

Bill No. HB 145

Barcode 351230

CHAMBER ACTION

Senate

House

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Senator Aronberg moved the following **amendment to substitute amendment** (501164):

Senate Amendment (with title amendment)

On page 1, line 21, through
page 3, line 25, delete those lines

and insert:

(3) APPORTIONMENT OF DAMAGES.--In cases to which this section applies, the trier of fact shall apportion the total fault for the plaintiff's damages among the plaintiff, the defendants to that action, and any released persons who have settled with the plaintiff, and the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability. A defendant in the action has a right to join a person who may be amenable to judgment to the plaintiff in that action, notwithstanding any applicable statutes of limitations, within 120 days after service of the complaint on that defendant. The person so joined is thereafter a defendant to the action and, if fault is

1 apportioned to the joined person, the joined person shall be
 2 adjudged legally liable to the plaintiff for its share of the
 3 damages. All presuit requirements and any tolling provisions
 4 set forth therein are applicable to any defendant choosing to
 5 join a person to the action. Notwithstanding any other
 6 provision of law, there shall be no setoffs in actions to
 7 which this section applies., except as provided in paragraphs
 8 ~~(a), (b), and (c):~~

9 ~~(a) Where a plaintiff is found to be at fault, the~~
 10 ~~following shall apply:~~

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

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

17 ~~3. For any defendant found at least 25 percent but not~~
 18 ~~more than 50 percent at fault, joint and several liability~~
 19 ~~shall not apply to that portion of economic damages in excess~~
 20 ~~of \$500,000.~~

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

24
 25 ~~For any defendant under subparagraph 2., subparagraph 3., or~~
 26 ~~subparagraph 4., the amount of economic damages calculated~~
 27 ~~under joint and several liability shall be in addition to the~~
 28 ~~amount of economic and noneconomic damages already apportioned~~
 29 ~~to that defendant based on that defendant's percentage of~~
 30 ~~fault.~~

31 ~~(b) Where a plaintiff is found to be without fault,~~

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1 ~~the following shall apply:~~

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

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

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

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

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

22 (c) ~~With respect to any defendant whose percentage of~~
23 ~~fault is less than the fault of a particular plaintiff, the~~
24 ~~doctrine of joint and several liability shall not apply to any~~
25 ~~damages imposed against the defendant.~~

26 (d) ~~In order to allocate any or all fault to a~~
27 ~~nonparty, a defendant must affirmatively plead the fault of a~~
28 ~~nonparty and, absent a showing of good cause, identify the~~
29 ~~nonparty, if known, or describe the nonparty as specifically~~
30 ~~as practicable, either by motion or in the initial responsive~~
31 ~~pleading when defenses are first presented, subject to~~

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1 ~~amendment any time before trial in accordance with the Florida~~
2 ~~Rules of Civil Procedure.~~

3 ~~(e) In order to allocate any or all fault to a~~
4 ~~nonparty and include the named or unnamed nonparty on the~~
5 ~~verdict form for purposes of apportioning damages, a defendant~~
6 ~~must prove at trial, by a preponderance of the evidence, the~~
7 ~~fault of the nonparty in causing the plaintiff's injuries.~~

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10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 Delete everything before the enacting clause

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14 and insert:

15 A bill to be entitled
16 An act relating to apportionment of damages in
17 civil actions; amending s. 768.81, F.S.;
18 providing for apportionment of fault; providing
19 for joinder of parties; deleting exceptions to
20 a requirement for liability based on percentage
21 of fault instead of joint and several
22 liability; providing applicability; providing
23 an effective date.

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