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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 "accident," "negligence  
4 action," and "products liability action"; requiring  
5 the trier of fact to consider the fault of all persons  
6 who contributed to an accident when apportioning  
7 damages in a products liability action alleging an  
8 enhanced injury; requiring the jury instructions to  
9 apportion certain fault in a products liability  
10 action; providing the rules of evidence apply;  
11 providing legislative intent to overrule a judicial  
12 opinion; providing a legislative finding that fault  
13 should be apportioned among all responsible persons in  
14 a products liability action; providing for retroactive  
15 application of the act; providing a legislative  
16 finding that the retroactive application of the act  
17 does not impair vested rights; providing an effective  
18 date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Section 768.81, Florida Statutes, is amended to  
23 read:

24 768.81 Comparative fault.—

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

27 (a) "Accident" means the events and actions that relate to  
28 the incident as well as those events and actions that relate to  
29 the alleged defect or injuries, including enhanced injuries.

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30        (b) "Economic damages" means past lost income and future  
31 lost income reduced to present value; medical and funeral  
32 expenses; lost support and services; replacement value of lost  
33 personal property; loss of appraised fair market value of real  
34 property; costs of construction repairs, including labor,  
35 overhead, and profit; and any other economic loss that ~~which~~  
36 would not have occurred but for the injury giving rise to the  
37 cause of action.

38        (c) "Negligence action" means, without limitation, a civil  
39 action for damages based upon a theory of negligence, strict  
40 liability, products liability, professional malpractice whether  
41 couched in terms of contract or tort, or breach of warranty and  
42 like theories. The substance of an action, not conclusory terms  
43 used by a party, determines whether an action is a negligence  
44 action.

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

55        (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence ~~an~~ action  
56 ~~to which this section applies~~, any contributory fault chargeable  
57 to the claimant diminishes proportionately the amount awarded as  
58 economic and noneconomic damages for an injury attributable to

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59 the claimant's contributory fault, but does not bar recovery.

60 (3) APPORTIONMENT OF DAMAGES.—In a negligence action ~~cases~~  
61 ~~to which this section applies,~~ the court shall enter judgment  
62 against each party liable on the basis of such party's  
63 percentage of fault and not on the basis of the doctrine of  
64 joint and several liability.

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

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

78 (b) In a products liability action alleging that injuries  
79 received by a claimant in an accident were enhanced by a  
80 defective product, the trier of fact shall consider the fault of  
81 all persons who contributed to the accident when apportioning  
82 fault between or among them. The jury shall be appropriately  
83 instructed by the trial judge on the apportionment of fault in  
84 products liability actions where there are allegations that the  
85 injuries received by the claimant in an accident were enhanced  
86 by a defective product. The rules of evidence apply to these  
87 actions.

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88 (4) APPLICABILITY.—

89 ~~(a) This section applies to negligence cases. For purposes~~  
90 ~~of this section, "negligence cases" includes, but is not limited~~  
91 ~~to, civil actions for damages based upon theories of negligence,~~  
92 ~~strict liability, products liability, professional malpractice~~  
93 ~~whether couched in terms of contract or tort, or breach of~~  
94 ~~warranty and like theories. In determining whether a case falls~~  
95 ~~within the term "negligence cases," the court shall look to the~~  
96 ~~substance of the action and not the conclusory terms used by the~~  
97 ~~parties.~~

98 ~~(b) This section does not apply to any action brought by~~  
99 ~~any person to recover actual economic damages resulting from~~  
100 ~~pollution, to any action based upon an intentional tort, or to~~  
101 ~~any cause of action as to which application of the doctrine of~~  
102 ~~joint and several liability is specifically provided by chapter~~  
103 ~~403, chapter 498, chapter 517, chapter 542, or chapter 895.~~

104 (5) MEDICAL MALPRACTICE.—Notwithstanding anything in law to  
105 the contrary, in an action for damages for personal injury or  
106 wrongful death arising out of medical malpractice, whether in  
107 contract or tort, if when an apportionment of damages pursuant  
108 to this section is attributed to a teaching hospital as defined  
109 in s. 408.07, the court shall enter judgment against the  
110 teaching hospital on the basis of such party's percentage of  
111 fault and not on the basis of the doctrine of joint and several  
112 liability.

113 Section 2. The Legislature intends that this act be applied  
114 retroactively and overrule *D'Amario v. Ford Motor Co.*, 806 So.  
115 2d 424 (Fla. 2001), which adopted what the Florida Supreme Court  
116 acknowledged to be a minority view. That minority view fails to

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117 apportion fault for damages consistent with Florida's statutory  
118 comparative fault system, codified in s. 768.81, Florida  
119 Statutes, and leads to inequitable and unfair results,  
120 regardless of the damages sought in the litigation. The  
121 Legislature finds that, in a products liability action as  
122 defined in this act, fault should be apportioned among all  
123 responsible persons.

124       Section 3. This act is remedial in nature and applies  
125 retroactively. The Legislature finds that the retroactive  
126 application of this act does not unconstitutionally impair  
127 vested rights. Rather, the law affects only remedies, permitting  
128 recovery against all tortfeasors while lessening the ultimate  
129 liability of each consistent with this state's statutory  
130 comparative fault system, codified in s. 768.81, Florida  
131 Statutes. In all cases, the Legislature intends that this act be  
132 construed consistent with the due process provisions of the  
133 State Constitution and the Constitution of the United States.

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