

By Senator Siplin

19-00752-09

20092228\_\_

1                   A bill to be entitled  
2           An act relating to litigation; creating s. 46.061,  
3           F.S.; requiring the division of total fault for  
4           parties and nonparties by judgment in negligence  
5           cases; defining negligence cases; determining criteria  
6           for negligence cases; providing exceptions and  
7           limitations for joint and several liability; creating  
8           s. 46.071, F.S.; abrogating use of privilege and  
9           immunity defenses as to all statutory causes of  
10          action, abuse of process, malicious prosecution, and  
11          fraud upon the court; requiring strict enforcement of  
12          and compliance with all provisions; creating s.  
13          46.081, F.S.; providing for assignment or interest in  
14          all claims or rights of a commercial and personal  
15          nature in whole or part; providing an implied waiver  
16          of any fiduciary or confidential relationship;  
17          providing standing for parties having an assignment or  
18          interest; requiring strict enforcement of and  
19          compliance with all provisions; reenacting and  
20          amending s. 57.105, F.S., relating to attorney's fees  
21          and sanctions for raising unsupported claims or  
22          defenses; providing an entitlement to fees and  
23          requiring compliance with filing provisions; providing  
24          legislative intent; amending s. 59.041, F.S.;  
25          requiring the court's opinion to cite authority for a  
26          rendered determination; providing that a transcript is  
27          not required for a proper and full examination of a  
28          case; amending s. 59.06, F.S.; providing purposes for  
29          appellate review of orders on motions to dismiss, for

19-00752-09

20092228\_\_

30 dismissal, and for summary judgment; amending s.  
31 454.18, F.S.; authorizing deputy clerks of court and  
32 deputy sheriffs who are employed less than full-time  
33 to practice law; conforming an exception; codifying  
34 otherwise authorized acts to practice law; providing  
35 conditions, circumstances and review for lay  
36 representation; providing for retroactive and  
37 perspective application; amending s. 454.23, F.S.;  
38 clarifying the exception otherwise authorized as to  
39 penalties; providing penalties for acts of attorneys  
40 duly admitted or authorized to practice law; amending  
41 s. 768.81, F.S.; requiring the division of total fault  
42 for parties and nonparties by judgment; requiring the  
43 division of total fault for an occurrence only among  
44 the plaintiff, parties who may be held legally liable,  
45 and specified nonparties; providing for court  
46 jurisdiction over nonparties and allocation of fault  
47 to certain nonparties; providing for proper court  
48 application; requiring strict enforcement and  
49 compliance of all provisions; amending s. 924.051,  
50 F.S.; requiring that the court's opinion cite  
51 authority for a rendered determination; providing that  
52 a transcript is not required for proper and full  
53 examination; amending s. 924.33, F.S.; requiring that  
54 the court's opinion cite authority for a rendered  
55 determination; providing that a transcript is not  
56 required for proper and full examination; creating s.  
57 939.055, F.S., relating to sanctions for raising  
58 unsupported offenses, defenses, or delay; providing an

19-00752-09

20092228\_\_

59 entitlement to any award and requiring compliance with  
60 filing provisions; providing legislative intent;  
61 providing for strict enforcement and compliance of all  
62 provisions; repealing s. 924.395, F.S., relating to  
63 sanctions in criminal appeal cases; providing an  
64 effective date.

65  
66 Be It Enacted by the Legislature of the State of Florida:

67  
68 Section 1. Section 46.061, Florida Statutes, is created to  
69 read:

70 46.061 Joint and several liability.-

71 (1) In any negligence case the court shall enter a judgment  
72 against each party and nonparty on the basis of the party's or  
73 nonparty's percentage of fault under s. 768.81 and not,  
74 initially, on the basis of the doctrine of joint and several  
75 liability. As used in this section, the term "negligence case"  
76 includes, but is not limited to, civil actions for damages based  
77 upon theories of negligence, strict liability, product  
78 liability, and professional malpractice, whether couched in  
79 terms of contract, tort, breach of warranty, or similar  
80 theories. In determining whether a case is to be classified as a  
81 negligence case, the court shall consider the substance of the  
82 action and not the conclusory terms used by the parties.

