

By Senator Siplin

19-01572-10

20102692

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; amending s. 57.105,  
20          F.S.; providing an entitlement to fees and requiring  
21          compliance with filing provisions; providing  
22          legislative intent; amending s. 59.041, F.S.;  
23          requiring the court's opinion to cite authority for a  
24          rendered determination; providing that a transcript is  
25          not required for a proper and full examination of a  
26          case; amending s. 59.06, F.S.; providing purposes for  
27          appellate review of orders on motions to dismiss, for  
28          dismissal, and for summary judgment; amending s.  
29          454.18, F.S.; prohibiting sheriffs, clerks of court,

19-01572-10

20102692

30 full-time deputy sheriffs, and deputy clerks of court  
31 from practicing law; declaring others who may not  
32 practice law in this state; providing exceptions to  
33 practice law pursuant to federal and state laws and  
34 regulations; codifying otherwise authorized acts to  
35 practice law; providing conditions, circumstances, and  
36 review for lay representation; authorizing sheriffs,  
37 clerks of court, full-time deputy sheriffs, and deputy  
38 clerks of court to practice law when representing  
39 their office or agency; providing for retroactive and  
40 prospective application; amending s. 454.23, F.S.;  
41 clarifying the exception otherwise authorized as to  
42 penalties; providing penalties for acts of attorneys  
43 duly admitted or authorized to practice law; amending  
44 s. 768.81, F.S.; requiring the division of total fault  
45 for parties and nonparties by judgment; requiring the  
46 division of total fault for an occurrence only among  
47 the plaintiff, parties who may be held legally liable,  
48 and specified nonparties; providing for court  
49 jurisdiction over nonparties and allocation of fault  
50 to certain nonparties; providing for proper court  
51 application; requiring strict enforcement and  
52 compliance of all provisions; amending s. 924.051,  
53 F.S.; requiring that the court's opinion cite  
54 authority for a rendered determination; providing that  
55 a transcript is not required for proper and full  
56 examination; amending s. 924.33, F.S.; requiring that  
57 the court's opinion cite authority for a rendered  
58 determination; providing that a transcript is not

19-01572-10

20102692

59 required for proper and full examination; creating s.  
60 939.055, F.S.; providing for sanctions for raising  
61 unsupported offenses, defenses, or delay; providing an  
62 entitlement to any award and requiring compliance with  
63 filing provisions; providing legislative intent;  
64 providing for strict enforcement and compliance of all  
65 provisions; repealing s. 924.395, F.S., relating to  
66 sanctions in criminal appeal cases; providing an  
67 effective date.

68  
69 Be It Enacted by the Legislature of the State of Florida:

70  
71 Section 1. Section 46.061, Florida Statutes, is created to  
72 read:

73 46.061 Joint and several liability.-

74 (1) In any negligence case the court shall enter a judgment  
75 against each party and nonparty on the basis of the party's or  
76 nonparty's percentage of fault under s. 768.81 and not,  
77 initially, on the basis of the doctrine of joint and several  
78 liability.

79 (a) As used in this section, the term "negligence case"  
80 includes, but is not limited to, civil actions for damages based  
81 upon theories of negligence, strict liability, product  
82 liability, and professional malpractice, whether couched in  
83 terms of contract, tort, breach of warranty, or similar  
84 theories.

85 (b) In determining whether a case is to be classified as a  
86 negligence case, the court shall consider the substance of the  
87 action and not the conclusory terms used by the parties.

19-01572-10

20102692

88       (2) The doctrine of joint and several liability continues  
89 to apply to an action brought by a party to recover actual  
90 economic damages resulting from pollution which is based upon an  
91 intentional tort or any cause of action to which the application  
92 of the doctrine of joint and several liability is specifically  
93 provided by chapter 403, chapter 498, chapter 517, chapter 542,  
94 or chapter 895.

