

Bill No. HB 145

Barcode 704476

CHAMBER ACTION

Senate

House

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Senator Campbell moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 768.81, Florida Statutes, is amended to read:

768.81 Apportionment of tort responsibility

~~Comparative fault.--~~

(1) SHORT TITLE.--This section may be cited as the "Uniform Apportionment of Tort Responsibility Act."

(2)~~(1)~~ DEFINITION.--As used in this section, the term:

(a) "Economic ~~"economic~~ damages" means past lost income and future lost income reduced to present value; medical and funeral expenses; lost support and services; replacement value of lost personal property; loss of appraised fair market value of real property; costs of construction repairs, including labor, overhead, and profit; and any other economic loss which would not have occurred but for the injury giving rise to the cause of action.

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1 (b) "Comparative fault" includes comparative
2 negligence, unreasonable misuse of a product, and unreasonable
3 failure to avoid and mitigate harm.

4 (c) "Person" has the same meaning as in s. 1.01.

5 (d) "Released person" means a person who would be
6 liable for damages to a claimant for wrongful death, personal
7 injury, or harm to property if the person had not been
8 discharged from liability under subsection (8).

9 (e) "Responsibility," with respect to a claim for
10 damages for wrongful death, personal injury, or harm to
11 property arising from negligence or strict liability, means
12 the legal consequences of an act or omission that is the basis
13 for liability or a defense in whole or part.

14 (3)(2) EFFECT OF ~~COMPARATIVE~~ CONTRIBUTORY FAULT.--

15 (a) In an action seeking damages for wrongful death,
16 personal injury, or harm to property based on negligence or
17 strict liability, or based on a claim for which the claimant
18 may be subject to a defense in whole or part based on
19 comparative fault, any comparative fault chargeable to the
20 claimant diminishes the amount that the claimant would
21 otherwise be entitled to recover as compensatory damages for
22 the death, injury, or harm by the percentage of responsibility
23 assigned to the claimant under subsection (4). This section
24 does not apply to any claim for wrongful death, personal
25 injury, or harm to property based upon an intentional tort.

26 (b) In a trial by jury, the court shall instruct the
27 jury regarding the legal effect of the jury's findings, made
28 under subsection (4), concerning a claimant's right to recover
29 damages under paragraph (a).

30 (4) FINDING DAMAGES; ATTRIBUTION OF RESPONSIBILITY.--

31 (a) In an action to recover damages for wrongful

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1 death, personal injury, or harm to property involving the
 2 responsibility of more than one party or a released person,
 3 the court shall instruct the jury to answer special
 4 interrogatories to make the following findings:

5 1. The amount of damages to which a claimant would be
 6 entitled if comparative fault were disregarded;

7 2. As to each claim, the percentage of the total
 8 responsibility attributed to each claimant, defendant, and
 9 released person who caused the death, injury, or harm. The
 10 total combined responsibility for all claimants, parties, and
 11 released persons must equal 100 percent. However, a nonparty
 12 or intentional tortfeasor may not appear on the verdict form,
 13 and apportionment of fault or damages may not be attributed to
 14 a nonparty or intentional tortfeasor;

15 3. Whether any of the parties or released persons
 16 acted in concert to cause the wrongful death, personal injury,
 17 or harm to property; and

18 4. Any other issue of fact fairly raised by the
 19 evidence which is necessary to make a finding under subsection
 20 (5) or enter judgment under subsection (6).

21
 22 If the trial is conducted without a jury, the court shall make
 23 the findings.

24 (b) When calculating the percentage of responsibility
 25 of each party or released party, the jury or judge must
 26 consider the nature of the conduct of each party and released
 27 person who is found to be responsible and the extent of the
 28 causal relation between the conduct of the party or released
 29 person and the damages claimed.

30 (c) The court shall determine the extent to which the
 31 responsibility of one party, which is based on the act or

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1 omission of another party, warrants that the parties be
 2 treated as a single party for the purpose of submitting
 3 instructions to the jury or making findings under paragraph
 4 (a). In an action to which this section applies, any
 5 contributory fault chargeable to the claimant diminishes
 6 proportionately the amount awarded as economic and noneconomic
 7 damages for an injury attributable to the claimant's
 8 contributory fault, but does not bar recovery.