83 (2) The doctrine of joint and several liability continues  
84 to apply to an action brought by a party to recover actual  
85 economic damages resulting from pollution which is based upon an  
86 intentional tort or any cause of action to which the application  
87 of the doctrine of joint and several liability is specifically

19-00752-09

20092228

88 provided by chapter 403, chapter 498, chapter 517, chapter 542,  
89 or chapter 895.

90 Section 2. Section 46.071, Florida Statutes, is created to  
91 read:

92 46.071 Privilege and immunity defenses.-

93 (1) Litigation privilege, or judicial, qualified, or  
94 absolute immunity and the like, may not be considered as viable  
95 or valid defenses at law in the following cases:

96 (a) Statutory enactments that provide for rights and claims  
97 in injury, tort, or contract liability for acts that may,  
98 directly or indirectly, involve judicial or administrative  
99 proceedings.

100 (b) Actions on claims and rights for abuse of process,  
101 malicious prosecution, and fraud upon the court, also known as  
102 extrinsic fraud.

103 (2) This section shall be strictly construed, enforced, and  
104 complied with.

105 Section 3. Section 46.081, Florida Statutes, is created to  
106 read:

107 46.081 Assignment of interest in claims and rights.-

108 (1) All claims or rights in injury, tort, contract, or  
109 statute, whether of a commercial or personal nature, are fully,  
110 wholly, or partly assignable, and any existing fiduciary or  
111 confidential relationship is waived by implication in such  
112 executed assignment.

113 (2) All claims or rights in injury, tort, contract, or  
114 statute, whether of a commercial or personal nature, may be  
115 given as a divided or part interest, and any existing fiduciary  
116 or confidential relationship is waived by implication in such

19-00752-09

20092228\_\_

117 executed giving of interest.

118 (3) Parties having executed an assignment or a giving of  
119 interest have standing in all matters applicable to the claims  
120 or rights.

121 (4) This section shall be strictly construed, enforced, and  
122 complied with.

123 Section 4. Section 57.105, Florida Statutes, is reenacted,  
124 subsections (4) and (6) of that section are amended, and  
125 subsection (8) is added to that section, to read:

126 57.105 Attorney's fee; sanctions for raising unsupported  
127 claims or defenses; service of motions; damages for delay of  
128 litigation.—

129 (1) Upon the court's initiative or motion of any party, the  
130 court shall award a reasonable attorney's fee to be paid to the  
131 prevailing party in equal amounts by the losing party and the  
132 losing party's attorney on any claim or defense at any time  
133 during a civil proceeding or action in which the court finds  
134 that the losing party or the losing party's attorney knew or  
135 should have known that a claim or defense when initially  
136 presented to the court or at any time before trial:

137 (a) Was not supported by the material facts necessary to  
138 establish the claim or defense; or

139 (b) Would not be supported by the application of then-  
140 existing law to those material facts.

141

142 However, the losing party's attorney is not personally  
143 responsible if he or she has acted in good faith, based on the  
144 representations of his or her client as to the existence of  
145 those material facts. If the court awards attorney's fees to a

19-00752-09

20092228\_\_

146 claimant pursuant to this subsection, the court shall also award  
147 prejudgment interest.

148 (2) Paragraph (1)(b) does not apply if the court determines  
149 that the claim or defense was initially presented to the court  
150 as a good faith argument for the extension, modification, or  
151 reversal of existing law or the establishment of new law, as it  
152 applied to the material facts, with a reasonable expectation of  
153 success.

154 (3) At any time in any civil proceeding or action in which  
155 the moving party proves by a preponderance of the evidence that  
156 any action taken by the opposing party, including, but not  
157 limited to, the filing of any pleading or part thereof, the  
158 assertion of or response to any discovery demand, the assertion  
159 of any claim or defense, or the response to any request by any  
160 other party, was taken primarily for the purpose of unreasonable  
161 delay, the court shall award damages to the moving party for its  
162 reasonable expenses incurred in obtaining the order, which may  
163 include attorney's fees, and other loss resulting from the  
164 improper delay.

