

Select Year: 2010

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House 0689: Relating to Negligence [SPSC]

H689 GENERAL BILL/1ST ENG by Aubuchon; (CO-SPONSORS) Adkins; Ambler; Cannon; Crisafulli; Dorworth; Fresen; Frishe; Grady; Hasner; Holder; Horner; Hukill; Patronis; Plakon; Precourt; Proctor; Stargel; Tobia; Weatherford; T. Williams; Wood (Identical CS/S 1224)

Negligence [SPSC]; Provides that if person slips & falls on transitory foreign substance in business establishment, injured person must prove that establishment had actual or constructive knowledge of condition & should have taken action to remedy it; provides that constructive knowledge may be proven by circumstantial evidence, etc. EFFECTIVE DATE: 07/01/2010.

01/15/10 HOUSE Filed

01/28/10 HOUSE Referred to Civil Justice & Courts Policy (CCJP); Criminal & Civil Justice Policy Council

02/22/10 HOUSE On Committee agenda-- Civil Justice & Courts Policy (CCJP), 03/01/10, 2:15 pm, Reed Hall

03/01/10 HOUSE Favorable by Civil Justice & Courts Policy (CCJP); YEAS 11 NAYS 2; Now in Criminal & Civil Justice Policy Council

03/02/10 HOUSE Introduced, referred to Civil Justice & Courts Policy (CCJP); Criminal & Civil Justice Policy Council -HJ 00063; On Committee agenda-- Civil Justice & Courts Policy (CCJP), 03/01/10, 2:15 pm, Reed Hall; Favorable by Civil Justice & Courts Policy (CCJP); YEAS 11 NAYS 2 -HJ 00171; Now in Criminal & Civil Justice Policy Council -HJ 00171

03/05/10 HOUSE On Council agenda-- Criminal & Civil Justice Policy Council, 03/09/10, 11:00 am, 404-H

03/09/10 HOUSE Favorable by- Criminal & Civil Justice Policy Council; YEAS 13 NAYS 2 -HJ 00235; Placed on Calendar -HJ 00235

03/16/10 HOUSE Placed on Special Order Calendar; Read 2nd time -HJ 00286; Amendment(s) adopted -HJ 00286

03/18/10 HOUSE Read 3rd time -HJ 00318; Amendment(s) failed -HJ 00319; Passed as amended; YEAS 110 NAYS 2 -HJ 00319

03/23/10 SENATE In Messages

03/24/10 SENATE Received -SJ 00336; Referred to Judiciary -SJ 00336

03/25/10 SENATE Withdrawn from Judiciary -SJ 00340; Substituted for CS/SB 1224 -SJ 00340; Read 2nd time -SJ 00340; Read 3rd time -SJ 00340; Passed; YEAS 32 NAYS 5 -SJ 00340

03/31/10 HOUSE Ordered enrolled -HJ 00440

04/07/10 Signed by Officers and presented to Governor -HJ 00629

04/14/10 Approved by Governor -HJ 00723; Chapter No. 2010-S

Bills

Version:
H 0689
H 0689E1

Posted:
01/15/2010
03/16/2010

Format:
[Web Page](#) | [PDF](#)
[Web Page](#) | [PDF](#)

H 0689ER 03/31/2010 [Web Page](#) | [PDF](#)

Amendments

HB0689AM
 Amendment: Posted: Format:
 432727 03/15/2010 [PDF](#)

HB0689E1
 Amendment: Posted: Format:
 196099 03/17/2010 [PDF](#)
 600053 03/17/2010 [PDF](#)

HB0689ER
 Amendment: Posted: Format:

Bill Analyses

Analysis:	Sponsor	Posted:	Format:
h 0689	Civil Justice & Courts Policy Committee (CCJP)	02/23/2010	PDF
h 0689a	Civil Justice & Courts Policy Committee (CCJP)	03/01/2010	PDF
h 0689b	Criminal & Civil Justice Policy Council	03/08/2010	PDF
h 0689c	Criminal & Civil Justice Policy Council	03/09/2010	PDF

Vote History

Chamber:	Roll Call:	Date:	Format:
HOUSE	0581	03/18/10	Web Page
SENATE	0006	03/25/10	Web Page

Citations - Statute

[0768.0710](#)
[0768.0755](#)

Citations - Constitution

NO CONSTITUTION CITATIONS FOUND FOR HOUSE BILL 0689.

