

By Senators Richter and Fasano

37-00632B-10

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

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

11
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
29 warranty and like theories. The substance of an action, not

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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~~ action
43 ~~to which this section applies,~~ any contributory fault chargeable
44 to the claimant diminishes proportionately the amount awarded as
45 economic and noneconomic damages for an injury attributable to
46 the claimant's contributory fault, but does not bar recovery.

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

52 (a)1. In order to allocate any or all fault to a nonparty,
53 a defendant must affirmatively plead the fault of a nonparty
54 and, absent a showing of good cause, identify the nonparty, if
55 known, or describe the nonparty as specifically as practicable,
56 either by motion or in the initial responsive pleading when
57 defenses are first presented, subject to amendment any time
58 before trial in accordance with the Florida Rules of Civil

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59 Procedure.

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

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

72 (4) APPLICABILITY.—

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

82 ~~(b) This section does not apply to any action brought by~~
83 ~~any person to recover actual economic damages resulting from~~
84 ~~pollution, to any action based upon an intentional tort, or to~~
85 ~~any cause of action as to which application of the doctrine of~~
86 ~~joint and several liability is specifically provided by chapter~~
87 ~~403 or, chapter 498, chapter 517, chapter 542, or chapter 895.~~

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

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