

CS/HB 201

2011

1                   A bill to be entitled  
2           An act relating to negligence; amending s. 768.81, F.S.;  
3           specifying how the trier of fact is to apportion damages  
4           in products liability actions alleging additional or  
5           enhanced injury resulting from the crash of a motor  
6           vehicle alleged to be defective; providing that the  
7           doctrine of joint and several liability applies to a tort  
8           action brought by a first responder; defining the term  
9           "first responder"; providing applicability; providing an  
10          effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14           Section 1. Subsection (3) and paragraph (b) of subsection  
15           (4) of section 768.81, Florida Statutes, are amended to read:

16           768.81 Comparative fault.—

17           (3) APPORTIONMENT OF DAMAGES.—In cases to which this  
18           section applies, the court shall enter judgment against each  
19           party liable on the basis of such party's percentage of fault  
20           and not on the basis of the doctrine of joint and several  
21           liability.

22           (a) In order to allocate any or all fault to a nonparty, a  
23           defendant must affirmatively plead the fault of a nonparty and,  
24           absent a showing of good cause, identify the nonparty, if known,  
25           or describe the nonparty as specifically as practicable, either  
26           by motion or in the initial responsive pleading when defenses  
27           are first presented, subject to amendment any time before trial  
28           in accordance with the Florida Rules of Civil Procedure.

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29 (b) In order to allocate any or all fault to a nonparty  
30 and include the named or unnamed nonparty on the verdict form  
31 for purposes of apportioning damages, a defendant must prove at  
32 trial, by a preponderance of the evidence, the fault of the  
33 nonparty in causing the plaintiff's injuries.

34 (c) In a products liability action brought by the claimant  
35 alleging that because of a defective product the injuries  
36 received by the claimant in a motor vehicle accident were  
37 greater than the injuries the claimant would have received but  
38 for the defective product, the trier of fact shall consider only  
39 the fault of the persons responsible for the accident in regard  
40 to the injuries directly caused by the accident and shall  
41 consider only the fault of the persons responsible for the  
42 defective product in regard to the injuries directly caused by  
43 the defective product, unless the trier of fact cannot  
44 distinguish the injuries directly caused by the defective  
45 product, in which case the trier of fact shall consider the  
46 fault of all persons who contributed to the accident and the  
47 injuries and apportion liability between them.

48 (4) APPLICABILITY.—

49 (b) This section does not apply to any action brought by  
50 any person to recover actual economic damages resulting from  
51 pollution, to any action based upon an intentional tort, to any  
52 action brought by a first responder, or to any cause of action  
53 as to which application of the doctrine of joint and several  
54 liability is specifically provided by chapter 403, chapter 498,  
55 chapter 517, chapter 542, or chapter 895. For purposes of this  
56 paragraph, the term "first responder" means a law enforcement

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57 officer as defined in s. 943.10, a firefighter as defined in s.  
58 633.30, or an emergency medical technician or paramedic as  
59 defined in s. 401.23, whether such first responder is employed  
60 full time, employed part time, or is a volunteer.

61 Section 2. This act shall take effect upon becoming a law  
62 and shall apply to causes of action accruing on or after that  
63 date.