9 (5)(3) APPORTIONMENT OF DAMAGES; DETERMINING DAMAGE
 10 AWARD; REALLOCATION OF UNCOLLECTIBLE SHARE OF ECONOMIC
 11 DAMAGES.--

12 (a) After the jury or judge has made findings under
 13 subsection (4), the court shall find, in accordance with the
 14 percentages of responsibility found, the monetary amount of
 15 any award of damages to a claimant, the amount of the share of
 16 damages for which each party found liable is responsible, and
 17 any amount attributable to a released person.

18 (b) After the court has made its findings pursuant to
 19 paragraph (a), a claimant may, no later than 1 year after the
 20 judgment has become final by lapse of time for appeal or after
 21 appellate review, move the court to determine whether all or
 22 part of the amount of a share of economic damages for which a
 23 party is liable will not be reasonably collectible and, if so,
 24 to request a reallocation of the damages. For purposes of this
 25 subsection, it is presumed that a party's share of damages is
 26 not reasonably collectible if the party lacks sufficient
 27 insurance coverage to pay its share of the damage award or if
 28 the party is totally or partially immune from liability. If
 29 the court finds, by a preponderance of the evidence, that the
 30 share of a party is not reasonably collectible, the court
 31 shall make findings reallocating the uncollectible share

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1 severally to the other parties, the claimant, and any released
2 person. The reallocation must be made in the proportion that
3 each party's and released person's respective percentage of
4 responsibility bears to the total of the percentages of
5 responsibility attributed to the parties, the claimant, and
6 any released person, but not including the percentage being
7 reallocated, so that the sum of the proportional shares
8 reallocated to the parties and released persons equals 100
9 percent.

10 (c) A party whose liability for economic damages is
11 reallocated remains liable to a claimant for any additional
12 share of responsibility allocated to the claimant. A party
13 that discharges an additional share of responsibility
14 allocated to it pursuant to paragraph (b) has a right of
15 reimbursement from the party from which the share was
16 reallocated. Upon motion, the court in the judgment entered
17 under subsection (6) shall declare the rights and obligations
18 resulting from the reallocation, including any rights and
19 obligations with regard to subrogation or a secured position.
20 If any party to whom reallocation has been made holds a
21 secured position with regard to the share reallocated, each
22 party to whom reallocation has been made has a proportionate
23 share in the secured position. Any amount recovered under this
24 subsection from a party whose liability for economic damages
25 has been reallocated must be distributed to each of the
26 parties to whom the reallocation was made in the same
27 proportion as the original reallocation.

28 (d) Reallocation does not create a liability on the
29 part of a released person for any reallocated share of
30 responsibility unless the release or other agreement so
31 provides.

1 ~~(e) If a motion for reallocation is made, any party~~
2 ~~may conduct discovery regarding any issue that is relevant to~~
3 ~~the motion. In cases to which this section applies, the court~~
4 ~~shall enter judgment against each party liable on the basis of~~
5 ~~such party's percentage of fault and not on the basis of the~~
6 ~~doctrine of joint and several liability, except as provided in~~
7 ~~paragraphs (a), (b), and (c):~~

8 ~~(a) Where a plaintiff is found to be at fault, the~~
9 ~~following shall apply:~~

10 ~~1. Any defendant found 10 percent or less at fault~~
11 ~~shall not be subject to joint and several liability.~~

12 ~~2. For any defendant found more than 10 percent but~~
13 ~~less than 25 percent at fault, joint and several liability~~
14 ~~shall not apply to that portion of economic damages in excess~~
15 ~~of \$200,000.~~

16 ~~3. For any defendant found at least 25 percent but not~~
17 ~~more than 50 percent at fault, joint and several liability~~
18 ~~shall not apply to that portion of economic damages in excess~~
19 ~~of \$500,000.~~

20 ~~4. For any defendant found more than 50 percent at~~
21 ~~fault, joint and several liability shall not apply to that~~
22 ~~portion of economic damages in excess of \$1 million.~~