165 (4) A party is entitled to an award of sanctions under this  
166 section only if a motion is by a party seeking sanctions under  
167 this section must be served by a party seeking sanctions under  
168 this section. The motion shall but may not be filed with or  
169 presented to the court unless, within 21 days after service of  
170 the motion, the challenged paper, claim, defense, contention,  
171 allegation, or denial is not withdrawn or appropriately  
172 corrected. Any motion filed with the court which does not comply  
173 with this subsection is void. This subsection is substantive and  
174 may not be waived except in writing. This subsection does not

19-00752-09

20092228\_\_

175 apply to sanctions ordered upon the court's initiative.

176 (5) In administrative proceedings under chapter 120, an  
177 administrative law judge shall award a reasonable attorney's fee  
178 and damages to be paid to the prevailing party in equal amounts  
179 by the losing party and a losing party's attorney or qualified  
180 representative in the same manner and upon the same basis as  
181 provided in subsections (1)-(4). Such award shall be a final  
182 order subject to judicial review pursuant to s. 120.68. If the  
183 losing party is an agency as defined in s. 120.52(1), the award  
184 to the prevailing party shall be against and paid by the agency.  
185 A voluntary dismissal by a nonprevailing party does not divest  
186 the administrative law judge of jurisdiction to make the award  
187 described in this subsection.

188 (6) ~~The provisions of~~ This section must be strictly  
189 enforced and complied with and is ~~are~~ supplemental to other  
190 sanctions or remedies available under law or under court rules.

191 (7) If a contract contains a provision allowing attorney's  
192 fees to a party when he or she is required to take any action to  
193 enforce the contract, the court may also allow reasonable  
194 attorney's fees to the other party when that party prevails in  
195 any action, whether as plaintiff or defendant, with respect to  
196 the contract. This subsection applies to any contract entered  
197 into on or after October 1, 1988.

198 (8) (a) This section creates substantive rights to the award  
199 of attorney's fees, and any procedural provisions are directly  
200 related to the definition of those rights. Any procedural  
201 aspects of this provision are intended to implement the  
202 substantive provisions of the law.

203 (b) For purposes of this section, the term "party" means

19-00752-09

20092228\_\_

204 any person represented by a lawyer or appearing pro se as a  
205 nonlawyer or lawyer. The term "attorney" means a person licensed  
206 to practice law in this state and, where applicable, a lay,  
207 qualified, or designated representative appearing for a party.

208 (c) It is the intent of the Legislature to clearly express  
209 that the award of fees, costs, damages, and sanctions under this  
210 section do apply and are a right to any party, lawyer, or  
211 representative, equally or alike, whether a lawyer or nonlawyer.

212 Section 5. Section 59.041, Florida Statutes, is amended to  
213 read:

214 59.041 Harmless error; effect.—~~A~~ No judgment may not shall  
215 be set aside or reversed, or new trial granted by any court of  
216 the state in any cause, civil or criminal, on the ground of  
217 misdirection of the jury or the improper admission or rejection  
218 of evidence or for error as to any matter of pleading or  
219 procedure, unless in the opinion of the court to which  
220 application is made, after an examination of the entire case it  
221 shall appear that the error complained of has resulted in a  
222 miscarriage of justice. The opinion of the court must be  
223 supported by at least one binding authority for each point for  
224 review, which must be cited in the rendered final order or  
225 opinion. The court file and appellate record do not require a  
226 transcript or statement of proceedings for a proper full  
227 examination of the case before the court. This section shall be  
228 liberally construed.

229 Section 6. Subsection (1) of section 59.06, Florida  
230 Statutes, is amended to read:

231 59.06 Matters reviewable on appeal.—

232 (1) WHAT MAY BE ASSIGNED AS ERROR.—All judgments and orders



19-00752-09

20092228\_\_

233 made in any action wherein the trial court:

234 (a) May allow or refuse to allow any motion:

235 1. For a new trial or rehearing,

236 2. For leave to amend pleadings,

237 3. For leave to file new or additional pleadings,

238 4. To amend the record, or

239 5. For continuance of the action; or

240 (b) Shall sustain or overrule any motion to dismiss or for  
241 summary judgment, and the action

242

243 may be assigned as error upon any appeal from the final judgment  
244 or order in the action. For purposes of this paragraph, an order  
245 sustaining any motion without leave to amend or with prejudice,  
246 or absent allowing some other further labor expressly rendered  
247 by the court, shall be an order sufficient for interlocutory  
248 appeal within 30 days. The appellate court shall hear and  
249 determine the matter so assigned under like rules as in other  
250 actions.

