

Bill No. HB 145

Barcode 131648

CHAMBER ACTION

Senate

House

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Senator Campbell moved the following amendment:

Senate Amendment (with title amendment)

Between lines 74 and 75,

insert:

Section 2. Section 768.375, Florida Statutes, is created to read:

768.375 Comparative fault.--

(1) EFFECT OF CONTRIBUTORY FAULT.--In an action based on negligence which seeks to recover damages for personal injury or wrongful death or damages to property arising out of the same facts, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

(2) APPORTIONMENT OF DAMAGES.--

(a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under subsection (3), the court, unless otherwise agreed by all parties, shall instruct

Bill No. HB 145

Barcode 131648

1 the jury to answer special interrogatories or, if there is no
2 jury, shall make findings, indicating:

3 1. The amount of damages each claimant would be
4 entitled to recover if contributory fault is disregarded; and

5 2. The percentage of the total fault of all of the
6 parties to each claim which is allocated to each claimant,
7 defendant, third-party defendant, and person who has been
8 released from liability under subsection (3). For this purpose
9 the court may determine that two or more persons are to be
10 treated as a single party.

11 (b) In determining the percentages of fault, the trier
12 of fact shall consider the nature of the conduct of each party
13 at fault and the extent of the causal relation between the
14 conduct and the damages claimed.

15 (c) The court shall determine the award of damages to
16 each party entitled thereto in accordance with the findings
17 and enter judgment against each party liable on the basis of
18 the party's percentage of fault and not on the basis of rules
19 of joint and several liability. However, if any party against
20 whom judgment is entered has not paid such judgment and lacks
21 the immediate ability to pay such judgment through insurance,
22 self-insurance, or other assets, the claimant may request a
23 reallocation of judgment pursuant to paragraph (d).

24 (d) The claimant may at any time after 60 days
25 following entry of final judgment request the court to conduct
26 a reallocation hearing unless, upon motion of the claimant,
27 the court determines that reallocation may be ordered at the
28 time of entry of final judgment. If the claimant proves that
29 any portion of the judgment as originally apportioned is
30 unpaid and that the judgment debtor liable therefor does not
31 have available the immediate ability to pay through sufficient

Bill No. HB 145

Barcode 131648

1 insurance coverage, self-insurance, or other assets, the court
 2 shall reallocate the deficiency among the other judgment
 3 debtors to the extent to which they have the immediate ability
 4 to pay their share of the deficiency through sufficient
 5 insurance coverage, self-insurance, or other assets, and enter
 6 a supplemental judgment against each such judgment debtor;
 7 however, the amount of a supplemental judgment may not exceed
 8 the product of the deficiency multiplied by the supplemental
 9 judgment debtor's percentage of fault. Any judgment debtor
 10 whose judgment is reallocated pursuant to this paragraph
 11 remains liable to the claimant on the final judgment, less any
 12 reallocated amount, and is liable to any supplemental judgment
 13 debtor for his or her share of the reallocated amount.

14 (e) The reallocation procedures specified in paragraph
 15 (d) shall be stayed if the trial court grants a supersedeas to
 16 any party pending an appeal from the judgment.

17 (3) EFFECT OF RELEASE.--A release, covenant not to
 18 sue, or similar agreement entered into by a claimant and a
 19 person liable discharges all liability for the released
 20 person's proportional share of the claimant's damages and
 21 discharges the released person from any liability for
 22 reallocation of any other liable person's deficiency pursuant
 23 to paragraph (2)(d), but does not discharge any other persons
 24 liable upon the same claim unless it so provides.

25 (4) APPLICABILITY.--This section applies to any cause
 26 of action arising on or after July 1, 2006, which is based on
 27 negligence for damages for personal injury or wrongful death
 28 or damages to property arising out of the same facts. However,
 29 this section does not apply to any action brought by any
 30 person to recover actual economic damages resulting from
 31 pollution or to any action based upon an intentional tort.

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(Redesignate subsequent sections.)

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On line 6, after the semicolon,

insert:

creating s. 768.375, F.S.; providing for
comparative fault; providing for apportionment
of damages among parties; requiring that
special findings of fact be made; providing
procedures for the reallocation of damages
under certain circumstances; providing for the
effect of a release on the awarding of damages;
providing for applicability;