

Premises Liability & Negligent Security

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Issue:

Current law requires businesses open to the public to ensure that persons on their premises are reasonably safe from foreseeable risks of harm. Should the Florida Legislature absolve businesses of all responsibility when they fail to take proper security measures and someone is robbed, beaten, raped or murdered because of it?

Academy Position:

No. Current premises liability laws encourage commercial property owners to take necessary precautions to make their property safe. Changing the law would put the lives of every Floridian and every tourist in the state in danger. Additionally, changing the law would encourage businesses to avoid taking some precautions.

Summary:

Limiting premises liability would allow commercial property owners to escape responsibility for injuries to patrons caused by criminals on their property ñ no matter how dangerous the property is or how likely the risk of harm.

The Florida Supreme Court in *Merrill v. McDonald* stated that a business could not shirk its duty to protect its patrons by transferring liability to criminals who commit foreseeable acts; the business must use reasonable efforts to protect its customers. Why on earth would the state of Florida allow businesses to abandon this duty?

As the Florida Supreme Court unanimously stated in the *Merrill* case, it would be irrational to allow a party who negligently fails to provide reasonable security measures to reduce its liability because there is an intervening intentional tort, where the intervening intentional tort is exactly what the security measures are supposed to

protect against. It makes no sense to ask a jury to “compare” the fault of a business that shirks its duty to protect customers with the fault of the criminal the business had a duty to protect the public from.

A few examples of how this bill would impact negligent security cases:

1) A hotel fails to repair a lock and a hotel guest is raped. Everyone would agree that the rapist is a wrongdoer. However, the hotel is 100% at fault for creating the opportunity for the rapist to commit the criminal act. This proposal would require the jury to split the fault between the hotel and the rapist, despite the fact that the case is about the breach of the hotel’s duty to its guests. Under this proposal, a jury could apportion 90% of the fault to the rapist and 10% to the hotel. Do we really want to tell the millions of visitors who come to Florida every year that their hotel only owes them a 10% duty to make sure they are safe in their rooms?

2) A toddler is in the play yard of a day care center. The owner of the center has decided to cut staffing and an unwatched child is abducted by a stranger. The child and her kidnapper are never seen again. The day care center had a duty to protect the child from the danger that occurred. The day care center was negligent and breached its duty to the parent and the child. That is the basis for the lawsuit and the day care center’s negligence ñ the failure to use reasonable care. The day care center is 100% responsible for its failure to protect children under its care from being kidnapped. By allowing the kidnapper to go on the jury verdict form for an apportionment of fault, this proposal would allow the day care center to escape responsibility for the tragedy that occurred because of the negligence of the day care center.

If the same unattended child had drowned in the center’s swimming pool, no one would suggest that fault be apportioned between the center and the swimming pool. It also makes no sense to apportion fault to a foreseeable criminal act.

If a hotel, a day care center, or any other business fails to take reasonable security measures or to warn its patrons of the risk of criminal acts on its property and a

patron is injured or killed as a result of this failure, the business may be liable. To allow the negligent business to point the finger at someone else for what their own negligence caused would be irresponsible at a time when we are requiring extra vigilance and security.

Changing this law would encourage businesses to cut costs by cutting security and safety measures. The people who would be put most at risk by this new lack of security would be society's most vulnerable – seniors, women and children. They are the "easy targets" for muggers, kidnappers and rapists.

The Legislature should find this position unacceptable. If accountability is eliminated, the duty a business owes to their patrons and visitors will be abandoned and the safety of all of us – students, children, seniors, women and tourists – will be in jeopardy.