

Bill No. SB 1558

Barcode 973700

CHAMBER ACTION

Senate

House

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Comm: RCS
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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 the plaintiff, those parties to the action who may be held legally liable, and the following nonparties:

1. A nonparty, whether or not previously a party, who the plaintiff 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 agreement between the plaintiff and the nonparty;

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1 2. A nonparty who cannot properly be made a party to
2 the proceeding because the nonparty is not subject to the
3 jurisdiction of the court;

4 3. A nonparty who cannot properly be made a party to
5 the proceeding because the nonparty is completely immune from
6 suit;

7 4. A nonparty upon whom the defendant was unable to
8 serve process because the nonparty could not be sufficiently
9 identified after reasonable inquiry by the defendant; or

10 5. A nonparty who cannot properly be made a party to
11 the proceeding because the statute of limitations or statute
12 of repose applicable to the nonparty expired, and the
13 defendant, despite the exercise of reasonable diligence, was
14 unable to join the nonparty as an additional party within the
15 applicable statute of limitations or statute of repose.

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

20 (b) Any party to the action, including a defendant,
21 has the right to join as an additional party any person who is
22 or may be liable to the plaintiff for all or part of the
23 plaintiff's claim against a defendant. However, a defendant
24 must act with reasonable diligence in order to join such an
25 additional party and, if the liability of the additional party
26 is proven, the court shall enter judgment for the plaintiff
27 against the additional party based upon the additional party's
28 percentage of fault.

29 (c)~~(a)~~ In order to allocate any or all fault to a
30 nonparty under paragraph (a), a defendant must affirmatively
31 plead the fault of a nonparty and, absent a showing of good

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1 cause, identify the nonparty, if known, or describe the
 2 nonparty as specifically as practicable, ~~either by motion or~~
 3 in the initial responsive pleading when defenses are first
 4 presented, subject to amendment using reasonable diligence ~~any~~
 5 ~~time before trial~~ in accordance with the Florida Rules of
 6 Civil Procedure.

7 ~~(d)(b)~~ In order for the trier of fact to allocate any
 8 or all fault to an additional party or a nonparty under
 9 paragraph (a), the party that joined the additional party or
 10 alleged the fault of the nonparty ~~and include the named or~~
 11 ~~unnamed nonparty on the verdict form for purposes of~~
 12 ~~apportioning damages, a defendant~~ must prove at trial, by a
 13 preponderance of the evidence, the fault of the additional
 14 party or ~~the~~ nonparty in causing the plaintiff's injuries.

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

27 Section 3. This act shall take effect July 1, 2007,
 28 and applies to causes of action that accrue on or after that
 29 date.

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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 plaintiff, parties who may be held

11 legally liable, and specified nonparties;

12 providing for joinder of additional parties and

13 allocation of fault to certain nonparties;

14 providing legislative intent; providing for

15 application; providing an effective date.

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