251 Section 7. Section 454.18, Florida Statutes, is amended to  
252 read:

253 (Substantial rewording of section. See

254 s. 454.18, F.S., for present text.)

255 454.18 Officers and persons unauthorized or authorized to  
256 practice law.-

257 (1) A sheriff or full-time deputy sheriff may not practice  
258 law in this state.

259 (2) A clerk of any court or full-time deputy clerk of any  
260 court may not practice law in this state.

261 (3) Any person who is not of good moral character or who

19-00752-09

20092228

262 has been convicted of an infamous crime may not practice law in  
263 this state.

264 (4) Any person who is not licensed or otherwise authorized  
265 may not practice law in this state.

266 (5) Any person who has been disbarred and has not been  
267 lawfully reinstated or who is under suspension from the practice  
268 of law by the Supreme Court may not practice law.

269 (6) Any person:

270 (a) Whether an attorney at law or not, or whether within  
271 the exceptions provided in this section or not, may conduct his  
272 or her own cause; or

273 (b) Has a qualified right to lay representation or to be  
274 represented by a person of his or her choice as prescribed by:

275 1. Chapter 120 concerning a qualified representative.

276 2. Chapter 44 concerning a designated representative.

277 3. Section 709.08 concerning an attorney in fact.

278 4. Supreme Court rules concerning a realty property  
279 manager.

280 5. Supreme Court rules concerning a nonlawyer using  
281 approved forms.

282 6. Supreme Court rules concerning appearances in county or  
283 small claims civil procedure.

284 7. Supreme Court rules relating to admissions to the The  
285 Florida Bar, Rule 5-15.

286 8. Judicial discretion under the inherent authority of the  
287 court.

288 9. Federal law or any other clearly expressed rule,  
289 statute, or court decision or order under federal or state law  
290 and authority, in any court of this state or before any public

19-00752-09

20092228

291 board, committee, or officer, subject to the lawful rules and  
292 discipline of such court, board, committee, or officer.

293 (7) (a) Any party, counsel of record, or judicial or quasi-  
294 judicial court or officer, absent federal preemption, may  
295 inquire into and challenge the competence and character of a lay  
296 representative upon notice and hearing. The matters to be  
297 considered in such hearing must be in accordance with rules 28-  
298 106.106 and 28-106.107, Florida Administrative Code.

299 (b) A lay representative may proceed with a case unless he  
300 or she is found inadequate by the court. Upon such finding, the  
301 lay representative is disqualified from conducting the case.

302 (c) The disqualification of the lay representative may be  
303 enforced by a state attorney or by The Florida Bar Unauthorized  
304 Practice of Law Division. This paragraph may not be construed or  
305 executed in violation of s. 9, Art. I of the State Constitution.

306 (d) Review of the determination disqualifying the lay  
307 representative shall be by petition for certiorari.

308 (e) Notwithstanding paragraphs (b) and (c), if the  
309 disqualified lay representative has a valid interest in the  
310 cause or by assignment, the disqualified lay representative may  
311 appear pro se only to intervene or by substitution as allowed by  
312 law, otherwise such representation constitutes the unauthorized  
313 practice of law.

314 (8) (a) The provisions of this section restricting the  
315 practice of law by a sheriff, full-time deputy, or clerk do not  
316 apply in a case when the person is representing the office or  
317 agency in the course of his or her duties as an attorney at law  
318 or as to lay representation. This paragraph shall be strictly  
319 construed, enforced, and complied with.

19-00752-09

20092228

320 (b) The officers and persons described in subsections (1),  
321 (2), (3), and (5) are not otherwise authorized to practice as  
322 prescribed under subsection (6), absent federal law preempting  
323 such provisions.

