HB 689 — Negligence/Slip on Foreign Substance

by Rep. Aubuchon and others (CS/SB 1224 by Judiciary Committee and Senator Gardiner)

The bill (Chapter 2010-8, L.O.F.) repeals the current statute providing the burden of proof in "slip-and-fall" negligence claims and delineates the new burden of proof in these cases. This new standard reinstates the requirement that the plaintiff prove that the business had actual or constructive knowledge of the dangerous condition causing the injury, but specifies that the business owner or operator retains any common-law duties owed to invitees.

The bill specifies that, if a person slips and falls on a foreign transitory substance in a business, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. The bill also provides that constructive knowledge may be proven by circumstantial evidence demonstrating that:

- The dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or
- The condition occurred with regularity and was therefore foreseeable.

In effect, the burden of proof rests with the slip-and-fall plaintiff, who must present affirmative evidence of the business's actual knowledge of, or circumstantial evidence of the business's constructive knowledge of, the transitory substance or object on the floor and that the business should have removed the hazard prior to the accident.

The bill specifies that the new burden of proof does not affect any common-law duty of care owed by a person or entity in possession or control of a business premises.

These provisions were approved by the Governor and take effect July 1, 2010.
Vote: Senate 32-5; House 110-2