

Bill No. SB 1558

Barcode 160528

CHAMBER ACTION

Senate

House

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Comm: WD  
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The Committee on Judiciary (Ring) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Subsection (3) of section 768.81, Florida Statutes, is amended to read:

768.81 Comparative fault.--

(3) APPORTIONMENT OF DAMAGES.--

(a) In cases to which this section applies, the trier of fact shall apportion the total fault for the occurrence giving rise to the legal proceeding only among:

1. The claimant;

2. Those defendants to the action who may be held legally liable;

3. A nonparty that would have been liable to the claimant had it not been discharged from liability pursuant to a voluntary dismissal with prejudice or a release, covenant not to sue, covenant not to execute a judgment, or similar

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1 agreement between the nonparty subject to liability and the  
2 claimant;

3 4. A nonparty that cannot be made a party to the  
4 proceeding because the nonparty is not subject to the  
5 jurisdiction of the court;

6 5. A nonparty that cannot be made a party to the  
7 proceeding because the nonparty is immune from suit, and, but  
8 for the nonparty's immunity, the nonparty otherwise could be  
9 held liable for the damages sought by the claimant or  
10 claimants from the defendant seeking to apportion fault to the  
11 nonparty;

12 6. A nonparty upon whom the defendant was unable to  
13 serve process because such nonparty could not be sufficiently  
14 identified after reasonable inquiry by the defendant; or

15 7. A nonparty that cannot be made a party to the  
16 proceeding because the statute of limitations or statute of  
17 repose applicable to the nonparty expired prior to the  
18 expiration of the time limit for joining a codefendant set  
19 forth in paragraph (b), and the defendant, despite a diligent  
20 effort to do so, was unable to timely join the nonparty  
21 pursuant to paragraph (b) within the applicable statute of  
22 limitations or statute of repose. For purposes of this  
23 subparagraph, in determining whether a defendant's effort was  
24 diligent, the court shall take into consideration all  
25 information the defendant had or had access to with reasonable  
26 investigation prior to the expiration of the applicable  
27 statute of limitations or statute of repose.

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29 The court shall enter judgment against each party liable on  
30 the basis of such party's percentage of fault and not on the  
31 basis of the doctrine of joint and several liability.

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1       (b) A defendant may join as a codefendant any person  
2 who is or may be liable to the plaintiff for all or part of  
3 the plaintiff's claim against the defendant, and, if the  
4 liability of such person is proven, the court shall enter  
5 judgment for the plaintiff against such person based upon such  
6 person's percentage of fault. A defendant must join any  
7 codefendants at the time it files its initial responsive  
8 pleading, or not later than 90 days after the date of initial  
9 service of process on that defendant, whichever is earlier.

10       (c) A defendant may not seek to have the fault of a  
11 nonparty to the legal proceeding considered for purposes of  
12 fault apportionment except as provided in this paragraph. For  
13 a nonparty to be considered for purposes of apportioning fault  
14 to the nonparty, the defendant seeking to apportion fault to  
15 the nonparty must make a showing by the deadline for joining a  
16 codefendant as set forth in paragraph (b), and the court must  
17 find that the moving defendant has specifically identified the  
18 nonparty. For a nonparty whose identity cannot be established,  
19 the court must find that the moving defendant has described  
20 with a reasonable degree of specificity the nonparty whose  
21 identity cannot be determined and that the moving defendant  
22 has made a reasonable showing that the nonparty qualifies for  
23 apportionment of fault pursuant to subparagraphs (a)3.-7. In  
24 order for the trier of fact to allocate fault to a nonparty  
25 pursuant to subparagraphs (a)3.-7., the defendant must prove at  
26 trial by a preponderance of the evidence the fault of the  
27 nonparty in causing the plaintiff's injuries.

28       (d) The court shall determine the extent to which the  
29 responsibility of one party or nonparty, which is based on the  
30 act or omission of another party or nonparty, warrants that  
31 the parties or nonparties be treated as a single party or

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1 nonparty for the purpose of making findings pursuant to  
2 paragraph (a).

3 ~~(a) In order to allocate any or all fault to a~~  
4 ~~nonparty, a defendant must affirmatively plead the fault of a~~  
5 ~~nonparty and, absent a showing of good cause, identify the~~  
6 ~~nonparty, if known, or describe the nonparty as specifically~~  
7 ~~as practicable, either by motion or in the initial responsive~~  
8 ~~pleading when defenses are first presented, subject to~~  
9 ~~amendment any time before trial in accordance with the Florida~~  
10 ~~Rules of Civil Procedure.~~

11 ~~(b) In order to allocate any or all fault to a~~  
12 ~~nonparty and include the named or unnamed nonparty on the~~  
13 ~~verdict form for purposes of apportioning damages, a defendant~~  
14 ~~must prove at trial, by a preponderance of the evidence, the~~  
15 ~~fault of the nonparty in causing the plaintiff's injuries.~~

16 Section 2. It is the intent of the Legislature to  
17 demonstrate the utmost comity and respect to the  
18 constitutional prerogatives of Florida's judiciary, and this  
19 act is not an effort to infringe upon those prerogatives. To  
20 that end, if any court of competent jurisdiction enters a  
21 final judgment concluding or declaring that a provision of  
22 this act improperly encroaches upon the authority of the  
23 Supreme Court to determine the rules of practice and procedure  
24 in Florida courts, the Legislature declares its intent that  
25 such provision be construed as a request for a rule change  
26 pursuant to section 2, Article V of the State Constitution and  
27 not as a mandatory legislative directive.

28 Section 3. This act shall take effect July 1, 2007.

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

2 And the title is amended as follows:

3           Delete everything before the enacting clause

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5 and insert:

6                           A bill to be entitled

7           An act relating to apportionment of damages;

8           amending s. 768.81, F.S.; requiring the

9           division of total fault for an occurrence only

10          among the claimant, those who may be held

11          legally liable, and specified nonparties;

12          providing for joinder of codefendants; deleting

13          provisions providing for allocation of fault to

14          nonparties; providing legislative intent;

15          providing an effective date.

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