23
24 ~~For any defendant under subparagraph 2., subparagraph 3., or~~
25 ~~subparagraph 4., the amount of economic damages calculated~~
26 ~~under joint and several liability shall be in addition to the~~
27 ~~amount of economic and noneconomic damages already apportioned~~
28 ~~to that defendant based on that defendant's percentage of~~
29 ~~fault.~~

30 ~~(b) Where a plaintiff is found to be without fault,~~
31 ~~the following shall apply:~~

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1 ~~1. Any defendant found less than 10 percent at fault~~
2 ~~shall not be subject to joint and several liability.~~

3 ~~2. For any defendant found at least 10 percent but~~
4 ~~less than 25 percent at fault, joint and several liability~~
5 ~~shall not apply to that portion of economic damages in excess~~
6 ~~of \$500,000.~~

7 ~~3. For any defendant found at least 25 percent but not~~
8 ~~more than 50 percent at fault, joint and several liability~~
9 ~~shall not apply to that portion of economic damages in excess~~
10 ~~of \$1 million.~~

11 ~~4. For any defendant found more than 50 percent at~~
12 ~~fault, joint and several liability shall not apply to that~~
13 ~~portion of economic damages in excess of \$2 million.~~

14
15 ~~For any defendant under subparagraph 2., subparagraph 3., or~~
16 ~~subparagraph 4., the amount of economic damages calculated~~
17 ~~under joint and several liability shall be in addition to the~~
18 ~~amount of economic and noneconomic damages already apportioned~~
19 ~~to that defendant based on that defendant's percentage of~~
20 ~~fault.~~

21 ~~(c) With respect to any defendant whose percentage of~~
22 ~~fault is less than the fault of a particular plaintiff, the~~
23 ~~doctrine of joint and several liability shall not apply to any~~
24 ~~damages imposed against the defendant.~~

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

1 ~~Rules of Civil Procedure.~~

2 ~~(e) In order to allocate any or all fault to a~~
3 ~~nonparty and include the named or unnamed nonparty on the~~
4 ~~verdict form for purposes of apportioning damages, a defendant~~
5 ~~must prove at trial, by a preponderance of the evidence, the~~
6 ~~fault of the nonparty in causing the plaintiff's injuries.~~

7 (6) ENTERING AND MODIFYING JUDGMENT.--

8 (a) After determining an award of damages to a
9 claimant and the amount of the several share, including any
10 reallocated share of economic damages, for which each party
11 found liable is responsible, the court shall enter judgment
12 severally against each party adjudged liable, except in the
13 following situations:

14 1. If two or more parties adjudged liable acted in
15 concert to cause the wrongful death of, personal injury to, or
16 harm to the property of the claimant, the court shall enter
17 judgment jointly and severally against the parties for their
18 joint share of the economic damages.

19 2. If a party is adjudged liable for the act or
20 omission of another party under paragraph (4)(c), the court
21 shall enter judgment jointly and severally against the parties
22 for their joint share of the economic damages.

23 3. If a party is adjudged liable by way of gross
24 negligence, the court shall enter judgment jointly and
25 severally against that party for the economic damages.

26 4. If any provision of law, other than this section,
27 so requires, the court shall enter judgment jointly and
28 severally or otherwise conform the judgment to the law.

29 (b) The court shall retain jurisdiction to modify a
30 judgment for purposes of this section and, if a court grants a
31 motion for reallocation pursuant to subsection (5) after

1 judgment is entered, the court shall modify the judgment to
 2 declare the rights and obligations resulting from the
 3 reallocation, including any rights and obligations with regard
 4 to subrogation or a secured position.

5 (7) RIGHT OF CONTRIBUTION AND INDEMNITY; THIRD-PARTY
 6 ACTION.--

7 (a) Except as otherwise provided in paragraph (b), a
 8 party that is jointly and severally liable with one or more
 9 other parties under this section has a right of contribution
 10 from another party jointly liable for any amount the party
 11 pays in excess of the several amount for which the party is
 12 responsible. A party against whom contribution is sought is
 13 not liable for more than the monetary amount of the party's
 14 several share of responsibility determined pursuant to
 15 subsection (5).

16 (b) A party who is adjudged liable for the act or
 17 omission of another party under subparagraph (6)(a)2. has a
 18 right of indemnification from the other party.

