentional tort or  
6 a criminal act from which the litigation arose. If such  
7 liability exists, as a part of the verdict form, the trier of  
8 fact shall apportion fault according to this determination.

9 (4) APPLICABILITY.--

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

22 (b) This section does not apply to any action brought  
23 by any person to recover actual economic damages resulting  
24 from pollution, to any action in which an intentional  
25 tortfeasor is sued and seeks to apportion fault to a negligent  
26 tortfeasor, to any action based upon an intentional tort, or  
27 to any cause of action as to which application of the doctrine  
28 of joint and several liability is specifically provided by  
29 chapter 403, chapter 498, chapter 517, chapter 542, or chapter  
30 895.

1           Section 3. Section 768.0710, Florida Statutes, is  
2 repealed.

3           Section 4. For the purpose of incorporating the  
4 amendment made by this act to section 768.81, Florida  
5 Statutes, in references thereto, section 25.077, Florida  
6 Statutes, is reenacted to read:

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

22           Section 5. This act shall take effect July 1, 2005.  
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SENATE SUMMARY

Provides that if 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. Provides that constructive knowledge may be proven by circumstantial evidence. Provides for the apportionment of damages if an unnamed person commits an intentional tort or a criminal act from which the litigation arises. Provides that the apportionment of damages does not apply to any action in which an intentional tortfeasor is sued and seeks to apportion fault to a negligent tortfeasor. (See bill for details.)

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