

FLORIDA HOUSE OF REPRESENTATIVES

FINAL BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: [CS/HB 867](#)

TITLE: Indemnification and Insurance Obligations of Commuter Rail Transportation Providers

SPONSOR(S): Lopez, V.

COMPANION BILL: [CS/SB 916](#) (Rodriguez)

LINKED BILLS: None

RELATED BILLS: None

FINAL HOUSE FLOOR ACTION: 114 Y's 0 N's

GOVERNOR'S ACTION: Approved

SUMMARY

Effect of the Bill:

The bill establishes the Coastal Link Commuter Rail Service Act. Under the bill, a state, county, municipality, district, authority, or other separate unit of government that has entered into an agreement with Brightline to operate commuter rail service on the Coastal Link corridor may assume indemnification and insurance obligations in certain circumstances. Thus, the bill provides a legal framework for suits involving incidents which arise from commuter rail services along the Coastal Link Corridor.

Fiscal or Economic Impact:

None.

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ANALYSIS

EFFECT OF THE BILL:

The bill creates [s. 343.811, F.S.](#), referred to as the [Coastal Link Commuter Rail Service](#) Act. Under the bill, a state, county, municipality, district, authority, or other separate unit of government that has entered into an agreement with Brightline to operate [commuter rail service](#) on the [Coastal Link corridor](#) may assume indemnification and insurance obligations in certain circumstances. (Section [1](#)).

Assumption of Obligations

The bill provides that in association with the development or operation of a commuter rail service on the Coastal Link corridor, an [agency](#) may assume certain obligations.

The bill states that an agency may assume obligations by contract to protect, defend, indemnify, and hold harmless both [Florida East Coast Railway](#) (FECR), Brightline, and either entity's officers, agents, and employees from and against:

- Any [liability](#), cost, and expense, including, but not limited to, the agency's passengers and other [rail corridor invitees](#) on the Coastal Link corridor, regardless of whether the loss, damage, destruction, injury, or death is caused in whole or in part by the fault, failure, [negligence](#), misconduct, nonfeasance, or misfeasance of such freight rail operator or Brightline, its successors, or its officer, agents, and employees, or any other person.
- Any loss, injury, or [damages](#) incurred by other rail corridor invitees up to a self-insurance retention amount of \$5 million with respect to limited covered accidents caused by the agency. (Section [2](#)).

The bill provides that an agency may not contract to assume liability in any instance that exceeds the following parameters of allocation of risk:

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- The agency may be solely responsible for any loss, injury, or damage to the agency's passengers, or rail corridor invitees, third parties, or trespassers, regardless of circumstances or cause, subject to the other provisions of the bill.
- In the event of a [limited covered accident](#) caused by FECR or Brightline, the authority of an agency to protect, defend, and indemnify FECR or Brightline for all liability, cost, and expense, including punitive or exemplary damages, in excess of the self-insurance retention amount exists only if FECR or Brightline agrees, with respect to such accident, to protect, defend, and indemnify the agency for the amount of the self-insurance retention amount. (Section [2](#)).

Under the bill, when only one train is involved in an incident, including an incident with trespassers or at-grade crossings, and the train is an agency train, the agency may be solely responsible for any loss, injury, or damage. When only one train is involved in an incident and the train belongs to either FECR or Brightline, the owning entity is solely responsible for any loss, injury, or damage, except for the agency's passengers and other rail corridor invitees, which are the responsibility of the agency. The entity's passengers and other rail corridor invitees are the responsibility of the entity. (Section [2](#)).

The bill states that when an incident involves more than one [operator](#), each operator is responsible for:

- Its property, passengers, employees (excluding employees who are, at the time of the incident, rail corridor invitees of another operator), and other rail corridor invitees.
- Its proportionate share of any loss or damage to the [joint infrastructure](#).
- Its [proportionate share](#) of any loss, injury, or damage to rail corridor invitees who are not rail corridor invitees of operators¹ and trespassers or third parties outside the Coastal Link corridor as a result of the incident. (Section [2](#)).