95       Section 2. Section 46.071, Florida Statutes, is created to  
96 read:

97       46.071 Privilege and immunity defenses.—

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

101       (a) Statutory enactments that provide for rights and claims  
102 in injury, tort, or contract liability for acts that may,  
103 directly or indirectly, involve judicial or administrative  
104 proceedings.

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

108       (2) This section shall be strictly construed, enforced, and  
109 complied with.

110       Section 3. Section 46.081, Florida Statutes, is created to  
111 read:

112       46.081 Assignment of interest in claims and rights.—

113       (1) All claims or rights in injury, tort, contract, or  
114 statute, whether of a commercial or personal nature, are fully,  
115 wholly, or partly assignable, and any existing fiduciary or  
116 confidential relationship is waived by implication in such

19-01572-10

20102692

117 executed assignment.

118 (2) All claims or rights in injury, tort, contract, or  
119 statute, whether of a commercial or personal nature, may be  
120 given as a divided or part interest, and any existing fiduciary  
121 or confidential relationship is waived by implication in such  
122 executed giving of interest.

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

126 (4) This section shall be strictly construed, enforced, and  
127 complied with.

128 Section 4. Section 57.105, Florida Statutes, is amended to  
129 read:

130 57.105 Attorney's fee; sanctions for raising unsupported  
131 claims or defenses; service of motions; damages for delay of  
132 litigation.—

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

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

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

19-01572-10

20102692

146 However, the losing party's attorney is not personally  
147 responsible if he or she has acted in good faith, based on the  
148 representations of his or her client as to the existence of  
149 those material facts. If the court awards attorney's fees to a  
150 claimant pursuant to this subsection, the court shall also award  
151 prejudgment interest.

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

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

169 (4) A party is entitled to an award of sanctions under this  
170 section only if a motion is served by a party seeking sanctions  
171 under this section. The motion shall ~~must be served but may not~~  
172 be filed with or presented to the court unless, within 21 days  
173 after service of the motion, the challenged paper, claim,  
174 defense, contention, allegation, or denial is not withdrawn or

19-01572-10

20102692

175 appropriately corrected. Any motion filed with the court which  
176 does not comply with this subsection is void. This subsection is  
177 substantive and may not be waived except in writing. This  
178 subsection does not apply to sanctions ordered upon the court's  
179 initiative.

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

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

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

202 (8) (a) This section creates a substantive right to an award  
203 of attorney's fees and any procedural requirement is directly

19-01572-10

20102692

204 related to the attainment of that right. Any procedure used in  
205 this section is intended to implement the substantive provisions  
206 of the law.

207 (b) For purposes of this section, the term "party" means  
208 any person represented by an attorney or appearing pro se. The  
209 term "attorney" means a person licensed to practice law in this  
210 state and, where applicable, a lay, qualified, or designated  
211 representative appearing for a party.

212 (c) It is the intent of the Legislature to clearly express  
213 that the award of fees, costs, damages, and sanctions under this  
214 section do apply and are a right to any party, attorney, or  
215 representative, equally or alike, whether an attorney or  
216 nonattorney.

217 Section 5. Section 59.041, Florida Statutes, is amended to  
218 read:

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



19-01572-10

20102692\_\_

233 ~~liberally construed.~~

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

236 59.06 Matters reviewable on appeal.—

237 (1) WHAT MAY BE ASSIGNED AS ERROR.—All judgments and orders  
238 made in any action wherein the trial court:

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

240 1. For a new trial or rehearing,

241 2. For leave to amend pleadings,

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

243 4. To amend the record, or

244 5. For continuance of the action; or

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

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

256 Section 7. Section 454.18, Florida Statutes, is amended to  
257 read:

258 (Substantial rewording of section. See

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

260 454.18 Officers and persons unauthorized or authorized to  
261 practice law.—

19-01572-10

20102692

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

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

266       (3) Any person who is not of good moral character or who  
267 has been convicted of an infamous crime may not practice law in  
268 this state.

