

THE FLORIDA SENATE
2011 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/SB 142 — Negligence

by Commerce and Tourism Committee and Senators Richter, Gaetz, and Hays

The bill changes the apportionment of damages in products liability cases in which a plaintiff alleges that he or she received additional or enhanced injuries in an accident due to a defective product (e.g., crashworthiness cases). Specifically, under the bill, the fact finder in these cases must consider the fault of all persons who contributed to the accident when apportioning fault between or among them. The bill requires the trial judge to instruct the jury on the apportionment of fault in these cases and specifies that the rules of evidence apply to these actions.

The bill contains intent language and legislative findings that the provisions in the bill are intended to be applied retroactively and overrule *D’Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001). In that case, the Florida Supreme Court held that the focus in crashworthiness cases is the enhanced injury; therefore, consideration of the conduct that allegedly caused the enhanced and secondary injuries is pivotal, not the conduct that gave rise to the initial accident. As a result, the Court concluded that generally it would not be proper to admit evidence related to the intoxication of a non-party driver which caused the initial collision.

The bill reorganizes the comparative fault statute by moving the definition of “negligence action” to the definitions subsection in the current comparative fault statute, and it also adds definitions of the terms “accident” and “products liability action.”

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 28-12; House 80-35