

By the Committee on Commerce and Tourism; and Senators Richter and Gaetz

577-01792-11

2011142c1

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 persons who
 6 contributed to an accident when apportioning damages
 7 in a products liability action alleging an additional
 8 or enhanced injury; providing legislative intent to
 9 overrule a judicial opinion; providing a legislative
 10 finding that fault should be apportioned among all
 11 responsible persons in a products liability action;
 12 providing for retroactive application of the act;
 13 providing a legislative finding that the retroactive
 14 application of the act does not impair vested rights;
 15 providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 768.81, Florida Statutes, is amended to
 20 read:

21 768.81 Comparative fault.—

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

24 (a) "Economic damages" means past lost income and future
 25 lost income reduced to present value; medical and funeral
 26 expenses; lost support and services; replacement value of lost
 27 personal property; loss of appraised fair market value of real
 28 property; costs of construction repairs, including labor,
 29 overhead, and profit; and any other economic loss that ~~which~~

577-01792-11

2011142c1

30 would not have occurred but for the injury giving rise to the
31 cause of action.

32 (b) "Negligence action" means, without limitation, a civil
33 action for damages based upon a theory of negligence; strict
34 liability; products liability; or professional malpractice,
35 whether couched in terms of contract, tort, or breach of
36 warranty and like theories. The substance of an action, not
37 conclusory terms used by a party, determines whether an action
38 is a negligence action.

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

49 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence an action
50 ~~to which this section applies, any~~ contributory fault chargeable
51 to the claimant diminishes proportionately the amount awarded as
52 economic and noneconomic damages for an injury attributable to
53 the claimant's contributory fault, but does not bar recovery.

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

577-01792-11

2011142c1

59 (a)1. In order to allocate any or all fault to a nonparty,
60 a defendant must affirmatively plead the fault of a nonparty
61 and, absent a showing of good cause, identify the nonparty, if
62 known, or describe the nonparty as specifically as practicable,
63 either by motion or in the initial responsive pleading when
64 defenses are first presented, subject to amendment any time
65 before trial in accordance with the Florida Rules of Civil
66 Procedure.

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

72 (b) In a products liability action alleging that injuries
73 received by a claimant in an accident were greater than the
74 injuries the claimant would have received but for a defective
75 product, the trier of fact shall consider the fault of all
76 persons who contributed to the accident when apportioning fault
77 between or among them.

78 (4) APPLICABILITY.—

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

577-01792-11

2011142c1

88 ~~(b)~~ This section does not apply to any action brought by
89 any person to recover actual economic damages resulting from
90 pollution, to any action based upon an intentional tort, or to
91 any cause of action as to which application of the doctrine of
92 joint and several liability is specifically provided by chapter
93 403, chapter 498, chapter 517, chapter 542, or chapter 895.

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

103 Section 2. The Legislature intends that this act be applied
104 retroactively and overrule *D'Amario v. Ford Motor Co.*, 806 So.
105 2d 424 (Fla. 2001), which adopted what the Florida Supreme Court
106 acknowledged to be a minority view. That minority view fails to
107 apportion fault for damages consistent with Florida's statutory
108 comparative fault system, codified in s. 768.81, Florida
109 Statutes, and leads to inequitable and unfair results,
110 regardless of the damages sought in the litigation. The
111 Legislature finds that, in a products liability action as
112 defined in this act, fault should be apportioned among all
113 responsible persons.

114 Section 3. This act is remedial in nature and applies
115 retroactively. The Legislature finds that the retroactive
116 application of this act does not unconstitutionally impair

577-01792-11

2011142c1

117 vested rights. Rather, the law affects only remedies, permitting
118 recovery against all tortfeasors while lessening the ultimate
119 liability of each consistent with this state's statutory
120 comparative fault system, codified in s. 768.81, Florida
121 Statutes. In all cases, the Legislature intends that this act be
122 construed consistent with the due process provisions of the
123 State Constitution and the Constitution of the United States.

124 Section 4. This act shall take effect upon becoming a law.