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

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

274       (6) Any person:

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

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

280       1. Chapter 120 concerning a qualified representative.

281       2. Chapter 44 concerning a designated representative.

282       3. Section 709.08 concerning an attorney in fact.

283       4. Supreme Court rules concerning a realty property  
284 manager.

285       5. Supreme Court rules concerning a nonattorney using  
286 approved forms.

287       6. Supreme Court rules concerning appearances in county or  
288 small claims civil procedure.

289       7. Supreme Court rules relating to admissions to The  
290 Florida Bar, Rule 5-15.

19-01572-10

20102692

291 8. Judicial discretion under the inherent authority of the  
292 court.

293 9. Federal law or any other clearly expressed rule,  
294 statute, or court decision or order under federal or state law  
295 and authority, in any court of this state or before any public  
296 board, committee, or officer, subject to the lawful rules and  
297 discipline of such court, board, committee, or officer.

298 (7) (a) Any party, counsel of record, or judicial or quasi-  
299 judicial court or officer, absent federal preemption, may  
300 inquire into and challenge the competence and character of a lay  
301 representative upon notice and hearing. The matters to be  
302 considered in such hearing must be in accordance with rules 28-  
303 106.106 and 28-106.107, Florida Administrative Code.

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

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

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

313 (e) Notwithstanding paragraphs (b) and (c), if the  
314 disqualified lay representative has a valid interest in the  
315 cause or by assignment, the disqualified lay representative may  
316 appear pro se to intervene or by substitution as allowed by law,  
317 otherwise such representation constitutes the unauthorized  
318 practice of law.

319 (8) (a) The provisions of this section restricting the

19-01572-10

20102692

320 practice of law by a sheriff, full-time deputy, or clerk do not  
321 apply in a case when the person is representing the office or  
322 agency in the course of his or her duties as an attorney at law  
323 or as to lay representation. This paragraph shall be strictly  
324 construed, enforced, and complied with.

325 (b) The officers and persons described in subsections (1),  
326 (2), (3), and (5) are not otherwise authorized to practice as  
327 prescribed under subsection (6), absent federal law preempting  
328 such provisions.

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

331 (10) This section shall have retroactive and prospective  
332 application in law.

333 Section 8. Section 454.23, Florida Statutes, is amended to  
334 read:

335 454.23 Penalties.—

336 (1) Any person not licensed or otherwise authorized to  
337 practice law in this state who practices law in this state or  
338 holds himself or herself out to the public as qualified to  
339 practice law in this state, or who willfully pretends to be, or  
340 willfully takes or uses any name, title, addition, or  
341 description implying that he or she is qualified, or recognized  
342 by law as qualified, to practice law in this state, commits a  
343 felony of the third degree, punishable as provided in s.  
344 775.082, s. 775.083, or s. 775.084.

345 (2) An attorney licensed to practice law in this state who  
346 willfully or intentionally violates, or causes another person to  
347 violate, the rules and discipline of any court, tribunal, or  
348 officer in any matter of order or procedure in this state, not

19-01572-10

20102692

349 in conflict with the State Constitution or laws of this state,  
350 commits a misdemeanor of the first degree, punishable as  
351 provided in s. 775.082 or s. 775.083.

352 (3) An attorney licensed to practice law in this state who  
353 willfully or intentionally violates the oath of admission to The  
354 Florida Bar, or commits or causes any act in violation of 18  
355 U.S.C. s. 241 or 18 U.S.C. s. 242 under federal law before any  
356 court, tribunal, or officer in this state, commits a felony of  
357 the third degree, punishable as provided in s. 775.082, s.  
358 775.083, or s. 775.084.

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

361 768.81 Comparative fault.—

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

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

377 (b) In order to allocate any or all fault to a nonparty and

19-01572-10

20102692

378 include the named or unnamed nonparty on the verdict form for  
379 purposes of apportioning damages, a defendant must have filed  
380 with the court and served process on the nonparty all pertinent  
381 motions and pleadings, subjecting the nonparty to the  
382 jurisdiction of the court, and prove at trial, by a  
383 preponderance of the evidence, the fault of the nonparty in  
384 causing the plaintiff's injuries, otherwise the defendant shall  
385 be held fully liable for the allocation of fault of the nonparty  
386 alleged.

