

HB 433

2010

1 A bill to be entitled
 2 An act relating to negligence; amending s. 768.81, F.S.;
 3 defining the terms "negligence action" and "products
 4 liability action"; requiring the trier of fact to consider
 5 the fault of all parties to an accident when apportioning
 6 damages in a products liability action alleging an
 7 additional or enhanced injury; providing an effective
 8 date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

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 12 Section 1. Section 768.81, Florida Statutes, is amended to
 13 read:

14 768.81 Comparative fault.—

15 (1) DEFINITIONS ~~DEFINITION~~.—As used in this section, the
 16 term:

17 (a) "Economic damages" means past lost income and future
 18 lost income reduced to present value; medical and funeral
 19 expenses; lost support and services; replacement value of lost
 20 personal property; loss of appraised fair market value of real
 21 property; costs of construction repairs, including labor,
 22 overhead, and profit; and any other economic loss that ~~which~~
 23 would not have occurred but for the injury giving rise to the
 24 cause of action.

25 (b) "Negligence action" means, without limitation, a civil
 26 action for damages based upon a theory of negligence; strict
 27 liability; products liability; or professional malpractice,
 28 whether couched in terms of contract, tort, or breach of

HB 433

2010

29 warranty and like theories. The substance of an action, not
30 conclusory terms used by a party, determines whether an action
31 is a negligence action.

32 (c) "Products liability action" means a civil action based
33 upon a theory of strict liability, negligence, breach of
34 warranty, nuisance, or similar theories for damages caused by
35 the manufacture, construction, design, formulation,
36 installation, preparation, or assembly of a product. The term
37 includes an action alleging that injuries received by a claimant
38 in an accident were greater than the injuries the claimant would
39 have received but for a defective product. The substance of an
40 action, not the conclusory terms used by a party, determines
41 whether an action is a products liability action.

42 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence an
43 action to which this section applies, any contributory fault
44 chargeable to the claimant diminishes proportionately the amount
45 awarded as economic and noneconomic damages for an injury
46 attributable to the claimant's contributory fault, but does not
47 bar recovery.

48 (3) APPORTIONMENT OF DAMAGES.—In a negligence action cases
49 to which this section applies, the court shall enter judgment
50 against each party liable on the basis of such party's
51 percentage of fault and not on the basis of the doctrine of
52 joint and several liability.

53 (a)1. In order to allocate any or all fault to a nonparty,
54 a defendant must affirmatively plead the fault of a nonparty
55 and, absent a showing of good cause, identify the nonparty, if
56 known, or describe the nonparty as specifically as practicable,

57 | either by motion or in the initial responsive pleading when
 58 | defenses are first presented, subject to amendment any time
 59 | before trial in accordance with the Florida Rules of Civil
 60 | Procedure.

61 | 2.~~(b)~~ In order to allocate any or all fault to a nonparty
 62 | and include the named or unnamed nonparty on the verdict form
 63 | for purposes of apportioning damages, a defendant must prove at
 64 | trial, by a preponderance of the evidence, the fault of the
 65 | nonparty in causing the plaintiff's injuries.

66 | (b) In a products liability action alleging that injuries
 67 | received by a claimant in an accident were greater than the
 68 | injuries the claimant would have received but for a defective
 69 | product, the trier of fact shall consider the fault of all
 70 | entities who contributed to the accident when apportioning fault
 71 | between or among the parties and nonparties included on the
 72 | verdict form.

73 | (4) APPLICABILITY.—

74 | ~~(a) This section applies to negligence cases. For purposes~~
 75 | ~~of this section, "negligence cases" includes, but is not limited~~
 76 | ~~to, civil actions for damages based upon theories of negligence,~~
 77 | ~~strict liability, products liability, professional malpractice~~
 78 | ~~whether couched in terms of contract or tort, or breach of~~
 79 | ~~warranty and like theories. In determining whether a case falls~~
 80 | ~~within the term "negligence cases," the court shall look to the~~
 81 | ~~substance of the action and not the conclusory terms used by the~~
 82 | ~~parties.~~

83 | ~~(b)~~ This section does not apply to any action brought by
 84 | any person to recover actual economic damages resulting from

HB 433

2010

85 | pollution, to any action based upon an intentional tort, or to
86 | any cause of action as to which application of the doctrine of
87 | joint and several liability is specifically provided by chapter
88 | 403 or, chapter 498, ~~chapter 517, chapter 542, or chapter 895.~~

89 | (5) MEDICAL MALPRACTICE.—Notwithstanding anything in law
90 | to the contrary, in an action for damages for personal injury or
91 | wrongful death arising out of medical malpractice, whether in
92 | contract or tort, if ~~when~~ an apportionment of damages pursuant
93 | to this section is attributed to a teaching hospital as defined
94 | in s. 408.07, the court shall enter judgment against the
95 | teaching hospital on the basis of such party's percentage of
96 | fault and not on the basis of the doctrine of joint and several
97 | liability.

98 | Section 2. This act shall take effect upon becoming a law.