Under the bill, any contractual [duty](#) of an agency to protect, defend, indemnify, and hold harmless FECR or Brightline with respect to claims by rail passengers must expressly include a cap which may not exceed \$323 million per occurrence, unless legislative approval is provided. This amount must be adjusted in accordance with the [federal limitation on rail passenger transportation liability, 49 U.S. Code § 28103](#), or any successor provision. (Section [2](#)).

The bill states that the liabilities of the agency to the state or any other agency shall be as set forth in an agreement among such entities and limited by [s. 768.28\(19\), F.S.](#) (Section [2](#)).

Purchase of Insurance

Additionally, the bill provides that in association with the development or operation of a commuter rail service on the Coastal Link corridor, an agency may purchase liability insurance. (Section [2](#)).

Under the bill, if an agency purchases liability insurance, the insured amount may not exceed \$323 million per occurrence. This amount will be adjusted in accordance with the aggregate allowable award to all rail passengers, against all defendants, for all claims, including punitive damages, arising from a single accident or incident under the [federal limitation on rail passenger transportation liability, 49 U.S. Code § 28103](#), and any successor provisions. (Section [2](#)).

The bill provides that an agency may also establish a self-insurance retention fund for the purpose of paying the deductible limit for the insurance policies the agency may obtain, including coverage for a county agency, freight rail operators that access the Coastal Link corridor pursuant to a contract with FECR, Brightline, commuter rail service providers, governmental entities, or any ancillary development. The bill provides that any self-insurance retention fund or deductible may not exceed the self-insurance retention amount of \$5 million. (Section [2](#)).

¹ The bill provides that the agency shall always be responsible for its passengers and its rail corridor invitees regardless of whether the agency was involved in the incident.

The bill states that if an agency elects to purchase liability insurance, such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to compensatory, special, and exemplary damages. The insurance and self-insurance retention fund may be maintained to provide adequate funds to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of the Coastal Link corridor. (Section [2](#)).

Any self-insured retention account obtained in accordance with the provisions of the bill must be a segregated account of the agency and must be subject to the same conditions, restrictions, exclusions, obligations, and duties included in any and all of the policies of liability insurance purchased under the bill. (Section [2](#)).

Sovereign Immunity

The bill provides that the purchase of insurance, the establishment of a self-insurance retention fund, and the assumption by contract to protect, defend, indemnify, and hold harmless may not be deemed a waiver of any defense of sovereign immunity for [tort claims](#) or deemed to increase the limits of the agency's liability for tort claims provided under current law. (Section [2](#)).

The bill clarifies that unless specifically provided by law, FECR and Brightline, and their respective officers, agents, and employees, are not officers, employees, or [subdivisions](#) of the state and are not entitled to sovereign immunity. (Section [2](#)).

Definitions Provided Under the Bill

The bill defines "[agency](#)" as a state, county, municipality, district, authority, or other separate unit of government created or established by law which has entered into an agreement with Brightline allowing the government entity to operate commuter rail service on the Coastal link corridor. (Section [2](#)).

Under the bill, "[Brightline](#)" means Brightline Trains Florida, LLC, or its successors and assigns, or any of its affiliates that is a party to an agreement with an agency in connection with the Coastal Link corridor. The bill states that for the purposes of its status as an indemnitee, "Brightline" include Florida East Coast Dispatch, LLC. (Section [2](#)).

The bill defines the "[Coastal Link corridor](#)" as the rail transit system, including the intercity passenger rail service stations and vehicle maintenance facilities, located on or adjacent to the Florida East Coast Railway (FECR) and Brightline rail corridor in Miami-Dade County, Broward County, and Palm Beach County.² (Section [2](#)).