19 (c) A party who is subject to liability for the
 20 wrongful death of, injury to, or harm to property of a
 21 claimant under this section has a right to:

22 1. Join a person, other than an intentional
 23 tortfeasor, who is also subject to liability to the claimant
 24 for all or part of the same death, injury, or harm if the
 25 claimant has not sued the person; and

26 2. Seek contribution or indemnity, whichever is
 27 appropriate, from another person whose liability is not
 28 determined in the proceeding in which the party is adjudged
 29 liable if the other person is responsible for all or part of
 30 the claimant's death, injury, or harm.

31 (d) A claim for contribution or indemnity may be

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1 asserted in the original action, except as to an intentional
2 tortfeasor, or in a separate action.

3 (8) EFFECT OF RELEASE.--

4 (a) A release, covenant not to sue, covenant not to
5 execute a judgment, or similar agreement by a claimant and
6 person subject to liability discharges the person from
7 liability to the claimant to the extent provided in the
8 agreement and from liability for contribution to any other
9 person subject to liability to the claimant for the same
10 death, injury, or harm. The agreement does not discharge any
11 other person subject to liability upon the same claim unless
12 the agreement so provides.

13 (b) The amount of the claim of the releasing person
14 under paragraph (a) against other persons jointly and
15 severally liable for the same death, injury, or harm for which
16 the released person would have been liable shall be reduced by
17 the percentage of responsibility attributed to the released
18 person pursuant to subsection (4).

19 (c) A release, covenant not to sue, covenant not to
20 execute a judgment, or similar agreement extinguishes any
21 claim for contribution or indemnity which the released person
22 would have had against another person that would have been
23 jointly and severally liable with the released person.

24 (9) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In
25 applying and construing this uniform act, consideration must
26 be given to the need to promote uniformity of the law with
27 respect to its subject matter among states that enact it.

28 (10)(4) APPLICABILITY.--

29 (a) This section applies to negligence cases. For
30 purposes of this section, "negligence cases" includes, but is
31 not limited to, civil actions for damages based upon theories

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1 of negligence, strict liability, products liability,
 2 professional malpractice whether couched in terms of contract
 3 or tort, or breach of warranty and like theories. In
 4 determining whether a case falls within the term "negligence
 5 cases," the court shall look to the substance of the action
 6 and not the conclusory terms used by the parties.

7 (b) This section does not apply to any action brought
 8 by any person to recover actual economic damages resulting
 9 from pollution, to any action based upon an intentional tort,
 10 or to any cause of action as to which application of the
 11 doctrine of joint and several liability is specifically
 12 provided by chapter 403, chapter 498, chapter 517, chapter
 13 542, or chapter 895.

14 (c) The provisions of ss. 46.015, 768.041, and 768.31
 15 do not apply to any action to which this section applies.

16 ~~(11)(5)~~ TEACHING HOSPITALS.--Notwithstanding anything
 17 in law to the contrary, in an action for damages for personal
 18 injury or wrongful death arising out of medical malpractice,
 19 whether in contract or tort, when an apportionment of damages
 20 pursuant to this section is attributed to a teaching hospital
 21 as defined in s. 408.07, the court shall enter judgment
 22 against the teaching hospital on the basis of such party's
 23 percentage of fault and not on the basis of the doctrine of
 24 joint and several liability.

25 Section 2. This act shall take effect October 1, 2006,
 26 and shall apply to causes of action that accrue on or after
 27 that date.

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

31 And the title is amended as follows:

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1 Delete everything before the enacting clause

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3 and insert:

4 A bill to be entitled

5 An act relating to the apportionment of tort

6 liability; amending s. 768.81, F.S.; creating

7 the "Florida Uniform Apportionment of Tort

8 Responsibility Act"; providing definitions

9 relating to the apportionment of damages;

10 specifying the effect of comparative fault;

11 providing procedures for the attribution of

12 responsibility for wrongful death, personal

13 injury, or harm to property; providing a

14 procedure for determining the damage award;

15 providing for the reallocation of uncollectible

16 shares within a specified time; requiring that

17 a finding that an award is uncollectible be

18 made by a preponderance of the evidence;

19 providing a right of contribution and

20 indemnity; specifying the effect of a release;

21 providing for uniform construction; providing

22 for applicability; providing an effective date.

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