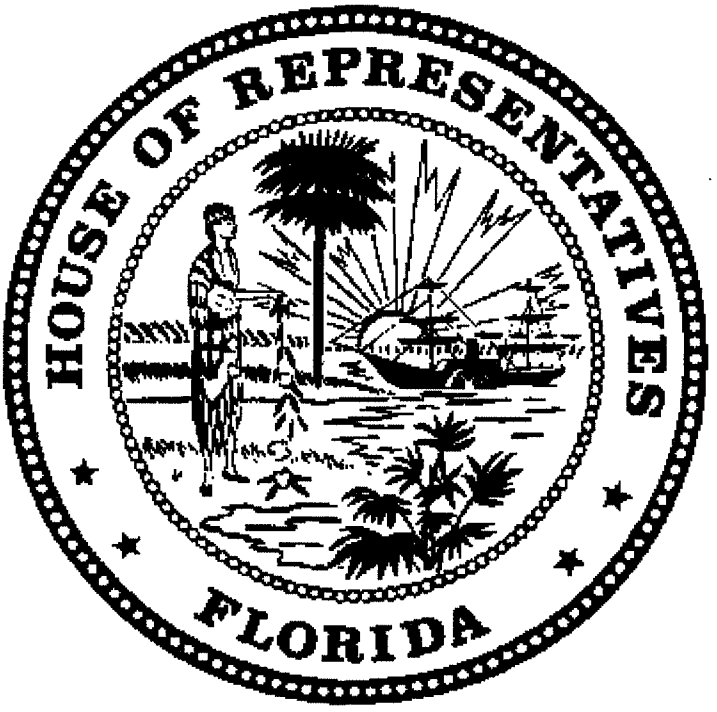

Civil Justice Subcommittee

Wednesday, February 9, 2011
1:00 PM
404 HOB

Dean Cannon
Speaker

Eric Eisnaugle
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Wednesday, February 09, 2011 01:00 pm

End Date and Time: Wednesday, February 09, 2011 04:00 pm

Location: 404 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 201 Negligence by O'Toole
HB 215 Emergency Management by Abruzzo
HB 253 Limited Liability Companies by Stargel
HB 277 Statutes of Limitations by Goodson
HB 4067 Residence of Clerk of the Circuit Court by McBurney

Continued Workshop on Court Rulemaking

NOTICE FINALIZED on 02/02/2011 16:20 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 201 Negligence
SPONSOR(S): O'Toole
TIED BILLS: None **IDEN./SIM. BILLS:** SB 142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Woodburn	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

Crashworthiness cases are a subset of product liability claims in which the plaintiff claims that a defect in the manufacture or design of an automobile caused or enhanced injuries suffered during an automobile accident. There is a majority and minority view amongst the various federal and state courts interpreting the application of the crashworthiness doctrine. The majority view allows the jury to hear evidence relating to the cause of the initial automobile accident and to apportion fault amongst the named parties, including the plaintiff. The minority view, which Florida courts currently follow, does not allow juries to hear evidence relating to the initial cause of the automobile accident.

The bill changes the apportionment of damages in products liability cases in which a plaintiff alleges an additional or enhanced injury (e.g., crashworthiness cases). More specifically, the statute would require Florida courts to follow the majority view and require the jury in these cases to consider the fault of all persons who contributed to the accident when apportioning fault among the parties who contributed to the accident.

This bill may have a minimal nonrecurring expense to the State court system. The bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Contributory Negligence and Comparative Negligence in Florida

Prior to 1973, Florida courts followed the legal doctrine of contributory negligence in tort actions.[1] Contributory negligence is a defense against a claim of negligence which provides that if a plaintiff is responsible in any way for his or her injury the plaintiff will not be able to recover any damages from the defendant.[2] For example, if the plaintiff was five percent responsible for the accident and the defendant was ninety-five percent responsible, the plaintiff would not be able to recover any damages from the defendant since he or she was partly responsible.

The Florida Supreme Court, in *Hoffman v. Jones*, retreated from the application of contributory negligence and adopted pure comparative negligence.[3] The court reasoned that:

> . . . the most equitable result that can ever be reached by a court is the equation of liability with fault. Comparative negligence does this more completely than contributory negligence, and we would be shirking our duty if we did not adopt the better doctrine.[4]

The doctrine of comparative negligence is now codified in Florida law. The law provides that "any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery."[5] Current law explicitly provides that the comparative fault principles apply in products liability actions.[6] Under comparative negligence, if the plaintiff is five percent liable and the defendant is ninety-five percent, the plaintiff's awarded damages will be reduced by his or her amount of liability, in this case, five percent.

The legal doctrine of joint and several liability evolved with contributory negligence.[7] The application of joint and several liability allows a plaintiff to collect the full amount of damages against one of the defendants in a multiple defendant case.[8] For example, if one defendant was thirty-five percent at fault and the other defendant was sixty-five percent at fault, the plaintiff could recover the total amount of damages from either defendant regardless of the amount at fault.

Following the culmination of additional reforms to the application of joint and several liability, in 2006 the Legislature generally repealed the application of joint and several liability for negligence actions.[9] It amended s. 768.81, F.S., to provide, subject to limited exceptions, for apportionment of damages in negligence cases according to each party's percentage of fault, rather than under joint and several liability.[10]

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[1] *Louisville and Nash Railroad Company v. Yniestra*, 21 Fla. 700 (Fla. 1886) (Case in which Florida adopted contributory negligence)
[2] "The contributory negligence doctrine, which evolved from an 1809 English case, is described as an 'all or nothing rule' for the plaintiff" *Smith v. Dep't of Insurance*, 507 So.2d 1080, 1090 (Fla. 1987) (Describing English case *Butterfield v. Forester*, 103 Eng.Rep. 926 (K.B. 1809).
[3] *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973).
[4] *Id.* at 438.
[5] Section 768.81(2), F.S.
[6] Section 768.81(4)(a), F.S.
[7] *Id.* at 1091.
[8] *Id.*
[9] Chapter 2006-6, s. 1, Laws of Fla.
[10] Section 768.81(3), F.S.

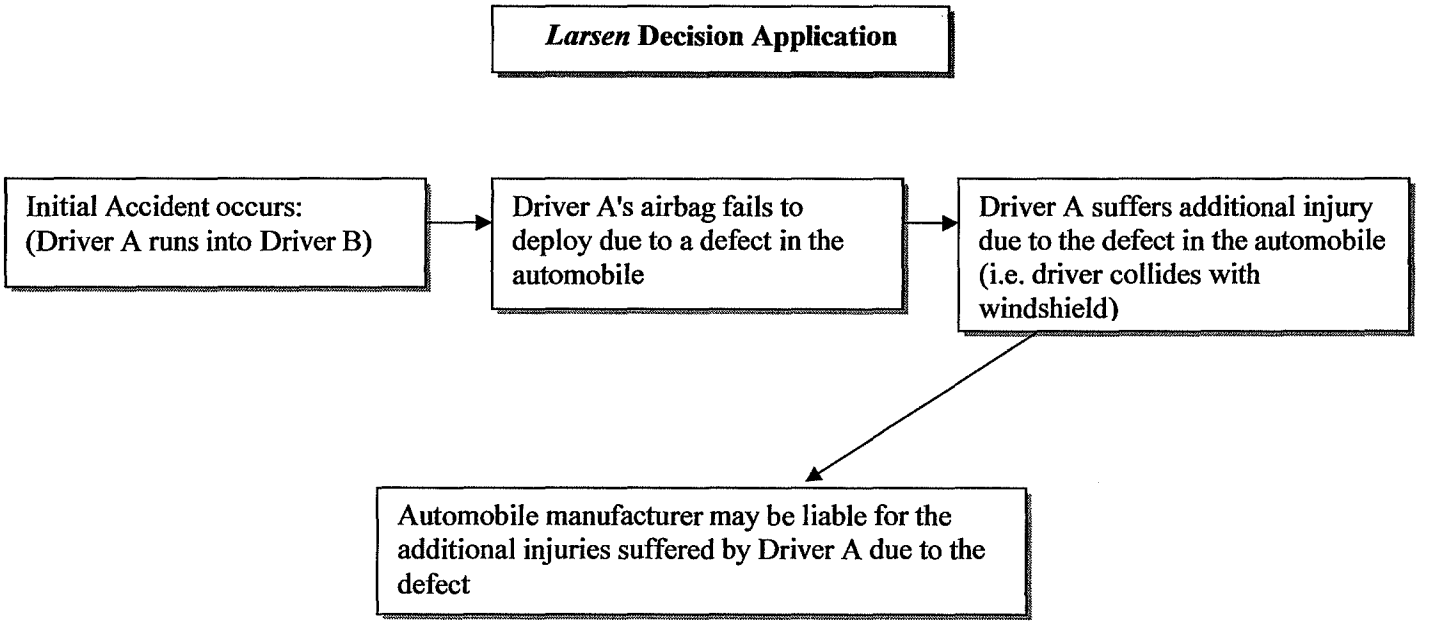
Evolution of Crashworthiness Doctrine

Larsen Decision

Prior to 1968, courts in the United States did not allow those injured in automobile accidents to hold automobile manufacturers liable for injuries sustained where the negligence of the driver or a third party caused the accident, including scenarios in which an automobile defect contributed to the injuries sustained.[11] This changed with the U.S. Court of Appeal Eighth Circuit's decision in *Larsen v. General Motors Corp.*[12]