324 (9) A person may not be denied the right to practice law on  
325 account of gender, race, or color.

326 (10) This section shall have retroactive and perspective  
327 application in law.

328 Section 8. Section 454.23, Florida Statutes, is amended to  
329 read:

330 454.23 Penalties.—

331 (1) Any person not licensed or otherwise authorized to  
332 practice law in this state who practices law in this state or  
333 holds himself or herself out to the public as qualified to  
334 practice law in this state, or who willfully pretends to be, or  
335 willfully takes or uses any name, title, addition, or  
336 description implying that he or she is qualified, or recognized  
337 by law as qualified, to practice law in this state, commits a  
338 felony of the third degree, punishable as provided in s.  
339 775.082, s. 775.083, or s. 775.084.

340 (2) An attorney licensed to practice law in this state who  
341 willfully or intentionally violates, or causes another person to  
342 violate, the rules and discipline of any court, tribunal, or  
343 officer in any matter of order or procedure in this state, not  
344 in conflict with the State Constitution or laws of this state,  
345 commits a misdemeanor of the first degree, punishable as  
346 provided in s. 775.082 or s. 775.083.

347 (3) An attorney licensed to practice law in this state who  
348 willfully or intentionally violates the oath of admission to The

19-00752-09

20092228

349 Florida Bar, or commits or causes any act in violation of 18  
350 U.S.C. s. 241 or 18 U.S.C. s. 242 under federal law before any  
351 court, tribunal, or officer in this state, commits a felony of  
352 the third degree, punishable as provided in s. 775.082, s.  
353 775.083, or s. 775.084.

354 Section 9. Subsection (3) of section 768.81, Florida  
355 Statutes, is amended to read:

356 768.81 Comparative fault.—

357 (3) APPORTIONMENT OF DAMAGES.—In cases to which this  
358 section applies, the court shall enter judgment against each  
359 party and nonparty liable on the basis of such party's  
360 percentage of fault and not, initially, on the basis of the  
361 doctrine of joint and several liability.

362 (a) In order to allocate any or all fault to a nonparty, a  
363 defendant must affirmatively plead the fault of a nonparty and,  
364 absent a showing of good cause, identify the nonparty, if known,  
365 or describe the nonparty as specifically as practicable, either  
366 by a preliminary motion, ~~or~~ in the initial responsive pleading  
367 when the answer and defenses are first due presented, or other  
368 third-party practice being interpleader, contribution,  
369 indemnification, or subrogation, subject to amendment any time  
370 before trial in accordance with the Florida Rules of Civil  
371 Procedure.

372 (b) In order to allocate any or all fault to a nonparty and  
373 include the named or unnamed nonparty on the verdict form for  
374 purposes of apportioning damages, a defendant must have filed  
375 with the court and served process on the nonparty all pertinent  
376 motions and pleadings, subjecting the nonparty to the  
377 jurisdiction of the court, and prove at trial, by a

19-00752-09

20092228\_\_

378 preponderance of the evidence, the fault of the nonparty in  
379 causing the plaintiff's injuries, otherwise the defendant shall  
380 be held fully liable for the allocation of fault of the nonparty  
381 alleged.

382 (c) A nonparty brought into the case who has been in any  
383 way absolved by a party is immune, or may invoke the statute of  
384 limitations or statute of repose from litigation or liability,  
385 and such shall be made known to the court with reasonable  
386 diligence by motion or pleading of a party or nonparty, and, if  
387 proven, shall be reflected in the judgment with the determined  
388 percentage of fault as to liability and damages being  
389 nonexecutable against the nonparty, otherwise the judgment shall  
390 be held fully executable against a nonparty for the allocation  
391 of fault determined.

392 (d) This section shall be strictly construed, enforced, and  
393 complied with.

