

By Senator Richter

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1 A bill to be entitled  
 2 An act relating to negligence; amending s. 768.81,  
 3 F.S.; defining the terms "negligence action" and  
 4 "products liability action"; requiring the trier of  
 5 fact to consider the fault of all persons who  
 6 contributed to an accident when apportioning damages  
 7 in a products liability action alleging an additional  
 8 or enhanced injury; providing legislative intent to  
 9 overrule a judicial opinion; providing a legislative  
 10 finding that fault should be apportioned among all  
 11 responsible persons in a products liability action;  
 12 providing for retroactive application of the act;  
 13 providing a legislative finding that the retroactive  
 14 application of the act does not impair vested rights;  
 15 providing an effective date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19 Section 1. Section 768.81, Florida Statutes, is amended to  
 20 read:

21 768.81 Comparative fault.—

22 (1) DEFINITIONS ~~DEFINITION~~.—As used in this section, the  
 23 term:

24 (a) "Economic damages" means past lost income and future  
 25 lost income reduced to present value; medical and funeral  
 26 expenses; lost support and services; replacement value of lost  
 27 personal property; loss of appraised fair market value of real  
 28 property; costs of construction repairs, including labor,  
 29 overhead, and profit; and any other economic loss that ~~which~~

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30 would not have occurred but for the injury giving rise to the  
31 cause of action.

32 (b) "Negligence action" means, without limitation, a civil  
33 action for damages based upon a theory of negligence; strict  
34 liability; products liability; or professional malpractice,  
35 whether couched in terms of contract, tort, or breach of  
36 warranty and like theories. The substance of an action, not  
37 conclusory terms used by a party, determines whether an action  
38 is a negligence action.

39 (c) "Products liability action" means a civil action based  
40 upon a theory of strict liability, negligence, breach of  
41 warranty, nuisance, or similar theories for damages caused by  
42 the manufacture, construction, design, formulation,  
43 installation, preparation, or assembly of a product. The term  
44 includes an action alleging that injuries received by a claimant  
45 in an accident were greater than the injuries the claimant would  
46 have received but for a defective product. The substance of an  
47 action, not the conclusory terms used by a party, determines  
48 whether an action is a products liability action.

49 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence an action  
50 ~~to which this section applies~~, any contributory fault chargeable  
51 to the claimant diminishes proportionately the amount awarded as  
52 economic and noneconomic damages for an injury attributable to  
53 the claimant's contributory fault, but does not bar recovery.

54 (3) APPORTIONMENT OF DAMAGES.—In a negligence action ~~eases~~  
55 ~~to which this section applies~~, the court shall enter judgment  
56 against each party liable on the basis of such party's  
57 percentage of fault and not on the basis of the doctrine of  
58 joint and several liability.

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59 (a)1. In order to allocate any or all fault to a nonparty,  
60 a defendant must affirmatively plead the fault of a nonparty  
61 and, absent a showing of good cause, identify the nonparty, if  
62 known, or describe the nonparty as specifically as practicable,  
63 either by motion or in the initial responsive pleading when  
64 defenses are first presented, subject to amendment any time  
65 before trial in accordance with the Florida Rules of Civil  
66 Procedure.

67 ~~2.(b)~~ In order to allocate any or all fault to a nonparty  
68 and include the named or unnamed nonparty on the verdict form  
69 for purposes of apportioning damages, a defendant must prove at  
70 trial, by a preponderance of the evidence, the fault of the  
71 nonparty in causing the plaintiff's injuries.

72 (b) In a products liability action alleging that injuries  
73 received by a claimant in an accident were greater than the  
74 injuries the claimant would have received but for a defective  
75 product, the trier of fact shall consider the fault of all  
76 persons who contributed to the accident when apportioning fault  
77 between or among them.

78 (4) APPLICABILITY.—

79 ~~(a) This section applies to negligence cases. For purposes~~  
80 ~~of this section, "negligence cases" includes, but is not limited~~  
81 ~~to, civil actions for damages based upon theories of negligence,~~  
82 ~~strict liability, products liability, professional malpractice~~  
83 ~~whether couched in terms of contract or tort, or breach of~~  
84 ~~warranty and like theories. In determining whether a case falls~~  
85 ~~within the term "negligence cases," the court shall look to the~~  
86 ~~substance of the action and not the conclusory terms used by the~~  
87 ~~parties.~~

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88           ~~(b)~~ This section does not apply to any action brought by  
89 any person to recover actual economic damages resulting from  
90 pollution, to any action based upon an intentional tort, or to  
91 any cause of action as to which application of the doctrine of  
92 joint and several liability is specifically provided by chapter  
93 403 or, chapter 498, ~~chapter 517, chapter 542, or chapter 895.~~

94           (5) MEDICAL MALPRACTICE.—Notwithstanding anything in law to  
95 the contrary, in an action for damages for personal injury or  
96 wrongful death arising out of medical malpractice, whether in  
97 contract or tort, if when an apportionment of damages pursuant  
98 to this section is attributed to a teaching hospital as defined  
99 in s. 408.07, the court shall enter judgment against the  
100 teaching hospital on the basis of such party's percentage of  
101 fault and not on the basis of the doctrine of joint and several  
102 liability.

103           Section 2. The Legislature intends that this act be applied  
104 retroactively and overrule *D'Amario v. Ford Motor Co.*, 806 So.  
105 2d 424 (Fla. 2001), which adopted what the Florida Supreme Court  
106 acknowledged to be a minority view. That minority view fails to  
107 apportion fault for damages consistent with Florida's statutory  
108 comparative fault system, codified in s. 768.81, Florida  
109 Statutes, and leads to inequitable and unfair results,  
110 regardless of the damages sought in the litigation. The  
111 Legislature finds that, in a products liability action as  
112 defined in this act, fault should be apportioned among all  
113 responsible persons.

114           Section 3. This act is remedial in nature and applies  
115 retroactively. The Legislature finds that the retroactive  
116 application of this act does not unconstitutionally impair

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117 vested rights. Rather, the law affects only remedies, permitting  
118 recovery against all tortfeasors while lessening the ultimate  
119 liability of each consistent with this state's statutory  
120 comparative fault system, codified in s. 768.81, Florida  
121 Statutes. In all cases, the Legislature intends that this act be  
122 construed consistent with the due process provisions of the  
123 State Constitution and the Constitution of the United States.

124 Section 4. This act shall take effect upon becoming a law.