

By the Committee on Judiciary; and Senators Webster, King,  
Clary and Lynn

590-2205-05

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 in  
8 | 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; creating s. 812.18,  
13 | F.S.; providing legislative intent relating to  
14 | business parking lot security; providing an  
15 | evidentiary presumption relating to determining  
16 | whether there was adequate security to protect  
17 | against a reasonably foreseeable and  
18 | preventable criminal act that occurs in a  
19 | commercial parking lot; providing for  
20 | admissibility of evidence relating to  
21 | compliance with this section; providing an  
22 | exception to applicability of the section;  
23 | repealing s. 768.0710, F.S., relating to the  
24 | duty to maintain premises in a reasonably safe  
25 | condition for the safety of business invitees;  
26 | providing an effective date.  
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28 | Be It Enacted by the Legislature of the State of Florida:  
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30 | Section 1. Section 768.0755, Florida Statutes, is  
31 | created to read:

1           768.0755 Premises liability for transitory foreign  
2 substances in a retail establishment.--If a person slips and  
3 falls on a transitory foreign substance in a retail  
4 establishment, the injured person must prove that the retail  
5 establishment had actual or constructive knowledge of the  
6 dangerous condition in that the condition existed for a  
7 sufficient length of time so that, in the exercise of ordinary  
8 care, the retail establishment should have known of the  
9 dangerous condition and taken action to remedy it.  
10 Constructive knowledge may be proven by circumstantial  
11 evidence showing that:

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

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

17           Section 2. Section 812.18, Florida Statutes, is  
18 created to read:

19           812.18 Business parking lot security.--

20           (1) The Legislature recognizes that a person or  
21 organization who owns or controls an interest in commercial  
22 real property upon which the sales of goods or services takes  
23 place and who owns or controls a parking lot of 150 or more  
24 parking spaces associated with such commercial property should  
25 provide adequate security for invitees, guests, and other  
26 members of the public who are legally on the premises to  
27 protect against reasonably foreseeable and preventable  
28 criminal acts that may occur in such parking lot, adjacent  
29 public walkways, common areas, and commercial business  
30 entrances and exits on the premises.

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1           (2) In determining whether adequate security to  
2 protect against a reasonably foreseeable and preventable  
3 criminal act was provided at the time that the criminal act  
4 occurred, a presumption exists that a person or organization  
5 who owns or controls an interest in commercial real property  
6 upon which the sales of goods or services takes place and who  
7 owns or controls a parking lot of 150 or more parking spaces  
8 associated with such commercial property has fulfilled any  
9 duty to provide adequate security in such parking lot to any  
10 person legally on the property in such parking lot against  
11 criminal acts committed by third parties if the court finds  
12 that the owner met the following conditions in a non-negligent  
13 manner at the time the criminal act occurred, and any party  
14 may present evidence on motion for summary judgment or at  
15 trial that some or all of the following security measures had  
16 or had not been taken and maintained in a reasonable,  
17 non-negligent manner:

18           (a) Signs were prominently posted in the parking lot  
19 and other exterior public places on the premises indicating  
20 the hours of normal business operations and advising that the  
21 premises are monitored by video cameras. Signs may also  
22 provide a safety message substantially similar to the  
23 following: TO HELP PROTECT YOUR SAFETY AND PERSONAL PROPERTY,  
24 PLEASE LOCK YOUR VEHICLE, BE ALERT, AND DO NOT LEAVE VALUABLES  
25 IN YOUR VEHICLE.

26           (b) Substantially all of the parking lot, adjacent  
27 public walkways, common areas, and commercial business  
28 entrances and exits on the premises, including the location  
29 where the criminal act occurred, were illuminated at an  
30 intensity of at least 2 foot-candles per square foot at 36  
31 inches above the surface of the ground, pavement, or walkway,

1 as attested to by a certified electrical engineer or a  
2 licensed electrical contractor, unless another level of  
3 illumination is required by local, state, or federal law.

4 (c) The person or organization who owns or controls  
5 the property adopted and maintained reasonable policies and  
6 training programs for employees concerning crime awareness and  
7 prevention and safety and security of invitees, guests, and  
8 other members of the public.

9 (d) Security cameras were installed and were operating  
10 during business hours and covered substantially all the  
11 parking lot and adjacent public walkways, common areas, and  
12 commercial building entrances and exits on the premises, and  
13 the recording for the cameras were maintained for at least 30  
14 days.

15 (e) One or more private security guards licensed  
16 pursuant to chapter 493 or police officers were on duty,  
17 either monitoring surveillance cameras or patrolling the  
18 premises, with such frequency that each area of the parking  
19 lot, public walkways, common areas, and commercial building  
20 entrances and exits could be observed by the guard or guards  
21 at not less than 30-minute intervals. The number of security  
22 guards or police officers utilized should be based on a  
23 reasonable assessment pursuant to paragraph (g). This  
24 assessment should be based, at a minimum, on the number of  
25 prior crimes occurring on and around the parking lot, adjacent  
26 public walkways, common areas, and commercial building  
27 entrances and exits on the premises, the time of day and  
28 season of commission of such crimes relative to the hours of  
29 business operations, the size of the parking lot, and the  
30 ability of the security guards or police officers to monitor  
31 and patrol the premises in a timely manner as described above.

1           (f) When not prohibited by law, fencing had been  
2 installed and maintained adjacent to property which limited  
3 pedestrian access and entry onto the premises via public  
4 accessways and walkways and denied access onto the premises  
5 from areas not intended for access onto the premises.

6           (g) A person or organization owning or controlling an  
7 interest in commercial real property made an assessment of the  
8 appropriate security measures for the parking lot, public  
9 walkways, common areas, and commercial building entrances and  
10 exits based upon criminal-incident reports from the local law  
11 enforcement agency. This assessment shall include an onsite  
12 examination and analysis of the business and surrounding  
13 properties by the person or organization to ascertain what  
14 crimes have occurred in the past, crimes likely to occur in  
15 the future, and the present status of security measures. The  
16 results and conclusions must be in writing and must be  
17 available through discovery.

18           (3) The provisions of this section and evidence  
19 relating to compliance or noncompliance with this section  
20 shall be admissible in evidence in any civil or criminal  
21 proceeding, if such evidence is otherwise admissible pursuant  
22 to the Florida Evidence Code.

23           (4) This section does not apply if the criminal act  
24 was committed by the person owning or controlling the interest  
25 in the commercial real property or an employee or agent of  
26 such person.

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

29           Section 4. This act shall take effect July 1, 2005.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2566

The committee substitute differs from the underlying bill in that the committee substitute:

- Deletes provisions that would have required the apportionment of fault to an intentional tortfeasor when a person is liable for damages as the result of negligent security; and
- Creates a presumption that a business has provided adequate security against criminal acts committed by third parties in a parking lot when certain security measures are implemented in a reasonable non-negligent manner.