394 Section 10. Subsection (3) of section 924.051, Florida  
395 Statutes, is amended to read:

396 924.051 Terms and conditions of appeals and collateral  
397 review in criminal cases.—

398 (3) An appeal may not be taken from a judgment or order of  
399 a trial court unless a prejudicial error is alleged and is  
400 properly preserved or, if not properly preserved, would  
401 constitute fundamental error. A judgment or sentence may be  
402 reversed on appeal only when an appellate court determines after  
403 a review of the complete record that prejudicial error occurred  
404 and was properly preserved in the trial court or, if not  
405 properly preserved, would constitute fundamental error. The  
406 opinion of the court must be supported by at least one binding

19-00752-09

20092228

407 authority for each point for review, which must be cited in the  
408 final order or opinion of the appellate court. The court file  
409 and the appellate record do not require a transcript or  
410 statement of proceedings for a proper full examination of the  
411 case before the court.

412 Section 11. Section 924.33, Florida Statutes, is amended to  
413 read:

414 924.33 When judgment not to be reversed or modified.—A ~~No~~  
415 judgment may not shall be reversed unless the appellate court is  
416 of the opinion, after an examination of all the appeal papers,  
417 that error was committed that injuriously affected the  
418 substantial rights of the appellant. It shall not be presumed  
419 that error injuriously affected the substantial rights of the  
420 appellant. The opinion of the appellate court must be supported  
421 by at least one binding authority for each point for review,  
422 which must be cited in the final order or opinion of the  
423 appellate court. The court file and the appellate record do not  
424 require a transcript or statement of proceedings for a proper  
425 full examination of the case before the court.

426 Section 12. Section 939.055, Florida Statutes, is created  
427 to read:

428 939.055 Sanctions for unfounded offense, defense, or delay;  
429 service of motions.—

430 (1) The Legislature strongly encourages the courts, through  
431 their inherent powers and pursuant to this section, to impose  
432 sanctions against any person, lawyer, or nonlawyer, including  
433 the state, within the court's jurisdiction who is found at any  
434 time in any trial or appellate court proceeding to have  
435 committed, without limitation, the following:

19-00752-09

20092228\_\_

- 436 (a) Abused a petition for extraordinary relief,  
437 postconviction motion, or appeal therefrom;
- 438 (b) Abused or caused unreasonable delay in any pretrial  
439 proceeding;
- 440 (c) Raised a claim that a court has found to be, or is in  
441 fact, frivolous or procedurally barred, or that should have been  
442 preserved by objection in the trial court or raised on a direct  
443 appeal;
- 444 (d) Improperly withheld or used misleading evidence or  
445 testimony;
- 446 (e) Adversely affected the orderly administration of  
447 justice; or
- 448 (f) Partaken in "game playing," dilatory tactics,  
449 sandbagging, or "gotcha" tactics.
- 450 (2) If applicable and appropriate in a case, the court may  
451 consider sanctions that include, but are not limited to:
- 452 (a) Dismissal of a pleading or case;  
453 (b) Disciplinary sanctions;  
454 (c) A fine;  
455 (d) Costs, fees, expenses, or damages; and  
456 (e) Any other sanction that is available to the court under  
457 its inherent powers.
- 458 (3) A motion seeking sanctions under this section shall be  
459 by the state, a defendant, whether a lawyer or nonlawyer, or, if  
460 pro se or otherwise, shall be by his or her representing lawyer.  
461 The motion must clearly express facts demonstrating conduct as  
462 prescribed under subsection (1), be verified, served on all the  
463 parties in the case, and filed with the court within 10 days  
464 after being subject to and apprised of the misconduct involved.



19-00752-09

20092228\_\_

465 Any motion filed with the court which does not comply with this  
466 subsection is void. This subsection is substantive and may not  
467 be waived except in writing. This subsection does not apply to  
468 sanctions ordered upon the court's initiative.

469 (4) Sanctions ordered against the state must be awarded and  
470 approved by the Chief Financial Officer in accordance with s.  
471 939.13.

472 (5) The provisions of this section are supplemental to  
473 other sanctions or remedies available under law or under court  
474 rules.

475  
476 The provisions under this section must be strictly construed,  
477 enforced, and complied with.

478 Section 13. Section 924.395, Florida Statutes, is repealed.  
479 Section 14. This act shall take effect July 1, 2009.