

House Bill No. 135

An act relating to liability of providers of streetlights; creating s. 768.1382, F.S.; providing definitions; including certain security or area lights within the definition of the term “streetlight”; limiting liability of a streetlight provider for injury or death or property damage affected or caused by a malfunctioning streetlight; providing procedures for notice and repair of malfunctioning streetlights as a condition for limited liability; providing that noncompliance with such procedures does not create a presumption of negligence; limiting liability of a public utility or electric utility that discontinues service to a streetlight under certain circumstances; limiting liability of a public utility or electric utility for the design, layout, quantity, or placement of streetlights or level of illumination resulting from the proper operation of a streetlight or series of streetlights; prohibiting certain findings of fault of an entity not a party to litigation; providing for conflict, effect, and application; providing an effective date.

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

Section 1. Section 768.1382, Florida Statutes, is created to read:

768.1382 Streetlights, security lights, and other similar illumination; limitation on liability.—

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

(a) “Actual notice” means notification to the streetlight provider that is acknowledged by the streetlight provider in accordance with its designated procedures by any person of an inoperative or malfunctioning streetlight using the designated procedures specified by the streetlight provider and containing at least the following information:

1. Identification of the streetlight location with such specificity that the location of the streetlight can be identified by the streetlight provider.

2. A description of the nature of the malfunction or failure of illumination of the streetlight.

3. Appropriate contact information, as available, sufficient for the streetlight provider to contact the person making the notification, such as the name and address, electronic mail address, or phone number of the person making the notification.

(b) “Designated procedures” means the procedures designated by a streetlight provider to provide actual notice as defined in paragraph (a).

(c) “Person” means any legal or natural person as defined in s. 1.01(3).

(d) “Streetlight” means any streetlight, any outdoor security light, or any outdoor area light that is owned or maintained by or for a streetlight pro-

vider. The term “streetlight” does not include any customer-owned or customer-maintained streetlights, outdoor security lights, or outdoor area lights of any type, regardless of their location.

(e) “Streetlight provider” means the state or any of the state’s officers, agencies, or instrumentalities, any political subdivision as defined in s. 1.01, any public utility as defined in s. 366.02(1), or any electric utility as defined in s. 366.02(2).

(2) A streetlight provider is not liable and may not be held liable for any civil damages for personal injury, wrongful death, or property damage affected or caused by the malfunction or failure of illumination of such streetlight, regardless of whether the malfunction or failure of illumination is alleged or demonstrated to have contributed in any manner to the personal injury, wrongful death, or property damage, unless the provider failed to comply with the provisions of subsection (3).

(3) In order for any streetlight provider to have the benefit of the limitation on liability as set forth in subsection (2), the streetlight provider must have complied with the following:

(a) The streetlight provider must disclose its designated procedures for providing actual notice of an inoperative or malfunctioning streetlight to its customers through annual inserts in its customers’ bills. The streetlight provider must disclose its designated procedures for providing actual notice of an inoperative or malfunctioning streetlight to the general public, and to its customers if bill inserts are not used, in an annual notice paid for by the streetlight provider and published in the relevant newspapers of general circulation.

(b) A streetlight provider must repair any inoperative or malfunctioning streetlight within 60 days after receiving actual notice that the streetlight is inoperative or malfunctioning.

(c) If a streetlight provider repairs the inoperative or malfunctioning streetlight and the streetlight subsequently again becomes inoperative or malfunctioning, the streetlight provider shall repair such inoperative or malfunctioning streetlight within 60 days after receiving actual notice that the streetlight is again inoperative or malfunctioning subsequent to the prior repair.

(d) After a streetlight provider receives actual notice, investigates the report, and determines that the streetlight is functioning properly, such information shall be noted in the streetlight provider’s business records. Upon receipt of any subsequent actual notice that the streetlight is again inoperative or malfunctioning, the streetlight provider shall repair the streetlight within 60 days after receiving such subsequent actual notice.

(e) If, upon investigation by the streetlight provider after receiving actual notice of any event described in paragraph (b), paragraph (c), or paragraph (d), the streetlight provider determines that the nature of the repair or replacement cannot be achieved within the 60-day period, the streetlight provider shall make a determination as to the time in which it can complete

the corrective action and denote such time in its business records. Except as provided in paragraph (f), a streetlight provider under this paragraph may not take more than 180 days to complete the corrective action after receiving actual notice unless such longer delay is related to actions or decisions made or required by the customer with the responsibility for paying the utility bill for such streetlight or related to a tornado, a severe weather event, or other unforeseen event resulting in severe damage that does not give rise to a declared state of emergency, in which case the streetlight provider shall be subject to the time periods set forth in paragraph (f).

(f) For a streetlight provider operating in a county affected by a state of emergency declared by federal, state, or local authorities, the time periods in paragraph (b), paragraph (c), paragraph (d), or paragraph (e) shall be extended to 365 days after the cessation of the emergency or such longer period of time that may be dictated by the circumstances or 60 days after receiving actual notice that the streetlight is inoperative or malfunctioning, whichever is later.

(4) Where the streetlight provider is a public utility or an electric utility, the streetlight provider is not liable for any civil damages for personal injury, wrongful death, or property damage affected or caused by the failure of illumination of such streetlights, regardless of whether the failure of illumination is alleged or demonstrated to have contributed in any manner to the personal injury, wrongful death, or property damage, if the streetlight provider disconnected electric or gas service to the streetlight upon the streetlight customer's request or as a result of the streetlight customer's failure to pay electric or gas bills when due or other breach of the applicable streetlight agreement or upon termination of the applicable streetlight agreement. In no event shall a public utility or electric utility be liable or held liable for civil damages for personal injury, wrongful death, or property damage under any circumstance affected or caused by the design, layout, quantity, or placement of streetlights or level of illumination resulting from the proper operation of a streetlight or series of streetlights.

(5) In any civil action for damages arising out of personal injury, wrongful death, or property damage when a streetlight provider's fault regarding the provision or maintenance of streetlights is at issue, if the streetlight provider responsible for providing or maintaining the streetlights is immune from liability pursuant to this section or is not a party to the litigation, such streetlight provider may not be named on the jury verdict form or be deemed or found in such action to be in any way at fault or responsible for the injury or death or damage that gave rise to the damages.

(6) In no event shall a streetlight provider's noncompliance with the provisions of subsection (3) create a presumption of negligence on the part of the streetlight provider in any civil action for damages arising out of personal injury, wrongful death, or property damage.

(7) In the event that there is any conflict between this section and s. 768.81, or any other section of Florida Statutes, this section shall control. Further, nothing in this section shall impact or waive any provision of s. 768.28.

Section 2. This act shall take effect upon becoming a law and shall apply to causes of action that accrue on or after the effective date.

Approved by the Governor June 20, 2005.

Filed in Office Secretary of State June 20, 2005.