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

397 (d) This section shall be strictly construed, enforced, and  
398 complied with.

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

401 924.051 Terms and conditions of appeals and collateral  
402 review in criminal cases.—

403 (3) An appeal may not be taken from a judgment or order of  
404 a trial court unless a prejudicial error is alleged and is  
405 properly preserved or, if not properly preserved, would  
406 constitute fundamental error. A judgment or sentence may be

19-01572-10

20102692\_\_

407 reversed on appeal only when an appellate court determines after  
408 a review of the complete record that prejudicial error occurred  
409 and was properly preserved in the trial court or, if not  
410 properly preserved, would constitute fundamental error. The  
411 opinion of the court must be supported by at least one binding  
412 authority for each point for review, which must be cited in the  
413 final order or opinion of the appellate court. The court file  
414 and the appellate record do not require a transcript or  
415 statement of proceedings for a proper full examination of the  
416 case before the court.

417 Section 11. Section 924.33, Florida Statutes, is amended to  
418 read:

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

431 Section 12. Section 939.055, Florida Statutes, is created  
432 to read:

433 939.055 Sanctions for unfounded offense, defense, or delay;  
434 service of motions.—

435 (1) The Legislature strongly encourages the courts, through

19-01572-10

20102692

436 their inherent powers and pursuant to this section, to impose  
437 sanctions against any person, attorney, or nonattorney,  
438 including the state, within the court's jurisdiction who is  
439 found at any time in any trial or appellate court proceeding to  
440 have committed, without limitation, the following:

441 (a) Abused a petition for extraordinary relief,  
442 postconviction motion, or appeal therefrom;

443 (b) Abused or caused unreasonable delay in any pretrial  
444 proceeding;

445 (c) Raised a claim that a court has found to be, or is in  
446 fact, frivolous or procedurally barred, or that should have been  
447 preserved by objection in the trial court or raised on a direct  
448 appeal;

449 (d) Improperly withheld or used misleading evidence or  
450 testimony;

451 (e) Adversely affected the orderly administration of  
452 justice; or

453 (f) Partaken in "game playing," dilatory tactics,  
454 sandbagging, or "gotcha" tactics.

455 (2) If applicable and appropriate in a case, the court may  
456 consider sanctions that include, but are not limited to:

457 (a) Dismissal of a pleading or case;

458 (b) Disciplinary sanctions;

459 (c) A fine;

460 (d) Costs, fees, expenses, or damages; and

461 (e) Any other sanction that is available to the court under  
462 its inherent powers.

463 (3) A motion seeking sanctions under this section shall be  
464 by the state, a defendant, whether a attorney or nonattorney,



19-01572-10

20102692

465 or, if pro se or otherwise, shall be by his or her representing  
466 attorney. The motion must clearly express facts demonstrating  
467 conduct as prescribed under subsection (1), be verified, served  
468 on all the parties in the case, and filed with the court within  
469 10 days after being subject to and apprised of the misconduct  
470 involved. Any motion filed with the court which does not comply  
471 with this subsection is void. This subsection is substantive and  
472 may not be waived except in writing. This subsection does not  
473 apply to sanctions ordered upon the court's initiative.

474 (4) Sanctions ordered against the state must be awarded and  
475 approved by the Chief Financial Officer in accordance with s.  
476 939.13.

477 (5) The provisions of this section are supplemental to  
478 other sanctions or remedies available under law or under court  
479 rules.

480  
481 This section must be strictly construed, enforced, and complied  
482 with.

483 Section 13. Section 924.395, Florida Statutes, is repealed.

484 Section 14. This act shall take effect July 1, 2010.