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1 A bill to be entitled
 2 An act relating to negligence; creating s. 768.0755, F.S.;
 3 providing that if a person slips and falls on a transitory
 4 foreign substance in a business establishment, the injured
 5 person must prove that the business establishment had
 6 actual or constructive knowledge of the condition and
 7 should have taken action to remedy it; providing that
 8 constructive knowledge may be proven by circumstantial
 9 evidence; repealing s. 768.0710, F.S., relating to the
 10 duty to maintain premises and the burden of proof in
 11 claims of negligence involving transitory foreign objects
 12 or substances; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 768.0755, Florida Statutes, is created
 17 to read:

18 768.0755 Premises liability for transitory foreign
 19 substances in a business establishment.—If a person slips and
 20 falls on a transitory foreign substance in a business
 21 establishment, the injured person must prove that the business
 22 establishment had actual or constructive knowledge of the
 23 dangerous condition and should have taken action to remedy it.
 24 Constructive knowledge may be proven by circumstantial evidence
 25 showing that:

26 (1) The dangerous condition existed for such a length of
 27 time that, in the exercise of ordinary care, the business
 28 establishment should have known of the condition; or

HB 689

2010

29 (2) The condition occurred with regularity and was
30 therefore foreseeable.

31 Section 2. Section 768.0710, Florida Statutes, is
32 repealed.

33 Section 3. This act shall take effect July 1, 2010.

1 A bill to be entitled
 2 An act relating to negligence; creating s. 768.0755, F.S.;
 3 providing that if a person slips and falls on a transitory
 4 foreign substance in a business establishment, the injured
 5 person must prove that the business establishment had
 6 actual or constructive knowledge of the condition and
 7 should have taken action to remedy it; providing that
 8 constructive knowledge may be proven by circumstantial
 9 evidence; providing that such provisions do not affect any
 10 common-law duty of care owed by a person or entity in
 11 possession or control of a business premises; repealing s.
 12 768.0710, F.S., relating to the duty to maintain premises
 13 and the burden of proof in claims of negligence involving
 14 transitory foreign objects or substances; providing an
 15 effective date.

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

18
 19 Section 1. Section 768.0755, Florida Statutes, is created
 20 to read:

21 768.0755 Premises liability for transitory foreign
 22 substances in a business establishment.-

23 (1) If a person slips and falls on a transitory foreign
 24 substance in a business establishment, the injured person must
 25 prove that the business establishment had actual or constructive
 26 knowledge of the dangerous condition and should have taken
 27 action to remedy it. Constructive knowledge may be proven by
 28 circumstantial evidence showing that:

29 (a) The dangerous condition existed for such a length of
 30 time that, in the exercise of ordinary care, the business
 31 establishment should have known of the condition; or

32 (b) The condition occurred with regularity and was
 33 therefore foreseeable.

34 (2) This section does not affect any common-law duty of
 35 care owed by a person or entity in possession or control of a
 36 business premises.

37 Section 2. Section 768.0710, Florida Statutes, is
 38 repealed.

39 Section 3. This act shall take effect July 1, 2010.

ENROLLED

HB 689, Engrossed 1

2010 Legislature

A bill to be entitled

An act relating to negligence; creating s. 768.0755, F.S.; providing that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the condition and should have taken action to remedy it; providing that constructive knowledge may be proven by circumstantial evidence; providing that such provisions do not affect any common-law duty of care owed by a person or entity in possession or control of a business premises; repealing s. 768.0710, F.S., relating to the duty to maintain premises and the burden of proof in claims of negligence involving transitory foreign objects or substances; providing an effective date.

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

Section 1. Section 768.0755, Florida Statutes, is created to read:

768.0755 Premises liability for transitory foreign substances in a business establishment.—

(1) If a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Constructive knowledge may be proven by circumstantial evidence showing that:

ENROLLED

HB 689, Engrossed 1

2010 Legislature

29 (a) The dangerous condition existed for such a length of
 30 time that, in the exercise of ordinary care, the business
 31 establishment should have known of the condition; or

32 (b) The condition occurred with regularity and was
 33 therefore foreseeable.

34 (2) This section does not affect any common-law duty of
 35 care owed by a person or entity in possession or control of a
 36 business premises.