In *Larsen*, the plaintiff was injured after a head-on collision that caused the steering mechanism to strike the plaintiff in the head. The federal court held that, because automobile accidents involving collisions are often inevitable and foreseeable, manufacturers have a duty to exercise reasonable care in designing vehicles for the safety of users.[13]

When faced with the practical application of the crashworthiness doctrine, many jurisdictions continue to grapple with whether a defendant automobile manufacturer may introduce evidence of, or assert as a defense, the comparative fault or contributory negligence of the driver or a third party in causing the initial collision.[14] Some state courts have concluded that "introduction of principles of negligence into what would otherwise be a straightforward product liability case is not allowed."[15] Conversely, a majority of courts have allowed defendants to introduce evidence of the driver's or a third party's negligence in causing the initial collision.[16]



[11] Schwartz, Victor E., *Fairly Allocating Fault Between a Plaintiff whose Wrongful Conduct Caused a Car accident and a Automobile Manufacturer Whose Product Allegedly "Enhanced" the Plaintiff's Injuries.* Available on file with the House of Representatives Civil Justice Subcommittee.
[12] *Larsen v. General Motors Corp.*, 391 F.2d 495 (8th Cir. 1968).
[13] *Id.* at 502.
[14] Mary E. Murphy, Annotation, *Comparative Negligence of Driver as Defense to Enhanced Injury, Crashworthiness, or Second Collision Claim,* 69 A.L.R. 5TH 625, 625 (1999).
[15] *Id.*
[16] *Id.*

Majority View

A majority of states have adopted the view that a manufacturer's fault in causing additional or enhanced injuries may be reduced by the fault of a plaintiff or third party who caused or contributed to the primary collision.[17] For example, in a Delaware crashworthiness case, the plaintiff's automobile was struck by another vehicle when the plaintiff allegedly failed to stop at a stop sign.[18] As a result, the automobile's airbag deployed and crushed the plaintiff's fingers. The defendant automobile manufacturer argued that the plaintiff's recovery should be reduced by his comparative fault in failing to stop at the stop sign and causing the initial accident. The court concluded that the cause of the initial accident is a proximate cause of the subsequent collision and the resulting enhanced injuries to the plaintiff's fingers. The court further opined that:

> "[i]t is obvious that the negligence of a plaintiff who causes the initial collision is one of the proximate causes of all of the injuries he sustained, whether limited to those the original collision would have produced or including those enhanced by a defective product in the second collision."[19]

Some courts following the majority position have reasoned that, in crashworthiness cases, the person causing the initial collision may be liable for the subsequent negligence of the automobile manufacturer because any enhanced injuries resulting from the second collision are foreseeable consequences of the first collision.[20] For example, in an Alaska crashworthiness case, the court allowed the automobile manufacturer to assert that its liability for a defective seatbelt system should be reduced because the initial head-on collision was caused by a third party.[21] The court sided with the manufacturer, citing that "[a]n original tortfeasor is considered a proximate cause, as a matter of law, of injuries caused by subsequent negligen[ce]" of the manufacturer of the defective product.[22]

Other courts holding the majority view have also ruled that "general fairness and public policy considerations require that the fault of the original tortfeasor be considered in apportioning liability for enhanced injuries."[23] Courts have also recognized that the application of comparative fault in crashworthiness cases enhances the public's interest in deterring drivers from driving negligently.[24]

Minority View

A minority of courts have adopted the theory that, because an automobile manufacturer is solely responsible for any product defects, the manufacturer should also be solely liable for the enhanced injuries caused by those defects. The minority position results from "a stricter construction of the crashworthiness doctrine that treats each collision as a separate event with independent legal causes and injuries."[25] Further reasoning behind the minority view is that a manufacturer maintains a duty to anticipate the foreseeable negligence of users of the automobile, as well as the foreseeable negligence of third parties.[26]

One federal court applied the minority view in a crashworthiness case and ruled that:

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[17] Edward M. Ricci et al., *The Minority Gets It Right: The Florida Supreme Court Reinvigorates the Crashworthiness Doctrine in D'Amario v. Ford*, 78 FLA. B.J. 14, 14 (June 2004). Some of the states recognizing the majority view include: Alaska, Arkansas, California, Colorado, Delaware, Louisiana, Indiana, North Carolina, North Dakota, Oregon, Tennessee, Washington, Wyoming, and Iowa.

[18] *Meekins v. Ford Motor Co.*, 699 A.2d 339 (Del. Super. Ct. 1997).

[19] *Id.* at 346.

[20] Ricci, *supra* note 9, at 18.

[21] *General Motors Corp. v. Farnsworth*, 965 P.2d 1209 (Alaska 1998).

[22] *Id.* at 1217-18

[23] Ricci, *supra* note 9, at 18 (citing *Whitehead v. Toyota Motor Corp.*, 897 S.W.2d 684, 695 (Tenn. 1995)).

[24] *Moore v. Chrysler Corp.*, 596 So. 2d 225, 238 (La. Ct. App. 1992).

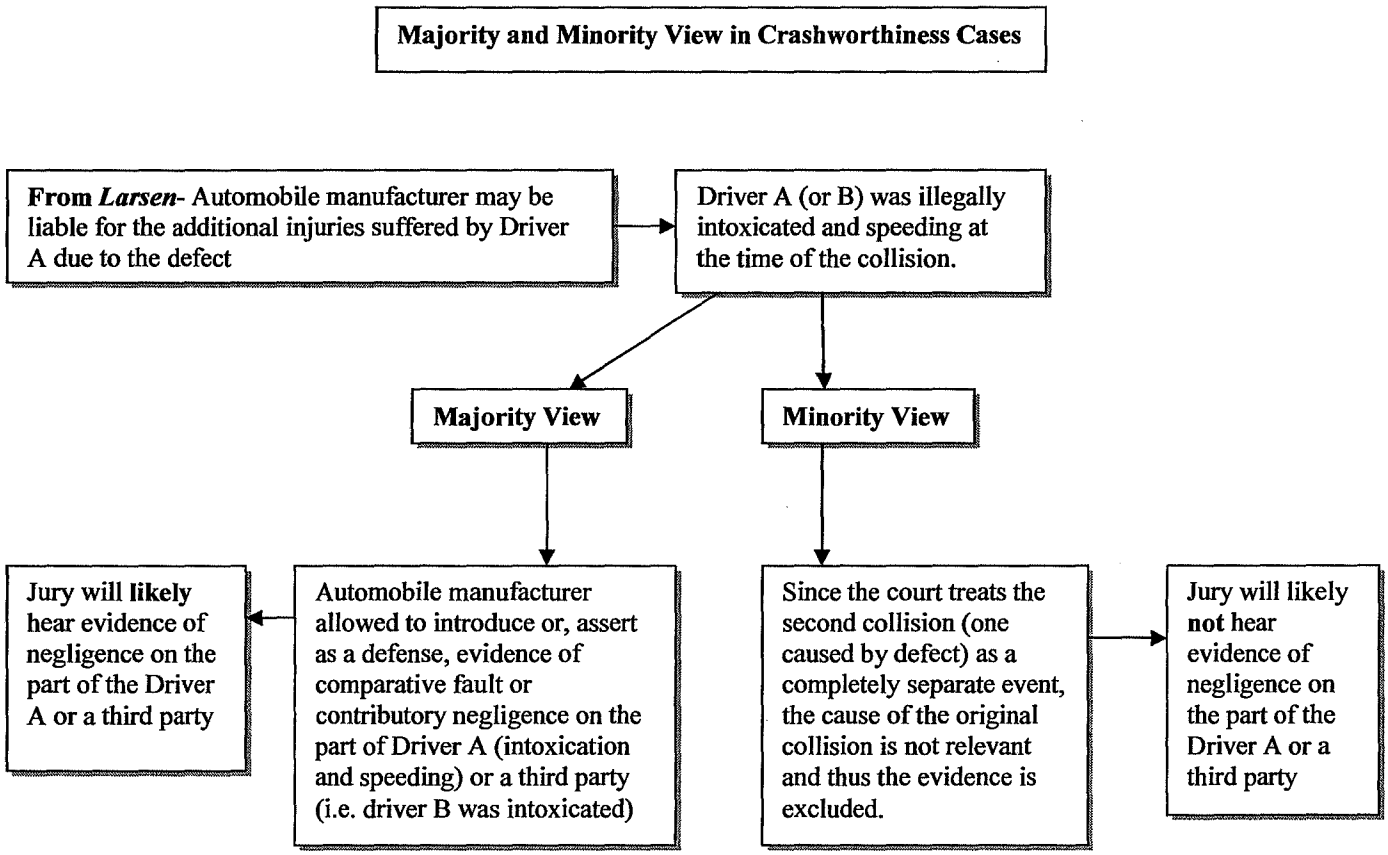
[25] Ricci, *supra* note 9, at 18.

[26] Schwartz, *supra* note 1, at 10.

> Because a collision is presumed, and enhanced injury is foreseeable as a result of the design defect, the triggering factor of the accident is simply irrelevant. . . . Further, the alleged negligence causing the collision is legally remote from, and thus not the legal cause of, the enhanced injury caused by a defective part that was supposed to be designed to protect in case of a collision.[27]

A federal district court in Ohio excluded evidence of a driver's intoxication at the time of the accident in a products liability action against the automobile manufacturer.[28] In addition to ruling that the probative value of the evidence of intoxication was outweighed by the danger that the jury could misuse the information, the court reasoned that it was foreseeable that front-end collisions occur and that an automobile manufacturer is under an obligation under Ohio law to use reasonable care in designing vehicles that do not expose a user to unreasonable risks.[29]

The rationale underlying the minority view may also flow from a public policy belief that allowing manufacturers to avoid or reduce their liability through application of comparative fault will reduce the manufacturer's incentive to design a safe automobile for consumer use.[30] One court opined that "[a] major policy behind holding manufacturers strictly liable for failing to produce crashworthy vehicles is to encourage them to do all they reasonably can do to design a vehicle which will protect a driver in an accident."[31]



[27] *Jimenez v. Chrysler Corp.*, 74 F. Supp. 2d 548, 566 (D.S.C. 1999), *reversed in part and vacated*, 269 F.3d 439 (4th Cir. 2001).
[28] *Mercurio v. Nissan Motor Corp.*, 81 F. Supp. 2d 859 (N.D. Ohio 2000).
[29] *Id.* at 861.
[30] Ricci, *supra* note 9, at 18-20.
[31] *Id.* at 20 (quoting *Andrews v. Harley Davidson, Inc.*, 769 P.2d 1092, 1095 (Nev. 1990)).

Crashworthiness in Florida

Prior to 2001, Florida courts generally applied comparative fault principles in crashworthiness cases where the injury was caused by the initial collision or was an enhanced injury caused by a subsequent collision.[32] For example, in *Kidron, Inc. v. Carmona*,[33] a mother and child brought a wrongful death action for the death of the father in a collision with a truck that had stalled, as well as an action against the manufacturer of the truck alleging strict liability for the manufacturer's design of the rear under-ride guard.[34] The court held that "principles of comparative negligence should be applied in the same manner in a strict liability suit, regardless of whether the injury at issue has resulted from the primary or secondary collision."[35] The court further recognized that:

> . . . fairness and good reason require that the fault of the defendant and of the plaintiff should be compared with each other with respect to all damages and injuries for which the conduct of each party is a cause in fact and a proximate cause.[36]

As a result, the court concluded that the decedent's negligence in failing to avoid the collision should be considered along with the manufacturer's liability in the design of the truck, as well as any other entity or person who contributed to the accident regardless of whether that entity was joined as a party.[37]

In 2001, the Florida Supreme Court retreated from the application of comparative fault and the holding in *Kidron, Inc.*, and adopted the minority view in crashworthiness cases. The seminal decision in *D'Amario v. Ford Motor Company* precludes the jury[38] from apportioning fault to a party contributing to the cause of the initial collision when considering liability for enhanced injuries resulting from a second collision.[39]

In its examination of liability and admissibility of evidence in these cases, the Florida Supreme Court concluded that the "principles of comparative fault involving the causes of the first collision do not generally apply in crashworthiness cases."[40] In reaching its conclusion, the court compared crashworthiness cases to medical malpractice actions in which the cause of an initial injury that may require medical treatment is not ordinarily considered as a legal cause of enhanced injuries resulting from subsequent negligent treatment.[41] The court further noted that:

> . . . unlike automobile accidents involving damages solely arising from the collision itself, a defendant's liability in a crashworthiness case is predicated upon the existence of a distinct and second injury caused by a defective product, and assumes the plaintiff to be in the condition to which he is rendered after the first accident. No claim is asserted, however, to hold the defendant liable for that condition. Thus, crashworthiness cases involve separate and distinct injuries–those caused by the initial collision, and those subsequently caused by a second collision arising from a defective product.[42]

The 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

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[32] Schwartz, *supra* note 1, at 6.
[33] *Kidron, Inc. v. Carmona*, 665 So. 2d 289 (Fla. 3d DCA 1995).
[34] *Id.*
[35] *Id.* at 292.
[36] *Id.*
[37] *Id.* at 293.
[38] Most trials are in front of a jury, but the parties may opt to waive a jury trial and elect to try the case before a judge, but the legal standards are the same.
[39] *D'Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001).
[40] *D'Amario*, 806 So. 2d at 441.
[41] *Id.* at 435. In addition, the court recognized that in medical malpractice actions, an initial tortfeasor who causes an injury is not to be considered a joint tortfeasor. *Id.*
[42] *Id.* at 436-47.

that gave rise to the initial accident.[43] As a result, the court concluded that admission of evidence related to the intoxication of the non-party drivers, which caused the initial collisions, unduly confused the jury and shifted the focus away from determining causation of the enhanced injuries.[44]

Effect of Proposed Changes

The bill changes the apportionment of damages in products liability cases in which a plaintiff, involved in an accident, alleges an additional or enhanced injury caused by a defective product (e.g., crashworthiness cases). More specifically, the jury in these cases must consider the fault of all persons who contributed to the accident when apportioning fault between or among them which effectively changes Florida to the majority opinion in crashworthiness cases.

For example, if a driver ran a stop sign and caused an accident and then claimed that a defect in the automobile caused enhanced injury, the jury would not be able to hear evidence relating to the driver's negligence (in this example running the stop sign). Under the proposed changes in the bill, the jury would now be required to hear evidence of the driver's negligence in order to apportion fault.

The bill reorganizes the comparative fault statute by changing the term "negligence cases" to "negligence action," revising the definition slightly, and moving the definition of "negligence action" to the definitions subsection in the current comparative law statute. The bill also defines a "products liability action" as a civil action based upon a theory of strict liability, negligence, breach of warranty, nuisance, or similar theories for damages caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product. This definition specifies that the term includes those claims in which the alleged injuries were greater than the injury would have been, but for the defective product. The definition of "products liability action" also provides that the substance of the claim, not the conclusory terms used by a party, determines whether an action satisfies the definition.

The bill contains legislative intent language and findings that the act is intended to be applied retroactively and overrule *D'Amario v. Ford Motor Co.* It includes a finding that the retroactive application of the act does not unconstitutionally impair vested rights, but affects only remedies, permitting recovery against all tortfeasors while lessening the ultimate liability of each consistent with the state's statutory comparative fault system.

The bill will take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 768.81, F.S. by adding definitions.

Section 2 amends s. 25.077, F.S. by conforming cross references

Section 3 contains legislative intent.

Section 4 contains an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[43] *Id.* at 437.

[44] The court also ruled that driving while intoxicated does not fall within the "intentional tort" exception to the comparative fault statute. *See* s. 768.81(4)(b), F.S.

2. Expenditures:

   This bill may have a minimal nonrecurring expense to the State court system. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of State Court Administrators (OSCA) evaluated an almost identical House bill last year (HB433, 2010 Reg. Sess.) and reported that the fiscal impact to the judiciary could not be determined at that time due to the unavailability of necessary data to evaluate the increase in judicial workload resulting from the requirement that the jury or judge must consider the fault of all those contributing to injuries in products liability cases where enhanced injuries are alleged.[45]

The OSCA further reported that the judiciary may experience an increase in workload related to revising the Standard Jury Instructions in civil cases to reflect the changes in apportionment of fault as written in the bill. However, OSCA reported that the fiscal impact of this workload issue was not likely to be substantial.[46]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   This bill specifically applies its provisions retroactively and overrules *D'Amario v. Ford Motor Co.* Retroactive operation is disfavored by courts and generally "statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction."[47] The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

   - Is the statute procedural or substantive?
   - Was there an unambiguous legislative intent for retroactive application?

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[45] Office of the State Courts Administrator, *Judicial Impact Statement: HB 433* (Jan. 1, 2010) (on file with the House of Representatives Civil Justice Subcommittee).
[46] *Id.*
[47] Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation,* 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

- Was a person's right vested or inchoate?
- Is the application of the statute to these facts unconstitutionally retroactive?[48]

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.[49]

Notwithstanding a determination of whether the provisions in the bill are procedural or substantive, the bill makes it clear that it is the Legislature's intent to apply the law retroactively. "Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision retroactively."[50] A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.[51]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

[48] *Weingrad v. Miles,* 29 So. 3d 406, 409 (Fla. 3d DCA 2010) (internal citations omitted).
[49] *See Alamo Rent-A-Car, Inc. v. Mancusi,* 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure,* 272 So. 2d 65, 65 (Fla. 1972).
[50] *Weingrad,* 29 So. 3d at 410.
[51] *Id.* at 411.

A bill to be entitled

An act relating to negligence; amending s. 768.81, F.S.; defining the terms "negligence action" and "products liability action"; requiring the trier of fact to consider the fault of all parties to an accident when apportioning damages in a products liability action alleging an additional or enhanced injury; deleting language concerning applicability and the definition of the term "negligence cases"; amending s. 25.077, F.S.; conforming provisions to changes made by this act; providing legislative findings and intent; providing for retroactive application; providing an effective date.

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

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

768.81 Comparative fault.—

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

(a) "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 that ~~which~~ would not have occurred but for the injury giving rise to the cause of action.

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

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

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

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

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

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

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

(4) APPLICABILITY.—

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

~~parties.~~

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

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

Section 2. Section 25.077, Florida Statutes, is amended to read:

25.077 Negligence action ~~case~~ settlements and jury verdicts; case reporting.—Through the state's uniform case reporting system, the clerk of court shall report to the Office of the State Courts Administrator~~, beginning in 2003,~~ information from each settlement or jury verdict and final judgment in negligence actions ~~cases~~ as defined in s. 768.81~~(4)~~, as the President of the Senate and the Speaker of the House of Representatives deem necessary from time to time. The information shall include, but need not be limited to: the name of each plaintiff and defendant; the verdict; the percentage of

fault of each; the amount of economic damages and noneconomic damages awarded to each plaintiff, identifying those damages that are to be paid jointly and severally and by which defendants; and the amount of any punitive damages to be paid by each defendant.

Section 3. The Legislature intends this law to be applied retroactively and the holding in *D'Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001), which adopted what the Florida Supreme Court acknowledged to be a minority view, to be nullified. That minority view fails to apportion fault for damages consistent with Florida's statutory comparative fault system, codified in section 768.81, Florida Statutes, and leads to inequitable and unfair results, regardless of what damages are sought in the litigation. The Legislature finds that, in products liability actions as defined in this act, fault should be apportioned among all responsible persons.

Section 4. The Legislature finds that this act is remedial and that its retroactive application does not unconstitutionally impair vested rights. Rather, this act affects only remedies, permitting a recovery against all tortfeasors while lessening the ultimate liability of each consistent with Florida's statutory comparative fault system, codified in section 768.81, Florida Statutes. In all cases, the Legislature intends this law to be construed consistent with the due process provisions of the federal and state constitutions.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 215 Emergency Management
SPONSOR(S): Abruzzo
TIED BILLS: None **IDEN./SIM. BILLS:** SB 450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Billmeier LMB	Bond
2) Community & Military Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of emergency is imminent. Current law empowers the State Health Officer to declare a public health emergency.

This bill provides immunity from civil damages for persons who, in good faith, provide temporary housing, food, water, or electricity to emergency first responders or their family members during the 6 months following a declared emergency or public health emergency. Persons are provided immunity only if they acted as an ordinary reasonably prudent person would have acted under the same or similar circumstances. The bill further provides a higher level of immunity from civil damages for entities that register with a county emergency management agency as a housing provider for emergency first responders and that, in good faith, provide housing, food, water, or electricity for emergency first responders. Such entities are immune from civil damages unless the damages result from circumstances demonstrating a reckless disregard for the consequences of another.

This bill may have a minimal fiscal impact on counties. This bill does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Declarations of Emergency

Section 252.36(2), F.S., empowers the Governor to declare a state of emergency is he or she finds that an emergency has occurred or that the threat of emergency is imminent. Section 381.00315, F.S., deals with the state's response to public health emergencies and empowers the State Health Officer to declare public health emergencies.[1] States of emergency and public health emergencies may only last for 60 days unless renewed by the Governor.[2] States of emergency are sometimes declared due to weather, such as hurricanes, and one was declared last year in response to the Deepwater Horizon incident.

Negligence

"Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances."[3] A person injured by another's negligence may recover damages against the negligent party if the negligence was the legal cause of the injury.[4] Negligence actions are governed by common law and by ch. 768, F.S.

Florida law contains immunity provisions that may limit civil liability of persons if they act in a specified manner. For example, s. 768.1315, F.S., provides that a state agency or subdivision which donates fire control or fire rescue equipment to a volunteer fire department is not liable for civil damages caused after the donation by a defect in the equipment.

Florida law also contains provisions that provide immunity from negligence but not from reckless behavior. For example, Florida's Good Samaritan Act provides that certain health care providers performing certain emergency services are not liable for civil damages unless the damages result from providing or failing to provide care under circumstances that demonstrate "a reckless disregard" for the consequences.[5] Reckless disregard is "such conduct that a health care provider knew or should have known, at the time such services were rendered, created an unreasonable risk of injury so as to affect the life or health of another, and such risk was substantially greater than that which was necessary to make the conduct negligent."[6]

Effect of the Bill

This bill creates the "Postdisaster Relief Assistance Act." The bill provides that any "individual, corporation, or other business entity"[7] ("Person") who in good faith provides temporary housing, food,

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[1] Section 381.00315(1)(b), F.S., provides in part: "Public health emergency" means any occurrence, or threat thereof, whether natural or man made, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.

[2] *See* ss. 252.36(2) and 381.00315, F.S.

[3] *See* Florida Standard Jury Instructions in Civil Cases, 401.4 at http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last accessed on February 3, 2011).

[4] *See* Florida Standard Jury Instructions in Civil Cases, 401.12, 401.18 at http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last accessed on February 3, 2011).

[5] s. 768.13(1)(b)1., F.S.

[6] s. 768.13(1)(b)3., F.S.

[7] The bill defines "individual, corporation, or other business entity" as physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, dentists, advanced registered nurse practitioners, physician assistants, workers employed by a public or private hospital, paramedics, emergency medical technicians, firefighters, members of the Florida National Guard, and other personnel designated by the Governor as emergency personnel.

water, or electricity to emergency first responders[8] or the immediate family members[9] of emergency first responders during a period of 6 months following the declaration of an emergency may not be held liable for any civil damages as a result of providing the temporary housing, food, water, or electricity where the Person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances. The temporary housing, food, water, or electricity must be provided in direct response to an emergency situation related to or arising out of a state of emergency declared pursuant to ss. 252.36 or 381.00315, F.S.

The bill provides increased protection from liability for certain entities. The bill provides that any "entity, employee thereof, or any individual that annually registers prior to a declared emergency with a county emergency management agency[10] as a housing provider for emergency first responders" and who, in good faith, provides housing, food, water, or electricity for emergency first responders or the immediate family members of emergency first responders may not be held liable for any civil damages as a result of providing or failing to provide such housing, food, water, or electricity unless such damages result from providing or failing to provide such housing, food, water, or electricity under circumstances demonstrating a reckless disregard for the consequences of another. In order to qualify for the immunity, the provision of such housing, food, water, or electricity must be necessitated by a sudden or unexpected post-emergency situation or occurrence arising as a result of a declared emergency.

Therefore, an entity that provides temporary housing, food, water, or electricity to emergency first responders is not liable for civil damages as a result of providing such housing, food, water or electricity is the entity acts as an ordinary reasonably prudent person. An entity that provides such goods and services to emergency first responders and registers in advance with a county emergency management may not be held civilly liable unless the entity is reckless.

The immunity provided to individuals, entities, and employees that annually register with the county emergency management agency does not apply to damages as a result of any act or omission:

- That occurs more than 6 months after the declaration of an emergency by the Governor, unless the declared state of emergency is extended by the Governor, in which case the immunity continues to apply for the duration of the extension; or

- That is unrelated to the original declared emergency or any extension.

The bill defines "reckless disregard" as "conduct that a reasonable person knew or should have known, at the time such services were provided, would be likely to result in injury so as to affect the life or health of another, taking into account the extent or serious nature of the prevailing circumstances."

B. SECTION DIRECTORY:

Section 1 creates s. 252.515, F.S., relating to the "Postdisaster Relief Assistance Act" and immunity from civil liability.

Section 2 provides that the bill is effective July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[8] "Emergency first responders" and "first responders" are not defined by the bill.
[9] The bill defines immediate family member as a parent, spouse, child, or sibling.
[10] County emergency management agencies are created by s. 252.38, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill requires entities seeking the civil damages immunity to register annually with the county emergency management agency. Counties may incur minimal expenditures related to such registration.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The phrases "emergency first responders" or "first responders" are not defined by the bill. "First responders" is defined in ss. 112.1815, 125.01045, and 166.0446, F.S. "Emergency first responder" is used in s. 286.29, F.S., but is not defined.

It is not clear whether providing immunity where an entity or person acts as "ordinary reasonably prudent person would have acted under the same or similar circumstances" has any effect. In *Campbell v. Kessler*, 848 So. 2d 369, 371 (Fla. 4th DCA 2003), the court explained a statute that purports to provide liability protection to those that act in good faith and as reasonably prudent persons, language similar to the language contained in this bill,[11] does not provide protection:

> The statute clearly and articulately provides that volunteers are protected if they are carrying out volunteer duties in good faith and as reasonably prudent persons.

[11] The Good Samaritan Act, s. 768.13, F.S., provides liability to protection to volunteers. This bill's protections are not limited to volunteers.

The same language in the Good Samaritan Act, §768.13(2)(a), has been recognized as offering no protection to a negligent party... [The defendant] would not be protected from his own negligence under the straightforward language of the statute.[12]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

[12] *See, also, Botte v. Pomeroy*, 438 So. 2d 544 (Fla. 4th DCA 1983)("As if the foregoing were not enough, there is another portion of the statue that completes its emasculation, because the good samaritan is required to render his assistance like an "ordinary reasonably prudent man." Obviously, any sensible plaintiff's lawyer can plead around a statute such as this and get to the jury. As it now stands, it does not appear to be a very good idea to render assistance to an accident victim."); *L.A. Fitness International, LLC v. Mayer*, 980 So. 2d 550, 561 n. 2 (Fla. 4th DCA 2008)("The immunity given under the Act to a person who gratuitously renders aid to an injured person is conditioned upon that person rendering aid "as an ordinary reasonably prudent person." Because this is no different than the common law standard of care that applies without this so-called immunity, the protection under the act is illusory").

A bill to be entitled

An act relating to emergency management; creating s. 252.515, F.S.; providing a short title; providing immunity from civil liability for providers of temporary housing and aid to emergency first responders and their immediate family members following a declared emergency; providing nonapplicability; providing definitions; providing an effective date.

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

Section 1. Section 252.515, Florida Statutes, is created to read:

252.515 Postdisaster Relief Assistance Act; immunity from civil liability.—

(1) This act may be cited as the "Postdisaster Relief Assistance Act."

(2)(a)1. Any individual, corporation, or other business entity within the state, including an individual, corporation, or business entity listed in subparagraph 2., who in good faith provides temporary housing, food, water, or electricity to emergency first responders or the immediate family members of emergency first responders during a period of 6 months following the declaration of an emergency by the Governor, either in direct response to an emergency situation related to and arising out of a public health emergency declared pursuant to s. 381.00315 or a state of emergency declared pursuant to s. 252.36, may not be held liable for any civil damages as a result

of providing the temporary housing, food, water, or electricity where the individual, corporation, or business entity acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

2. As used in this section, the term:

a. "Immediate family member" means any parent, spouse, child, or sibling.

b. "Individual, corporation, or other business entity within the state" includes, but is not limited to, any:

(I) Physician licensed under chapter 458.

(II) Osteopathic physician licensed under chapter 459.

(III) Chiropractic physician licensed under chapter 460.

(IV) Podiatric physician licensed under chapter 461.

(V) Dentist licensed under chapter 466.

(VI) Advanced registered nurse practitioner certified under s. 464.012.

(VII) Physician assistant licensed under s. 458.347 or s. 459.022.

(VIII) Worker employed by a public or private hospital in the state.

(IX) Paramedic as defined in s. 401.23(17).

(X) Emergency medical technician as defined in s. 401.23(11).

(XI) Firefighter as defined in s. 633.30.

(XII) Member of the Florida National Guard.

(XIII) Other personnel designated as emergency personnel by the Governor pursuant to a declared emergency.

(b)1. Any entity, employee thereof, or any individual that annually registers prior to a declared emergency with a county emergency management agency as a housing provider for emergency first responders and who in good faith provides housing, food, water, or electricity for emergency first responders or the immediate family members of emergency first responders where the provision of such housing, food, water, or electricity is necessitated by a sudden or unexpected postemergency situation or occurrence arising as a result of a declared emergency may not be held liable for any civil damages as a result of providing or failing to provide such housing, food, water, or electricity unless such damages result from providing or failing to provide such housing, food, water, or electricity under circumstances demonstrating a reckless disregard for the consequences of another.

2. The immunity provided by this paragraph does not apply to damages as a result of any act or omission:

a. That occurs more than 6 months after the declaration of an emergency by the Governor, unless the declared state of emergency is extended by the Governor, in which case the immunity provided by this paragraph continues to apply for the duration of the extension; or

b. That is unrelated to the original declared emergency or any extension thereof.

3. As used in this paragraph, the term "reckless disregard" as it applies to an entity, employee thereof, or individual registered with a county emergency management agency prior to a declared emergency as a provider of housing for

emergency first responders and that provides temporary housing, food, water, or electricity during a postdisaster emergency situation shall be such conduct that a reasonable person knew or should have known, at the time such services were provided, would be likely to result in injury so as to affect the life or health of another, taking into account the extent or serious nature of the prevailing circumstances.

Section 2. This act shall take effect July 1, 2011.

Amendment No. 1

COUNCIL/COMMITTEE ACTION		
ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Civil Justice Subcommittee
Representative(s) Abruzzo offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Section 252.515, Florida Statutes, is created to read:

252.515 Postdisaster Relief Assistance Act; immunity from civil liability.—

(1) This act may be cited as the "Postdisaster Relief Assistance Act."

(2) Any person who gratuitously and in good faith provides temporary housing, food, water, or electricity to emergency first responders or the immediate family members of emergency first responders in response to an emergency situation related to and arising out of a public health emergency declared pursuant to s. 381.00315 or a state of emergency declared pursuant to s. 252.36, may not be held liable for any civil damages as a result of providing the temporary housing, food,

water, or electricity unless the person acts in a manner that demonstrates a reckless disregard for the consequences of another.

(3) As used in this section, the term:

(a) "Emergency first responder" means

1. Physician licensed under chapter 458.

2. Osteopathic physician licensed under chapter 459.

3. Chiropractic physician licensed under chapter 460.

4. Podiatric physician licensed under chapter 461.

5. Dentist licensed under chapter 466.

6. Advanced registered nurse practitioner certified under s. 464.012.

7. Physician assistant licensed under s. 458.347 or s. 459.022.

8. Worker employed by a public or private hospital in the state.

9. Paramedic as defined in s. 401.23(17).

10. Emergency medical technician as defined in s. 401.23(11).

11. Firefighter as defined in s. 633.30.

12. Law enforcement officer as defined in s. 943.10.

13. Member of the Florida National Guard.

14. Other personnel designated as emergency personnel by the Governor pursuant to a declared emergency.

(b) "Immediate family member" means any parent, spouse, child, or sibling.

(3) The immunity provided by this section does not apply to damages as a result of any act or omission:

Amendment No. 1

(a) That occurs more than 6 months after the declaration of an emergency by the Governor, unless the declared state of emergency is extended by the Governor, in which case the immunity provided by this section continues to apply for the duration of the extension and 6 months thereafter; or

(b) That is unrelated to the original declared emergency or any extension thereof.

(4) As used in this section, the term "reckless disregard" means such conduct that a reasonable person knew or should have known, at the time such services were provided, would be likely to result in injury so as to affect the life or health of another, taking into account the extent or serious nature of the prevailing circumstances.

(5) A person may register with a county emergency management agency as a provider of housing for emergency first responders if the county provides for such registration. A person who has registered with a county emergency management agency as a provider of temporary housing, food, water, or electricity to emergency first responders or the immediate family members of emergency first responders is presumed to have acted in good faith in providing such housing, food, water, or electricity.

Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 253 Limited Liability Companies
SPONSOR(S): Stargel
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Billmeier LMB	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

A limited liability company is a form of business entity where owners have limited personal liability for the debts and actions of the limited liability company, similar to a corporation, but management flexibility and flexible tax treatment, similar to a partnership. When a monetary judgment is entered against a member of a limited liability company, Florida law provides for a "charging order" that directs the limited liability company to pay profits and distributions intended for the judgment debtor to the judgment creditor. By entering a charging order, the judgment creditor is paid without disrupting management of the limited liability company.

The Florida Supreme Court recently held that Florida's statutory charging order provision is not the exclusive means by which a judgment creditor can execute a judgment against a debtor owning all of the interest in a single-member limited liability company. The court ordered the judgment debtor to surrender all right, title, and interest in the member's single-member limited liability company to satisfy an outstanding judgment.

This bill provides that Florida's charging order provision is the sole and exclusive means to satisfy a judgment from the judgment debtor's transferrable interest in a limited liability company with more than one member. The bill further provides that a charging order is not the exclusive remedy in cases involving a limited liability company with only one member. In cases involving a single-member limited liability company, a court may order other remedies if the creditor establishes that the judgment will not be satisfied within a reasonable period of time.

The fiscal impact of the bill on state and local governments is speculative. Some commenters believe that current law is discouraging business formation within the state and are concerned that the court's opinion will cause disruption within the business climate in Florida. It is not known whether significant costs will be incurred by limited liability companies that take action to deal with the court's opinion. Accordingly, it is not known whether this bill will reduce costs to Florida limited liability companies. The bill does not appear to impose additional costs on limited liability companies.

This bill takes effect upon becoming a law and applies retroactively.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Introduction

In *Olmstead v. Federal Trade Commission*, 44 So. 3d 76 (Fla. 2010), the Florida Supreme Court held that Florida's statutory charging order provision is not the exclusive means that a judgment creditor can execute a judgment against a single-member limited liability company and held that a court can order a judgment debtor to surrender all right, title, and interest in the member's single-member limited liability company to satisfy an outstanding judgment. While the court's holding does not specifically apply to limited liability companies with more than one member, the court's reasoning would likely apply to all limited liability companies. This bill provides that a charging order is the sole and exclusive means to satisfy a judgment from the judgment debtor's transferrable interest in a limited liability company with more than one member. The bill provides that the charging order is not the exclusive remedy in cases involving a limited liability company with only one member.

Limited Liability Companies

Sections 608.401-608.705, F.S., comprise the Florida Limited Liability Company Act ("LLC Act). A limited liability company ("LLC") is a business entity where owners have limited personal liability for the debts and actions of the LLC, similar to a corporation, but management flexibility and flexible tax treatment, similar to a partnership. Owners of an LLC are called members. Florida law allows a single-member LLC. Ownership shares, often called "membership interests," "member's interest, or "interest," are considered personal property. A member's interest in an LLC may be assigned but the assignee's interest is generally limited to sharing in the profits and losses and receiving distributions from the LLC.[1] Generally, an assignee does not receive any rights relating to management of the LLC.[2] Section 608.433(1), F.S., provides that an assignee may become a member only if the other members consent, unless the operating agreement or articles of organization provide otherwise. An LLC may file as a corporation, a partnership, or a sole proprietorship for federal income tax purposes so the LLC business entity provides tax flexibility.[3]

According to the Florida Division of Corporations, there are 548,893 active LLCs in Florida.[4] The number of LLC filings has generally increased over the last ten years. In 2000, 19,186 documents related to LLCs were filed with the Division of Corporations. In 2010, 138,287 such documents were filed with the Division.[5]

Enforcement of Judgments and Charging Orders

A judgment is an order of the court creating an obligation, such as a debt. Chapter 56, F.S., provides mechanisms for execution of judgments. Section 56.061, F.S., provides that "lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations shall be subject to levy and sale upon execution." The statute allows a judgment creditor to take stock held by a judgment debtor to satisfy the judgment.

A charging order is an order directing the members of an LLC to pay a judgment debtor's share of the LLC profits or distributions to a judgment creditor. The judgment creditor is not involved in the management decisions of the LLC but merely collects the judgment debtor's share of profits or

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[1] The provisions related to assignments are the same as provisions related to partnerships, whereby if a partner transfers his or her interest, the remaining partners are not required to accept the new partner as an equal for management and voting purposes.
[2] *See, generally, Olmstead v. Federal Trade Commission*, 44 So. 3d. 76, 77-81 (Fla. 2010)(providing background information on LLCs under Florida law).
[3] *See*, http://www.irs.gov/businesses/small/article/0,,id=98277,00.html (accessed January 27, 2011).
[4] http://www.sunbiz.org/corp_stat.html (accessed January 28, 2011).
[5] *Id.*

distributions.[6] Florida has codified the charging order in the LLC Act. Section 608.433(4), Florida Statutes, provides:

> On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of such interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's interest.

The theory behind the charging order is that a judgment creditor can be paid from the profits or distributions from the LLC without the disruption of the business caused by inserting another member into the group or the damage caused to other members if the business, or portions of it, was sold to pay the judgment creditor.[7] As a federal court has explained, "a charging order protects the autonomy of the original members, and their ability to manage their own enterprise."[8] A limitation of the charging order remedy is that a creditor cannot recover unless the voting members of the LLC distribute profits. If the LLC does not make a distribution, the judgment creditor is not paid.

The charging order is not unique to the LLC business structure. Florida's Revised Uniform Partnership Act of 1995, ss. 620.81001 -620.9902, F.S., and Florida's Revised Uniform Limited Partnership Act of 2005, ss. 620.1101-620.2205, F.S., similarly provide charging order remedies in partnership and limited partnership law.

The *Olmstead* Decision

In *Olmstead*, a federal court asked the Florida Supreme Court whether, under Florida law, a court may order a judgment debtor to surrender all "right, title, and interest" in the debtor's single-member LLC to satisfy an outstanding judgment. In *Olmstead*, the Federal Trade Commission ("FTC") alleged Olmstead was operating an "advance-fee credit card scam" and sued for unfair and deception trade practices.[9] The FTC prevailed and obtained a order directing Olmstead to surrender all right, title, and interest in his LLC. Olmstead, the judgment debtor and sole member of an LLC, argued that a charging order under s. 608.433(4), F.S., was the sole and exclusive remedy available against his ownership interest in the LLC. He argued that no other remedy was applicable. The FTC argued that other remedies were available under Florida law and that the statutory charging order was not the sole remedy.[10]

The court held that a charging order under s. 608.433(4), F.S., was not the exclusive remedy. The court noted that s. 56.061, F.S., provides that stock in corporations is subject to sale and execution to satisfy a judgment and that because an LLC is "type of corporate entity," an ownership interest in an LLC is reasonably understood to be corporate stock and subject to execution under the statute.[11] The court rejected arguments that s. 608.433(4), F.S., displaced s. 56.061, F.S. It noted that Florida's partnership and limited partnership statutes contain similar charging order provisions but those provisions provide that the charging order is the exclusive remedy and that specific language relating to an exclusive remedy is not present in the LLC statute.[12] Accordingly, the court said:

> Specifically, we conclude that there is no reasonable basis for inferring that the provision authorizing the use of charging orders under section 608.433(4) establishes the sole remedy for a judgment creditor against a judgment debtor's interest in a single-member

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[6] *See City of Arkansas City v. Anderson*, 752 P.2d 673, 681-684 (Kansas 1988)(discussing the charging order at common law and under the Uniform Partnership Act).
[7] *See, generally, City of Arkansas City*, 752 P.2d at 682.
[8] *In re: First Protection, Inc.*, 2010 WL 5059589 (9th Cir. BAP (Ariz.)) at 6.
[9] *See Olmstead*, 44 So. 3d at 78.
[10] *See Olmstead*, 44 So. 3d at 77-78.
[11] *Olmstead*, 44 So. 3d at 80.
[12] *See Olmstead*, 44 So. 3d at 81-82.

> LLC... Section 608.433(4) does not displace the creditor's remedy available under section 56.061 with respect to a debtor's ownership interest in a single-member LLC.[13]

Criticism of *Olmstead*

In dissent, Justice Lewis argued that the majority opinion was rewriting the LLC Act to create a remedy not contemplated by the Legislature. He said that a reading of all of ch. 608, F.S., and not merely the provisions cited by the majority, makes clear that the LLC Act displaces ch. 56, F.S.[14] Justice Lewis warned:

> This is extremely important and has far-reaching impact because the principles used to ignore the LLC statutory language under the current factual circumstances apply with equal force to multimember LLC entities and, in essence, today's decision crushes a very important element for all LLCs in Florida. If the remedies available under the LLC Act do not apply here because the phrase "exclusive remedy" is not present, the same theories apply to multimember LLCs and render the assets of all LLCs vulnerable.[15]

Commenters argue that *Olmstead* will damage Florida's reputation as an attractive business entity jurisdiction:

> This opinion [*Olmstead*], and the lack of coordination between it and the implied meaning of the statute, will reflect poorly on the state of Florida with reference to its reputation as an attractive business entity jurisdiction. Florida will be at a disadvantage because other jurisdictions, like Delaware and New York, are known for having sound legislative and court systems that provide commercial and trust clientele with a predictable business law environment.[16]

The authors explain the concern of some business law practitioners:

> As a result of the dissenting opinion, many practitioners are concerned that a multiple-member Florida LLC arrangement may not provide charging order protection, although that is not what the majority held. As discussed below, there is a good chance that there will be legislative clarification of this court-created "uncertainty by implication." In the interim, advisors should alert their clients to the exposure and consider bifurcating Florida LLC membership interests into voting and nonvoting interests, converting Florida LLCs to limited partnerships or limited liability limited partnerships, moving Florida LLCs to jurisdictions that have a more stable charging order protection law, or implementing other divestment of management control strategies.[17]

Effect of Proposed Changes

This bill contains "whereas" clauses to express the Legislature's intent that *Olmstead* not apply to multimember LLCs. It provides that s. 608.433, F.S., is the "sole and exclusive remedy" by which a judgment creditor seeking enforce a judgment against a member or member's transferee may satisfy the judgment from the judgment debtor's transferrable interest in the LLC. All other remedies to give effect to the charging order are not available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's transferrable interest and may not be ordered by a court.

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[13] *Olmstead*, 44 So. 3d at 83.
[14] *Olmstead*, 44 So. 3d at 83-84 (Lewis dissenting).
[15] *Olmstead*, 44 So. 3d at 84 (Lewis dissenting).
[16] Gassman, Denicolo, Koche, and Wells, "After *Olmstead*: Will a Multiple-member LLC Continue to Have Charging Order Proection," The Florida Bar Journal, December 2010, Volume 84, No. 10, accessed at http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/8c9f13012b96736985256aa900624829/f3631c387f59325c852577ea0060b5e6!OpenDocument on January 27, 2011.
[17] *Id.*

The bill provides a circumstance where a charging order will not be the sole and exclusive remedy. In the case of an LLC having only one member, this bill provides that s. 608.433, F.S., is not the sole and exclusive remedy if the judgment creditor can establish to the satisfaction of the court that distributions under a charging order will not satisfy a judgment within a reasonable time.

The bill contains language indicating that its provisions are clarifying and shall apply retroactively.

This bill takes effect upon become a law.

B. SECTION DIRECTORY:

Section 1 amends s. 608.433, F.S., relating to right of assignee to become member.

Section 2 indicates legislative intent that the bill apply retroactively.

Section 3 provides that the bill becomes effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The fiscal impact of this bill is unknown and speculative. The Department of State has not completed its fiscal analysis. It is not clear how Florida LLCs are reacting to the *Olmstead* decision so it is not known how the bill will affect filings at the Division of Corporations. The fiscal impact on Florida LLCs is not known. It is not known how many, if any, LLCs would relocate or not locate in Florida because of *Olmstead* because of this bill. It is not known how many LLCs, if any, would incur additional costs due to changing legal status in response to *Olmstead*.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill provides that it is intended to be clarifying and remedial and shall apply retroactively. Retroactive application of legislation can implicate the due process provisions of the Constitution.[18] As a general matter, statutes which do not alter vested rights but relate only to remedies or procedure can be applied retroactively.[19]

The Florida Supreme Court has ruled that statutes enacted soon after a controversy over the meaning of legislation may be considered a legislative interpretation of the original law and not substantive change:

> When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof. This Court has recognized the propriety of considering subsequent legislation in arriving at the proper interpretation of the prior statute.[20]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

[18] *See State Department of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981).
[19] *See Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d. 494 (Fla. 1999).
[20] *Lowry v. Parole and Probation Commission*, 473 So. 2d 1248, 1250 (Fla. 1985)(internal citations omitted).

A bill to be entitled

An act relating to limited liability companies; amending s. 608.433, F.S.; providing that a charging order against a member's transferable interest is the sole and exclusive remedy available to enforce a judgment creditor's unsatisfied judgment against a member or member's transferee; providing an exception for enforcing a judgment creditor's unsatisfied judgment against a judgment debtor or assignee of the judgment debtor of a single-member limited liability company under certain circumstances; providing legislative intent; providing for retroactive application; providing an effective date.

WHEREAS, on June 24, 2010, the Florida Supreme Court held in *Olmstead v. Federal Trade Commission* (No. SC08-1009), reported at 44 So.3d 76, 2010-1 Trade Cases P 77,079, 35 Fla. L. Weekly S357, that a charging order is not the exclusive remedy available to a creditor holding a judgment against the sole member of a Florida single-member limited liability company (LLC), and

WHEREAS, a charging order represents a lien entitling a judgment creditor to receive distributions from the LLC or the partnership that otherwise would be payable to the member or partner who is the judgment debtor, and

WHEREAS, the dissenting members of the Court in *Olmstead* expressed a concern that the majority's holding is not limited to a single-member LLC and a desire that the Legislature clarify the law in this area, and

WHEREAS, the Legislature finds that the uncertainty of the breadth of the Court's holding in *Olmstead* may persuade businesses and investors located in Florida to organize LLCs under the law in other jurisdictions where a charging order is the exclusive remedy available to a judgment creditor of a member of a multimember LLC, and

WHEREAS, the Legislature further finds it necessary to amend s. 608.433, Florida Statutes, to remediate the potential effect of the holding in *Olmstead* and to clarify that the current law does not extend to a member of a multimember LLC organized under Florida law, NOW, THEREFORE,

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

Section 1. Section 608.433, Florida Statutes, is amended to read:

608.433 Right of assignee to become member.—

(1) Unless otherwise provided in the articles of organization or operating agreement, an assignee of a limited liability company interest may become a member only if all members other than the member assigning the interest consent.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of the assigning member under the articles of organization, the operating agreement, and this chapter. An assignee who becomes a member also is liable for the obligations of the assignee's assignor to make and return contributions as provided in s. 608.4211 and wrongful

distributions as provided in s. 608.428. However, the assignee is not obligated for liabilities which are unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or the operating agreement.

(3) If an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to the limited liability company under ss. 608.4211, 608.4228, and 608.426.

(4)(a) On application to a court of competent jurisdiction by any judgment creditor of a member or a member's transferee, the court may enter a charging order against the transferable interest of the judgment debtor for ~~charge the limited liability company membership interest of the member with payment of~~ the unsatisfied amount of the judgment ~~with interest~~.

(b) To the extent so charged, the judgment creditor has only the rights of an assignee of the transferable ~~such~~ interest.

(c) This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's interest.

(5) Except as provided in subsection (6), this section provides the sole and exclusive remedy by which a person seeking to enforce a judgment against a member or member's transferee may, in the capacity of a judgment creditor, satisfy the judgment from the judgment debtor's transferable interest in the limited liability company. Foreclosure on the judgment debtor's interest, and all other remedies to give effect to the charging

order, including, but not limited to, the appointment of a receiver or a court order for directions, accounts, and inquiries that the judgment debtor might have made, are not available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's transferable interest and may not be ordered by a court.

(6) In the case of a limited liability company having only one member, this section does not provide the exclusive remedy of a judgment creditor seeking to enforce a judgment against a judgment debtor who is the sole member of a limited liability company or the assignee of the sole member if the judgment creditor establishes to the satisfaction of a court of competent jurisdiction that distributions under a charging order will not satisfy the judgment within a reasonable time.

Section 2. The amendment to s. 608.433, Florida Statutes, made by this act is intended by the Legislature to be clarifying and remedial in nature and shall apply retroactively.

Section 3. This act shall take effect upon becoming a law.

Amendment No. 1

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice Subcommittee
Representative(s) Stargel offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 608.433, Florida Statutes, is amended to read:

608.433 Right of assignee to become member.—

(1) Unless otherwise provided in the articles of organization or operating agreement, an assignee of a limited liability company interest may become a member only if all members other than the member assigning the interest consent.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of the assigning member under the articles of organization, the operating agreement, and this chapter. An assignee who becomes a member also is liable for the obligations of the assignee's assignor to make and return contributions as provided in s. 608.4211 and wrongful

distributions as provided in s. 608.428. However, the assignee is not obligated for liabilities which are unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or the operating agreement.

(3) If an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to the limited liability company under ss. 608.4211, 608.4228, or ~~and~~ 608.426.

(4)(a) On application to a court of competent jurisdiction by any judgment creditor of a member or a member's assignee, the court may enter a charging order against the limited liability company interest of the judgment debtor or assignee rights for ~~charge the limited liability company membership interest of the member with payment of~~ the unsatisfied amount of the judgment plus ~~with~~ interest.

(b) ~~To the extent so charged,~~ A charging order constitutes a lien on the judgment debtor's limited liability company interest or assignee rights. Under a charging order, the judgment creditor has only the rights of an assignee of a limited liability company interest to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled from the limited liability company, to the extent of the judgment, including interest ~~such interest~~.

(c) This chapter does not deprive any member or member's assignee of the benefit of any exemption law ~~laws~~ applicable to the member's limited liability company interest or the

assignee's rights to distributions from the limited liability company ~~interest~~.

(5) Except as provided in subsections (6) and (7) below, a charging order is the sole and exclusive remedy by which a judgment creditor of a member or member's assignee may satisfy a judgment from the judgment debtor's interest in a limited liability company or rights to distributions from the limited liability company.