Under the bill, "[commuter rail service](#)" means the operation of a train transporting passengers³ and making frequent stops within urban areas and the immediate suburbs along the rail corridor for the purpose of transporting passengers, including boarding and alighting and the nonrevenue movement of passenger trains for

² The bill states that the "Coastal Link corridor" includes structures essential to railroad operations, including land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the purpose of construction, operation, or maintenance of a railroad that provides rail service.

³ The bill states that, with respect to intercity passenger rail service or commuter rail service, "passenger" means a person, ticketed or unticketed, using the rail service on the Coastal Link corridor:

- Onboard trains, locomotives, rail cars, or rail equipment employed in such intercity passenger rail service or commuter rail service or boarding or alighting therefrom;
- On or about the Coastal Link corridor for any purpose related to such intercity passenger rail service or commuter rail service, including parking or purchasing tickets therefor and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or
- Meeting, assisting, or in the company of a person described in subparagraph 1. or subparagraph 2.

storage, maintenance, or repairs. The bill states that the term does not include the operation of trains by Brightline transporting passengers in intercity passenger rail service between Brightline stations⁴. (Section [2](#)).

Under the bill, “[FECR](#)” means the Florida East Coast Railway, LLC, or its successors and assigns. For the purposes of its status as an indemnitee, the term “FECR” includes Florida East Coast Dispatch, LLC, or its successors and assigns. (Section [2](#)).

The bill defines “intercity passenger rail service” as all passenger service on the Coastal Link corridor other than commuter rail service and is characterized by trains making less frequent stops along the Coastal Link corridor than the commuter rail service makes. (Section [2](#)).

Under the bill, “[joint infrastructure](#)” means any portion or segment of the Coastal Link corridor which does not contain tracks or infrastructure designated for the exclusive use of one operator.⁵ (Section [2](#)).

“[Limited covered accident](#)” is defined in the bill as a collision directly between the trains, locomotives, rail cars, or rail equipment of more than one operator on the Coastal Link corridor, where the collision is caused by or arising from the willful misconduct of one of the responsible operators⁶, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of the responsible operator, as adjudicated pursuant to a final and unappealable court order. (Section [2](#)).

Under the bill, the term “[operator](#)” includes:

- Brightline, including any passenger rail operators that access the Coastal Link corridor pursuant to a contract with Brightline, other than an agency;
- FECR, including Amtrak or any freight rail operators that access the Coastal Link corridor pursuant to a contract with FERC;
- An agency, including any commuter rail operators that access the Coastal Link corridor pursuant to a contract with an agency; or
- The South Florida Regional Transportation Authority (SFRTA), with respect to its operation contemplated under [s. 343.545, F.S.](#) (Section [2](#)).

The bill defines “[proportionate share](#)” as, with respect to a loss, injury, or damage for which operators share responsibility, a percentage in proportion to the number of operators involved in the relevant incident.

- When one or more agencies are jointly operating a commuter rail service, such agencies are considered a single operator for the purposes of computing and assessing the proportionate share.
- When two operators are involved in the incident, each is responsible for one-half of such loss, injury, or damage; when three operators are involved in the incident, each is responsible for one-third, and so on.
- When more than one agency shares responsibility with respect to loss, injury, or damage, each agency is considered a separate entity for purposes of determining its proportionate share. (Section [2](#)).

Under the bill, “[rail corridor invitee](#)” means a passenger who is on or about the Coastal Link corridor or a person otherwise present on the Coastal Link corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of an operator. The bill states that this term does not include patrons at any station who are not also passengers, commercial or residential tenants at any station or the developments in and around the stations or their invitees, or third parties performing work at a station or in the Coastal Link corridor, including any utilities or fiber optic companies. The bill further provides that:

⁴ For the purpose of the “commuter rail service” definition, the bill states that “Brightline stations” means the Brightline-owned intercity passenger rail service stations in Miami located near Aventura, Fort Lauderdale, Boca Raton, and West Palm Beach, as well as any future stations developed by Brightline in connection with its intercity passenger rail service.

⁵ Train stations, including, but not limited to, pedestrian bridges, stairs, or conveyance systems, do not constitute part of the joint infrastructure.

⁶ The bill states that for the purpose of the definition of “limited covered accident,” “responsible operator” means an operator or its subsidiaries, agents, licenses, employees, officers, or directors which has caused a collision as a result of willful misconduct.

- A rail corridor invitee of an agency may not be considered an invitee of Brightline or FECR.
- A rail corridor invitee of Brightline or FECR may not be considered an invitee of an agency.
- An employee of an operator is not a rail corridor invitee of such operator at any time the employee is a passenger or is otherwise present on the Coastal Link corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of another operator.
- When a passenger is transferring from the service of one operator to another, the passenger is a rail corridor invitee of the first operator until the passenger has left the first operator's platform, at which time the passenger is then a rail corridor invitee of the other operator. (Section 2).

The bill reenacts existing law, [s. 341.302\(17\), F.S.](#), for the purpose of incorporating changes made by the bill. (Section 3).

The bill was approved by the Governor on June 4, 2025, ch. 2025-119, L.O.F., and will become effective on July 1, 2025.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Rail Service in Florida

The Florida Department of Transportation (DOT) must develop and implement a rail program designed to ensure its proper maintenance, safety, revitalization, and expansion to assure its continued and increased availability, and to respond to statewide mobility needs. DOT's statutory rail requirements include:

- Providing the overall leadership, coordination, and financial and technical assistance necessary to assure the effective responses of the state's rail system to mobility needs.
- Promoting and facilitating the implementation of advanced rail systems.
- Developing and administering state standards concerning the safety and performance of rail systems.⁷

Most of Florida's rail mileage is owned by freight railroads. Roughly 60 percent of the rail mileage in the state is owned by CSX Transportation, Inc., (CSX) and Florida East Coast Railway (FECR). The remaining rail mileage in the state is owned by Norfolk Southern Railway, short lines railroads, and the state of Florida.⁸

In 1988, DOT and CSX entered into an agreement whereby DOT purchased approximately 81 miles of CSX track and right-of-way⁹ in order to operate commuter rail in South Florida.¹⁰ The commuter rail system, known as Tri-Rail, operates in Miami-Dade, Broward, and Palm Beach counties.¹¹

Brightline

Brightline Trains Florida (Brightline) is the only privately owned and operated intercity railroad in the United States.¹² Brightline operates hourly intercity passenger rail service on a 235-mile corridor between Miami and Orlando.¹³ Brightline is also actively planning a further extension from Orlando to Tampa.¹⁴ As of July 2024,

⁷ [S. 341.302, F.S.](#)

⁸ *Florida Rail System Plan, Executive Summary* (Nov. 2023) at 3, [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/rail/plans/rail/rail-system-plan-2023/rsp-october-version/fdot_rsp_ch-1_ada-\(nov\).pdf?sfvrsn=606135b_4](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/rail/plans/rail/rail-system-plan-2023/rsp-october-version/fdot_rsp_ch-1_ada-(nov).pdf?sfvrsn=606135b_4) (last visited Mar. 11, 2025).

⁹ This is commonly known as the South Florida Rail Corridor. *FDOT Florida Freight & Passenger Rail Plan*, 2-1 n. 1.; https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/rail/publications/plans/rail/06visionplan/flrail06.pdf?sfvrsn=ce111160_0 (last visited March 12, 2025).

¹⁰ *Id.* at 5-34.

¹¹ Tri-Rail System Map, <https://www.tri-rail.com/> (last visited March 12, 2025)

¹² Brightline, *About Us*, <https://www.gobrightline.com/about> (last visited Mar. 11, 2025).

¹³ *Florida Rail System Plan, Executive Summary* (Nov. 2023) at 5, [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/rail/plans/rail/rail-system-plan-2023/rsp-october-version/fdot_rsp_ch-1_ada-\(nov\).pdf?sfvrsn=606135b_4](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/rail/plans/rail/rail-system-plan-2023/rsp-october-version/fdot_rsp_ch-1_ada-(nov).pdf?sfvrsn=606135b_4) (last visited Mar. 11, 2025).

Brightline offers sixteen daily round trips between South Florida and Orlando, departing from the Orlando International Airport and ending in Miami with stops in West Palm Beach, Boca Raton, Fort Lauderdale, and Aventura.¹⁵

[Florida East Coast Railway \(FECR\)](#)

FECR is a regional railroad in Florida which owns all 351-mile mainline track from Jacksonville to Miami. The railway connects to the national railway system in Jacksonville, allowing it to provide rail service in and out of Georgia, Tennessee, South Carolina, and North Carolina. FECR is the exclusive rail provider for Port Miami, Port Everglades, and Port of Palm Beach.¹⁶

[Coastal Link Commuter Rail Service](#)

Since 2021, DOT and Broward County Transit have been evaluating the implementation of commuter rail along the FECR corridor from Aventura in Miami-Dade County into Broward County. This evaluation is a direct result of a previous study known as the “Coastal Link” that evaluated 85 miles of commuter rail in Miami-Dade, Broward, and Palm Beach counties.¹⁷

In August 2022, the Broward County Commission adopted a Locally Preferred Alternative for Broward Commuter Rail South (BCR South) to extend commuter rail service on the FECR corridor from Aventura north to Fort Lauderdale. In February 2023, the Broward Metropolitan Planning Organization voted to amend its Metropolitan Transportation Plan to include BCR South as a Priority I project within the fiscally constrained portion of the plan, with project development funding programmed and approved by both Broward County and DOT in 2022.¹⁸

Miami-Dade County is also studying the implementation of commuter rail service in the FECR corridor from Downtown Miami to Aventura, known as the Northeast Corridor.¹⁹ The Northeast Corridor will establish a new rapid transit route from Miami Central Station in downtown Miami to West Aventura Station, utilizing the existing railroad corridor shared with Brightline and freight rail services. This project will utilize Brightline’s existing stations and add five additional stations.²⁰

[DOT Rail Liability](#)

DOT is authorized to implement a statewide rail program.²¹ In the event of an accident in a DOT-owned rail corridor, DOT may assume detailed obligations to specific parties who may be involved.²² These provisions relate to DOT trains, the National Railroad Passenger Corporation (AMTRAK) trains, and freight trains. DOT may agree to assume the obligations to indemnify and insure, pursuant to [s. 343.545, F.S.](#), freight rail service, intercity passenger rail service, and commuter rail service on a DOT-owned rail corridor, whether the ownership is in fee or by easement, or on a rail corridor where DOT has the right to operate.²³

DOT's duty to indemnify a freight rail operator or Amtrak is capped at \$200 million.²⁴ DOT is required to

¹⁴ *Id.* at 6.

¹⁵ Megan Dubois, *Taking the Brightline Train from Orlando to Boca Raton: Here's What It's Like*, Condé Nast Traveler (July 18, 2024), <https://www.cntraveler.com/story/brightline-train-orlando-to-boca-raton> (last visited Mar. 11, 2025).

¹⁶ Florida East Coast Railway, *Who We Are*, <https://fecrwy.com/> (last visited Mar. 11, 2025).

¹⁷ Florida Department of Transportation, *Broward Commuter Rail South*, <https://www.fdot.gov/projects/broward-commuter-rail-south/home> (last visited March 11, 2025)

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Miami-Dade County, *Northeast Corridor*, <https://www.miamidade.gov/global/transportation/smart-plan-northeast-corridor.page> (last visited March 11, 2025).

²¹ [S. 341.302, F.S.](#)

²² [S. 341.302\(17\), F.S.](#)

²³ [S. 341.302\(17\)\(d\), F.S.](#)

²⁴ [S. 341.302\(17\)\(a\)6., F.S.](#)

purchase up to \$200 million in liability insurance and establish a self-insurance retention fund to cover any deductible, provided that any parties covered under the insurance must pay a reasonable monetary contribution to cover the cost of the insurance.²⁵ The self-insurance fund or deductible is capped at \$10 million.²⁶ Neither the purchase of insurance nor the establishment of a self-insurance retention fund constitutes a waiver of sovereign immunity.²⁷

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.²⁸ [Article X, section 13 of the Florida Constitution](#) allows the Legislature to waive this immunity. In accordance with article X, section 13 of the Florida Constitution, Florida law allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment.²⁹ This liability exists only where a private person would be liable for the same conduct. The waiver of sovereign immunity provided under s. [768.28, F.S.](#), applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment.”³⁰

Section [768.28\(5\), F.S.](#), caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident.³¹ Although a court may enter an excess judgment, a claimant may not collect more than the caps provide, absent a claim bill passed by the Legislature.³²

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee’s acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.³³ A government entity is not liable for any damages resulting from actions by an employee outside the scope of his or her employment and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.³⁴

Political Subdivisions

A political subdivision is a separate legal entity of the State which usually has specific governmental functions.³⁵ Section [218.077\(2\)\(f\), F.S.](#), defines a political subdivision as a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. Local governments are incorporated by special acts of the Florida Legislature and include counties, municipalities, school districts, and special districts.³⁶

Some examples of different types of political subdivisions of the State of Florida include, but are not limited to:

- Cities;
- Counties;

²⁵ *Id.*

²⁶ S. [341.302\(17\)\(b\), F.S.](#)

²⁷ S. [341.302\(17\), F.S.](#)

²⁸ *Sovereign immunity*, Legal Information Institute, https://www.law.cornell.edu/wex/sovereign_immunity (last visited Mar. 7, 2025).

²⁹ [s. 768.28\(1\), F.S.](#)

³⁰ *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting [s. 768.28\(1\), F.S.](#)) (internal punctuation omitted).

³¹ S. [768.28\(5\), F.S.](#)

³² *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

³³ S. [768.28\(9\)\(a\), F.S.](#)

³⁴ *Id.*

³⁵ Social Security Administration, *How to Determine an Entity’s Legal Status*, https://www.ssa.gov/section218training/advanced_course_9.htm#3 (last visited Feb. 11, 2025).

³⁶ Susan A. MacManus, et al, *Politics in Florida*, (4th ed. 2015).

- Municipalities;
- School boards; and
- Special districts established by the Legislature.

Federal Limitation on Rail Passenger Transportation Liability

In the event of conduct giving rise to a claim for damages or liability arising from or in connection with the provision of rail passenger transportation, federal law provides a monetary cap on awards to all rail passengers. Under [49 U.S. Code § 28103](#), the aggregate allowable award to all rail passengers, against all defendants, for all claims, including punitive damages, arising from a single accident or incident may not exceed \$200,000,000.³⁷ In 2021, this cap was adjusted in accordance with inflation to \$322,864,228.³⁸

Tort Law

One of the goals of the civil justice system is to redress tortious conduct, or “torts.” A tort is a wrong for which the law provides a remedy. Torts are generally divided into two categories, as follows:

- An intentional tort, examples of which include an assault, a battery, or a false imprisonment.
- Negligence, which is a tort that is unintentionally committed. To prevail in a negligence lawsuit, the party seeking the remedy, the “plaintiff,” must demonstrate that the:
 - Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
 - Defendant breached his or her duty of care by failing to conform to the required standard;
 - Defendant’s breach caused the plaintiff to suffer an injury; and
 - Plaintiff suffered actual damage or loss resulting from such injury.³⁹

Negligence

“Negligence” is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances.⁴⁰ Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.⁴¹

³⁷ 49 U.S.C. § 28103 (1997).

³⁸ Adjustment to Rail Passenger Transportation Liability Cap, 86 Fed. Reg. 11571 (Feb. 22, 2021) (amending 49 U.S.C. § 28103).

³⁹ 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).

⁴⁰ 38 Fla. Jur 2d Negligence s. 1.

⁴¹ Fla. Standard Jury Instruction [401.4](#) at 57.

Duty of Care

The first of the four elements a plaintiff must show to prevail in a negligence action is that the defendant owed the plaintiff a "duty of care" to do something or refrain from doing something. The existence of a legal duty is a threshold requirement that, if satisfied, "merely opens the courthouse doors."⁴² Whether a duty sufficient to support a negligence claim exists is a matter of law⁴³ determined by the court.⁴⁴ A duty may arise from various sources, including:

- Legislative enactments or administrative regulations;
- Judicial interpretations of such enactments or regulations;
- Other judicial precedent; and
- The general facts of the case.⁴⁵

In determining whether a duty arises from the general facts of the case, courts look to whether the defendant's conduct foreseeably created a "zone of risk" that posed a general threat of harm to others—that is, whether there was a likelihood that the defendant's conduct would result in the type of injury suffered by the plaintiff.⁴⁶ Such zone of risk defines the scope of the defendant's legal duty, which is typically to either lessen the risk or ensure that sufficient precautions are taken to protect others from the harm the risk poses.⁴⁷ However, it is not enough that a risk merely exists or that a particular risk is foreseeable; rather, the defendant's conduct must create or control the risk before liability may be imposed.⁴⁸

Breach of the Duty of Care

The second element a plaintiff must prove is that the defendant "breached," or failed to discharge, the duty of care. Whether a breach occurred is generally a matter of fact for the jury to determine.⁴⁹

Causation

The third element a plaintiff must prove is that the defendant's breach of the duty of care "proximately caused" the plaintiff's injury. Whether or not proximate causation exists is generally a matter of fact for the jury to determine.⁵⁰ Florida follows the "more likely than not" standard in proving causation; thus, the inquiry for the factfinder is whether the defendant's negligence probably caused the plaintiff's injury.⁵¹ In making such a determination, the factfinder must analyze whether the injury was a foreseeable consequence of the danger created by the defendant's negligent act or omission.⁵² It is not required that the defendant's conduct must be the exclusive cause, or even the primary cause, of the plaintiff's injury suffered; instead, the plaintiff must only show that the defendant's conduct substantially caused the injury.⁵³

⁴² *Kohl v. Kohl*, 149 So. 3d 127 (Fla. 4th DCA 2014).

⁴³ A matter of law is a matter determined by the court, unlike a matter of fact, which must be determined by the jury. Matters of law include issues regarding a law's application or interpretation, issues regarding what the relevant law is, and issues of fact reserved for judges to resolve. Legal Information Institute, *Question of Law*, https://www.law.cornell.edu/wex/question_of_law (last visited March 12, 2025); Legal Information Institute, *Question of Fact*, https://www.law.cornell.edu/wex/Question_of_fact (last visited March 12, 2025).

⁴⁴ *Kohl*, 149 So. 3d at 135; *Goldberg v. Fla. Power & Light Co.*, 899 So. 2d 1110 (Fla. 2005).

⁴⁵ *Goldberg*, 899 So. 2d at 1105 (citing *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182 (Fla. 2003)).

⁴⁶ *Kohl*, 149 So. 3d at 135 (citing *McCain v. Fla. Power Corp.*, 593 So. 2d 500 (Fla. 1992); *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001)).

⁴⁷ *Kohl*, 149 So. 3d at 135; *Whitt*, 788 So. 2d at 217.

⁴⁸ *Bongiorno v. Americorp, Inc.*, 159 So. 3d 1027 (Fla. 5th DCA 2015) (citing *Demelus v. King Motor Co. of Fort Lauderdale*, 24 So. 3d 759 (Fla. 4th DCA 2009)).

⁴⁹ *Wallace v. Dean*, 3 So. 3d 1035 (Fla. 2009).

⁵⁰ *Sanders v. ERP Operating Ltd. P'ship*, 157 So. 3d 273 (Fla. 2015).

⁵¹ *Ruiz v. Tenent Hialeah Healthsystem, Inc.*, 260 So. 3d 977 (Fla. 2018).

⁵² *Id.* at 981-982.

⁵³ *Id.* at 982.

Negligence is a tort that is unintentionally committed. To prevail in a lawsuit for negligence, the plaintiff (the party seeking the remedy) must demonstrate that:

- The defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
- The defendant breached his or her duty of care by failing to conform to the required standard;
- The defendant's breach caused the plaintiff to suffer an injury; and
- The plaintiff suffered actual damage or loss resulting from such injury.⁵⁴

Section 95.11(3)(a), F.S., currently provides that general actions against a private citizen or entity founded on negligence are subject to a two-year statute of limitations.

Liability

Liability refers to the legal concept whereby a party is held legally responsible for an action. A person can be held liable based on his or her own actions, inactions, or the actions of people or animals for which he or she is legally responsible for.⁵⁵ Generally, once a party to a lawsuit has been found to have been liable, the party will likely be required to pay monetary damages.⁵⁶ In certain cases, the party may also be required to complete specific performance of an action; that is, the party may be ordered to fulfill his or her obligations under a contract as closely as possible to what was originally promised in the contract.⁵⁷

In the event multiple parties are legally responsible for the same thing (i.e. liable), [ch. 768](#), Florida Statutes, provides that each party's individual responsibility will be determined based on the comparative fault of each liable party. That is, a percentage of fault will be assigned to each liable party and the damages will be split between the parties based upon the percentage of fault that was attributed to the respective party.

Damages

Compensatory Damages

Actual damages, also called compensatory damages, are damages the plaintiff actually suffered as the result of the injury.⁵⁸ Juries award compensatory damages to compensate an injured person for a defendant's negligent acts.⁵⁹ Compensatory damages consist of both:

- "Economic damages," which typically consist of financial losses that can be easily quantified, such as lost wages, the cost to replace damaged property, or the cost of medical treatment; and
- "Non-economic damages," which typically consist of nonfinancial losses that cannot be easily quantified, such as pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, and loss of the capacity to enjoy life.⁶⁰

Punitive or Exemplary Damages

In certain limited situations, a court may also award "punitive damages," the purpose of which is to punish a defendant for bad behavior and deter future bad conduct, rather than to compensate the plaintiff for a loss.⁶¹ Punitive damages are sometimes referred to as "exemplary damages," but both terms convey the same idea; that is,

⁵⁴ 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).

⁵⁵ Cornell Law School, Legal Information Institute, *Liability*, <https://www.law.cornell.edu/wex/liability> (last visited March 21, 2025).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

⁵⁹ *St. Regis Paper Co. v. Watson*, 428 So. 2d 243 (Fla. 1983).

⁶⁰ *Cf.* [s. 766.202\(8\), F.S.](#)

⁶¹ See ss. [768.72](#), [768.725](#), and [768.73, F.S.](#) (providing standards and requirements for awarding punitive damages).

extra damages awarded beyond that actually incurred by the plaintiff.⁶² Under Florida Law, an award of punitive damages generally may not exceed three times the value of the compensatory damages awarded, or \$500,000.⁶³ In order to be awarded punitive damages, a plaintiff must prove by clear and convincing evidence that he or she is entitled to such (the burden of proof for a determination of regular, non-punitive damages is by the greater weight of the evidence, which is a lower burden than clear and convincing evidence).⁶⁴

OTHER RESOURCES:

[Florida Department of Transportation, Florida Rail System Plan \(2023\).](#)

⁶² Cornell Law School, *Exemplary Damages*, https://www.law.cornell.edu/wex/exemplary_damages (last visited March 23, 2025).

⁶³ S. [768.73, F.S.](#) provides for an increased limit to punitive damages under certain situations such as motivation or intent of the defendant.

⁶⁴ S. [768.725, F.S.](#)