37 Section 2. Section 768.0710, Florida Statutes, is
 38 repealed.

39 Section 3. This act shall take effect July 1, 2010.

Amendment No.

CHAMBER ACTION

Senate

House

1 Representative Eisnaugle offered the following:

2
3 **Amendment (with title amendment)**

4 Remove lines 18-30 and insert:

5 768.0755 Premises liability for transitory foreign
6 substances in a business establishment.-

7 (1) If a person slips and falls on a transitory foreign
8 substance in a business establishment, the injured person must
9 prove that the business establishment had actual or constructive
10 knowledge of the dangerous condition and should have taken
11 action to remedy it. Constructive knowledge may be proven by
12 circumstantial evidence showing that:

13 (a) The dangerous condition existed for such a length of
14 time that, in the exercise of ordinary care, the business
15 establishment should have known of the condition; or

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Amendment No.

16 (b) The condition occurred with regularity and was
17 therefore foreseeable.

18 (2) This section does not affect any common-law duty of
19 care owed by a person or entity in possession or control of a
20 business premises.

21

22

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

23

24

Remove line 9 and insert:

25

evidence; providing that such provisions do not affect any
26 common-law duty of care owed by a person or entity in
27 possession or control of a business premises; repealing s.
28 768.0710, F.S., relating to the

26

27

28

Amendment No.

CHAMBER ACTION

Senate

House

*

1 Representative Fetterman offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 36 and 37, insert:

5 (3) (a) If a business establishment has actual knowledge of
6 an incident involving a transitory foreign substance, the
7 business establishment shall, until the earlier of the
8 conclusion of any legal action or 1 year from the date of the
9 incident, preserve:

10 1. Video images of the incident and the 12-hour period
11 prior to the incident.

12 2. Documentary evidence of the incident.

13 (b) For purposes of this subsection, the term "actual
14 knowledge" means an incident having been witnessed by an
15 employee or reported to an employee.

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Amendment No.

16 (4) Evidence reflecting that a business establishment did
17 not have a video surveillance system or that the video
18 surveillance system did not capture an incident may not be used
19 adversely against a business establishment in a cause of action
20 brought under this section.
21

22 -----
23 **T I T L E A M E N D M E N T**

24 Remove line 14 and insert:
25 transitory foreign objects or substances; requiring preservation
26 of certain kinds of evidence concerning an incident involving a
27 transitory foreign substance for a specified period; providing a
28 definition; providing that evidence reflecting that a business
29 establishment did not have a video surveillance system or that
30 the video surveillance system did not capture an incident may
31 not be used adversely against a business establishment;
32 providing an

Amendment No.

CHAMBER ACTION

Senate

House

*

1 Representative Gibson offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 36 and 37, insert:

5 (3) A business establishment shall make a written report
6 concerning each incident involving a slip and fall on a
7 transitory foreign substance on its premises and shall preserve
8 the report for 30 days following the incident.

9
10 -----
11 **T I T L E A M E N D M E N T**

12 Remove line 14 and insert:

13 transitory foreign objects or substances; requiring a business
14 to make a written report concerning each slip and fall on a
15 transitory foreign substance on its premises and preserve the
16 report for a specified period; providing an

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689
SPONSOR(S): Aubuchon
TIED BILLS:

Negligence

IDEN./SIM. BILLS: SB 1224

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		De La Paz	De La Paz
2)	Criminal & Civil Justice Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

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

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable.

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

Proposed Changes

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

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable.

B. SECTION DIRECTORY:

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

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

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

N/A.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689
SPONSOR(S): Aubuchon
TIED BILLS:

Negligence

IDEN./SIM. BILLS: SB 1224

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

SUMMARY ANALYSIS

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

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable.

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

Proposed Changes

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

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable.

B. SECTION DIRECTORY:

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

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

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

N/A.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HOUSE PRINCIPLES

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

² *Id.* at 331.

³ *Id.*

⁴ Section 768.0710(1), F.S.

damage.

Proposed Changes

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

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable.

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II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

N/A.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HOUSE PRINCIPLES

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- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

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

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

² *Id.* at 331.

³ *Id.*

⁴ Section 768.0710(1), F.S.

damage.

Proposed Changes

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

HB 689 provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable.

B. SECTION DIRECTORY:

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

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

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

N/A.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES