

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689 Negligence

SPONSOR(S): Aubuchon and others

TIED BILLS: IDEN./SIM. BILLS: SB 1224

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	11 Y, 2 N	De La Paz	De La Paz
2)	Criminal & Civil Justice Policy Council		De la Paz	Havlicak
3)				
4)				
5)				

SUMMARY ANALYSIS

HB 689 repeals s. 768.0710, F.S. relating to the burden of proof in "slip and fall" claims of negligence and approximates the law with respect to slip and fall law suits as it existed before 2001.

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, 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. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) 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 (2) that the condition occurred with regularity and was therefore foreseeable.

This bill does not appear to have a fiscal impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Business owners owe a duty to their customers to use reasonable care in maintaining their premises in a safe condition. Prior to 2001, when a person slipped and fell on a transitory foreign substance, the injured person had to prove that the business had actual or constructive knowledge of the dangerous condition and "that the condition existed for such a length of time that in the exercise of ordinary care, the premises owner should have known of it and taken action to remedy it." Constructive knowledge could be established by circumstantial evidence showing that: (1) the dangerous condition existed for such a length of time that in the exercise of ordinary care, the premises owner should have known of the condition; or (2) the condition occurred with regularity and was therefore foreseeable.

In Owens v. Publix Supermarkets, Inc., decided in 2001, the Florida Supreme Court changed the standard of proof in slip-and-fall cases.<sup>1</sup> The Court concluded that "premises liability cases involving transitory foreign substances are appropriate cases for shifting the burden to the premises owner or operator to establish that it exercised reasonable care under the circumstances, eliminating the specific requirement that the customer establish that the store had constructive knowledge of its existence in order for the case to be presented to the jury."<sup>2</sup> The new standard adopted by the Court was that "the existence of a foreign substance on the floor of a business premises that causes a customer to fall and be injured is not a safe condition, and the existence of that unsafe condition creates a rebuttable presumption that the premises owner did not maintain the premises in a reasonably safe condition."<sup>3</sup>

In 2002, the Legislature adopted s. 768.0710, F.S., in response to the Owens decision. This statute recognizes that a business owes a duty of reasonable care to its customers to maintain "the premises free from transitory foreign objects or substances that might foreseeably give rise to loss, injury, or damage."<sup>4</sup> However, the statute requires a claimant to prove:

- The business owed a duty to the claimant;
- The business acted negligently by failing to exercise reasonable care (but the claimant does not have to show the business had actual or constructive notice of the object); and
- The failure to exercise reasonable care by the business was the cause of the loss, injury, or

<sup>1</sup> Owens v. Publix Supermarket, Inc., 802 So.2d 315 (Fla. 2001).

<sup>2</sup> Id. at 331.

<sup>3</sup> Id.

<sup>4</sup> Section 768.0710(1), F.S.

damage.

### Proposed Changes

HB 689 repeals s. 768.0710, F.S. and approximates the law with respect to slip and fall suits as it existed before 2001.

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, 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. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) 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 (2) that the condition occurred with regularity and was therefore foreseeable.

#### B. SECTION DIRECTORY:

Section 1. Creates 768.0755, F.S., relating to premises liability for transitory foreign substances in a business establishment.

Section 2. Repeals s. 768.0710, F.S., relating to the duty to maintain premises in a reasonably safe condition for the safety of business invitees.

Section 3. Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

##### 2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

##### 2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may affect the outcome of litigation in slip and fall suits in a manner that is more frequently favorable to business establishments than under the current law.

#### D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

##### **2. Other:**

N/A.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**