(6) In the case of a limited liability company having only one member, if a judgment creditor of a member or member's assignee establishes to the satisfaction of a court of competent jurisdiction that distributions under a charging order will not satisfy the judgment within a reasonable time, a charging order is not the sole and exclusive remedy by which the judgment creditor may satisfy the judgment against a judgment debtor who is the sole member of a limited liability company or the assignee of the sole member and, upon such showing, the court may order the sale of that interest in the limited liability company pursuant to a foreclosure sale. A judgment creditor shall be permitted to make a showing to the court that distributions under a charging order will not satisfy the judgment within a reasonable time at any time after the entry of the judgment and may do so at the same time that the judgment creditor applies for the entry of a charging order.

(7) In the case of a limited liability company having only one member, if the court orders foreclosure sale of a judgment debtor's interest in the limited liability company or of a

charging order lien against the sole member of the limited liability company pursuant to subsection (6), above:

(a) The purchaser at the court-ordered foreclosure sale obtains the member's entire limited liability company interest, not merely the member's transferable interest;

(b) The purchaser at the sale becomes the member of the limited liability company; and

(c) The person whose limited liability company interest is sold pursuant to the foreclosure sale or is the subject of the foreclosed charging order ceases to be a member of the limited liability company.

Section 2. The amendment to s. 608.433, Florida Statutes, made by this act is intended by the Legislature to be clarifying and remedial in nature, and shall apply retroactively.

Section 3. This act shall take effect upon becoming a law.

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

Remove lines 4-39 and insert:

a member's limited liability company interest is the sole and exclusive remedy available to enforce a judgment creditor's unsatisfied judgment against a member or member's assignee; providing an exception for enforcing a judgment creditor's unsatisfied judgment against a judgment debtor or assignee of the judgment debtor of a single-member limited liability company under certain circumstances; providing legislative intent;

providing for retroactive application; providing an effective date.

WHEREAS, on June 24, 2010, the Florida Supreme Court held in *Olmstead v. Federal Trade Commission* (No. SC08-1009), reported at 44 So.3d 76, 2010-1 Trade Cases P 77,079, 35 Fla. L. Weekly S357, that a charging order is not the exclusive remedy available to a creditor holding a judgment against the sole member of a Florida single-member limited liability company (LLC), and

WHEREAS, a charging order represents a lien entitling a judgment creditor to receive distributions from the LLC or the partnership that otherwise would be payable to the member or partner who is the judgment debtor, and

WHEREAS, the dissenting members of the Court in *Olmstead* expressed a concern that the majority's holding is not limited to a single-member LLC and a desire that the Legislature clarify the law in this area, and

WHEREAS, the Legislature finds that the uncertainty of the breadth of the Court's holding in *Olmstead* may persuade businesses and investors located in Florida to organize LLCs under the law in other jurisdictions where a charging order is the exclusive remedy available to a judgment creditor of a member of a multimember LLC, and

WHEREAS, the Legislature further finds it necessary to amend s. 608.433, Florida Statutes, to remediate the potential effect of the holding in *Olmstead* and to clarify that the current law does not extend to a member of a multimember LLC

organized under Florida law and to provide procedures for application of the holding in *Olmstead* to a member of a single member LLC organized under Florida law, NOW, THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 277 Statutes of Limitations
SPONSOR(S): Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Billmeier LMB	Bond NB
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A statute of limitations is a time period after which no legal case can be brought relating to an injury or wrong. Current law provides that the statute of limitations for a wrongful death action against the state or one of its political subdivisions is four years but the statute of limitations for a wrongful death action brought against a person is two years.

This bill changes the statute of limitations in a wrongful death action brought against the state or one of its agencies or subdivisions from four years to two years.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Wrongful Death Actions

Sections 768.16-768.26, F.S., comprise the "Florida Wrongful Death Act" ("Wrongful Death Act"). The Wrongful Death Act provides that when a death is caused by negligence, wrongful act, default, or breach of contract, the person responsible is liable for damages.[1] The action may be brought by the decedent's personal representative and recovery is for the benefit of the decedent's estate and survivors.[2] Damages recoverable under the Wrongful Death Act include:

- The person who paid medical and funeral expenses may recover those expenses;
- Each survivor may recover the value of lost support and services;
- Each survivor may recover the value of future support and services;
- A spouse may recover for lost companionship and for mental pain and suffering;
- Minor children, and all children if there is no surviving spouse, may recover for lost companionship and for mental pain and suffering; and
- The decedent's estate may recover lost earnings.[3]

Statutes of Limitations

A statute of limitations is a time period after which no legal case can be brought relating to an injury or wrong. Section 95.11, F.S., sets forth time limitations for commencing civil actions in Florida. The time limitations range from 30 days to 20 years. Section 95.11(4)(d), F.S., provides that actions for wrongful death must be commenced within two years of the death from when the cause of action accrues.[4] This is usually the date of the decedent's death.

Section 768.28, F.S., provides for tort actions against the state and its subdivisions. Section 768.28(14), F.S., creates special limitations periods for actions against the state and its subdivisions. It provides:

> Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4), and an action for damages arising from medical malpractice must be commenced within the limitations for such an action in s. 95.11(4).

In *Beard v. Hambrick*, 396 So. 2d 708 (Fla. 1981), the Florida Supreme Court ruled that the four year statute of limitations contained in s. 768.28, F.S., is applicable to actions against political subdivisions of the state rather than the two year statute of limitations relating to wrongful death actions in s. 95.11, F.S.

Effect of this Bill

This bill provides that the two year statute of limitations at s. 95.011(4), F.S., applies to wrongful death actions brought against the state or one of its agencies or political subdivisions instead of the four year statute of limitations provision contained in s. 768.28, F.S.

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[1] *See* s. 768.19, F.S.
[2] *See* s. 768.20, F.S.
[3] *See* s. 768.21, F.S.
[4] Section 95.031, F.S., provides that the statute of limitations begins to run from the time that the cause of action accrues and provides that the cause of action accrues once the last element constituting the cause of action occurs.

This bill takes effect on July 1, 2011. This bill does not specify whether the statute of limitations is intended to apply to causes of action which have already accrued, or only apply to causes of action which occur after July 1, 2011.

B. SECTION DIRECTORY:

Section 1 amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions, recovery limits, limitation on attorney fees, statutes of limitations, exclusions, indemnification, and risk management programs.

Section 2 provides that the bill takes effect July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Section 2 of the bill provides that it will become effective July 1, 2011. This bill does not specify whether the statute of limitations is intended to apply to causes of action which have already accrued or only to causes of action which occur after July 1, 2011. Accordingly, a court would determine the applicability of the statute if the issue is ever litigated. In *Polk County BOCC v. Special Disability*

Trust Fund, 791 So. 2d 581, 583 (Fla. 1st DCA 2001), the court discussed changes in a statute of limitations:

> Although an amendment to a statute of limitations cannot extinguish existing claims, it can, consistent with due process, shorten the limitations period applicable to the prior claim if the intent to make the amendment retroactive is clearly expressed, and if a reasonable time is allowed within which to seek enforcement of such claim.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to statutes of limitations; amending s. 768.28, F.S.; providing that actions for wrongful death against the state or one of its agencies or subdivisions must be brought within the period applicable to actions brought against other defendants; providing an effective date.

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

Section 1. Subsection (14) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(14) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4), and an action for damages arising from medical malpractice or wrongful death must be commenced within the limitations for such actions ~~an action~~ in s. 95.11(4).

Section 2. This act shall take effect July 1, 2011.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice Subcommittee

Representative(s) Goodson offered the following:

Amendment

Remove line 27 and insert:

Section 2. This act shall take effect July 1, 2011, and shall apply to causes of action accruing on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4067 Residence of Clerk of the Circuit Court
SPONSOR(S): McBurney
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Bond	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

In every county, there is a clerk of the court. Current law requires that the clerk, or a deputy employed by the clerk, must reside at the county seat or within 2 miles of the county seat.

This bill repeals the requirement that the clerk or a deputy reside within 2 miles of the county seat.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 28.08, F.S., requires the clerk of the circuit court, or a deputy, to reside at the county seat or within 2 miles thereof. The law was passed in 1871.[1] The act creating the requirement included the same requirement applicable to the county sheriff. The original act required compliance within 3 months, and allowed the court to fine the clerk between $100 and $500 for noncompliance. It is unknown why this requirement was enacted.

This bill repeals the requirement.

B. SECTION DIRECTORY:

Section 1 repeals s. 28.08, F.S., regarding the place of residence of the clerk.

Section 2 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[1] Chapter 1,851.

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to residence of the clerk of the circuit court; repealing s. 28.08, F.S., relating to the clerk of the circuit court's place of residence; providing an effective date.

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

Section 1. Section 28.08, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2011.