

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; deleting language
 8 concerning applicability and the definition of the term
 9 "negligence cases"; amending s. 25.077, F.S.; conforming
 10 provisions to changes made by this act; providing
 11 legislative findings and intent; providing for retroactive
 12 application; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 768.81, Florida Statutes, is amended to
 17 read:

18 768.81 Comparative fault.—

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

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

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

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

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

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

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

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

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

76 (4) APPLICABILITY.—

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

85 ~~parties.~~

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

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

101 Section 2. Section 25.077, Florida Statutes, is amended to
 102 read:

103 25.077 Negligence action ~~case~~ settlements and jury
 104 verdicts; case reporting.—Through the state's uniform case
 105 reporting system, the clerk of court shall report to the Office
 106 of the State Courts Administrator, ~~beginning in 2003,~~
 107 information from each settlement or jury verdict and final
 108 judgment in negligence actions ~~cases~~ as defined in s. 768.81~~(4)~~,
 109 as the President of the Senate and the Speaker of the House of
 110 Representatives deem necessary from time to time. The
 111 information shall include, but need not be limited to: the name
 112 of each plaintiff and defendant; the verdict; the percentage of

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113 fault of each; the amount of economic damages and noneconomic
114 damages awarded to each plaintiff, identifying those damages
115 that are to be paid jointly and severally and by which
116 defendants; and the amount of any punitive damages to be paid by
117 each defendant.

118 Section 3. The Legislature intends this law to be applied
119 retroactively and the holding in *D'Amario v. Ford Motor Co.*, 806
120 So. 2d 424 (Fla. 2001), which adopted what the Florida Supreme
121 Court acknowledged to be a minority view, to be nullified. That
122 minority view fails to apportion fault for damages consistent
123 with Florida's statutory comparative fault system, codified in
124 section 768.81, Florida Statutes, and leads to inequitable and
125 unfair results, regardless of what damages are sought in the
126 litigation. The Legislature finds that, in products liability
127 actions as defined in this act, fault should be apportioned
128 among all responsible persons.

129 Section 4. The Legislature finds that this act is remedial
130 and that its retroactive application does not unconstitutionally
131 impair vested rights. Rather, this act affects only remedies,
132 permitting a recovery against all tortfeasors while lessening
133 the ultimate liability of each consistent with Florida's
134 statutory comparative fault system, codified in section 768.81,
135 Florida Statutes. In all cases, the Legislature intends this law
136 to be construed consistent with the due process provisions of
137 the federal and state constitutions.

138 Section 5. This act shall take effect upon becoming a law.