

By the Committee on Judiciary; and Senator Ring

590-2502-07

1 A bill to be entitled
2 An act relating to apportionment of damages;
3 amending s. 768.81, F.S.; requiring the
4 division of total fault for an occurrence only
5 among the plaintiff, parties who may be held
6 legally liable, and specified nonparties;
7 providing for joinder of additional parties and
8 allocation of fault to certain nonparties;
9 providing legislative intent; providing for
10 application; providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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

16 768.81 Comparative fault.--

17 (3) APPORTIONMENT OF DAMAGES.--

18 (a) In cases to which this section applies, the trier
19 of fact shall apportion the total fault for the occurrence
20 giving rise to the legal proceeding only among the plaintiff,
21 those parties to the action who may be held legally liable,
22 and the following nonparties:

23 1. A nonparty, whether or not previously a party, who
24 the plaintiff discharged from liability pursuant to a
25 voluntary dismissal with prejudice or a release, covenant not
26 to sue, covenant not to execute a judgment, or similar
27 agreement between the plaintiff and the nonparty;

28 2. A nonparty who cannot properly be made a party to
29 the proceeding because the nonparty is not subject to the
30 jurisdiction of the court;
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1 3. A nonparty who cannot properly be made a party to
2 the proceeding because the nonparty is completely immune from
3 suit;

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

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

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

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

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

1 presented, subject to amendment using reasonable diligence ~~any~~
2 ~~time before trial~~ in accordance with the Florida Rules of
3 Civil Procedure.

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

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

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1558

This committee substitute differs from the underlying bill in that it permits nonparties to be placed on a jury verdict form in certain circumstances. However, the bill also requires defendants to join nonparties as defendants or prove that the nonparty cannot be joined.