

CHAPTER 46

PARTIES

- 46.011 Parties for contribution.
 46.015 Release of parties.
 46.021 Actions; surviving death of party.
 46.031 Actions by husband and wife, parent or guardian and child.
 46.041 Joinder of certain makers, endorsers, etc., of negotiable instruments.
 46.051 Joinder of products liability insurers.

46.011 Parties for contribution.—When a person executes any bond, note, draft, or bill of exchange and two or more persons execute it jointly with him or her, merely as his or her sureties, or endorse any note or draft or bill of exchange as sureties for the maker or drawer for his or her accommodation and without consideration, said persons are bound to each other for a proportional contribution of the amount of said bond, note, draft, or bill of exchange. If any person is compelled to pay any part of said bond, note, draft, or bill of exchange, he or she may sue his or her cosurety for contribution separately or jointly. Defendants, whether sureties, accommodation joint makers or accommodation endorsers may be sued separately or jointly.

History.—s. 1, Feb. 14, 1835; RS 983; GS 1369; s. 1, ch. 6210, 1911; RGS 2565; CGL 4205; s. 2, ch. 67-254; s. 264, ch. 95-147.

Note.—Former s. 45.05.

46.015 Release of parties.—

(1) A written covenant not to sue or release of a person who is or may be jointly and severally liable with other persons for a claim shall not release or discharge the liability of any other person who may be liable for the balance of such claim.

(2) At trial, if any person shows the court that the plaintiff, or his or her legal representative, has delivered a written release or covenant not to sue to any person in partial satisfaction of the damages sued for, the court shall set off this amount from the amount of any judgment to which the plaintiff would be otherwise entitled at the time of rendering judgment.

(3) The fact that a written release or covenant not to sue exists or the fact that any person has been dismissed because of such release or covenant not to sue shall not be made known to the jury.

(4) The provisions of this section shall apply only to written releases or covenants not to sue executed after June 23, 1980.

History.—ss. 1, 2, ch. 80-144; s. 265, ch. 95-147.

46.021 Actions; surviving death of party.—No cause of action dies with the person. All causes of action survive and may be commenced, prosecuted, and defended in the name of the person prescribed by law.

History.—s. 30, Nov. 23, 1828; RS 989; GS 1375; RGS 2571; CGL 4211; s. 1, ch. 26541, 1951; s. 2, ch. 67-254.

Note.—Former s. 45.11.

46.031 Actions by husband and wife, parent or guardian and child.—In any action brought by a husband and his wife, parent or guardian and child for an injury done to the wife or child, in which the wife or child is necessarily joined as coplaintiff, the husband, parent

or guardian may join claims of any nature in his or her own right.

History.—s. 11, ch. 1096, 1861; RS 1005; GS 1390; RGS 2586; CGL 4226; s. 1, ch. 21886, 1943; s. 1, ch. 28283, 1953; s. 2, ch. 67-254; s. 266, ch. 95-147.

Note.—Former s. 46.09.

46.041 Joinder of certain makers, endorsers, etc., of negotiable instruments.—

(1) The makers of negotiable instruments and all other persons who, at or before the execution and delivery thereof, endorsed, guaranteed, or became surety for payment thereof, or are otherwise secondarily liable for payment, may be sued in the same action.

(2) In such action the final judgment shall specify the defendants who are liable for payment only as endorser, surety, guarantor or otherwise secondarily.

(3) When a final judgment authorized by this section is paid by one or more defendants who are liable only as endorser, surety, guarantor, or otherwise secondarily, the holder of such judgment shall, on request, assign such judgment to the defendants paying it. Such defendants are entitled to all the rights and remedies of the original plaintiff to enforce collection from the other defendants who are liable.

History.—ss. 1-3, ch. 6486, 1913; RGS 4733-4735; CGL 6819-6821; s. 2, ch. 67-254.

Note.—Former s. 46.11.

46.051 Joinder of products liability insurers.—

(1) No products liability insurer shall be joined as a party defendant in an action to determine the insured's liability. However, each insurer which does or may provide products liability insurance coverage to pay all or a portion of any judgment which might be entered in the action shall file with the court, under oath, a statement by a corporate officer setting forth the following information with regard to each known policy of insurance:

- (a) The name of the insurer;
- (b) The name of each insured;
- (c) The limits of liability coverage; and

(d) A statement of any policy or coverage defense which said insurer reasonably believes is available to the insurer filing the statement at the time of filing.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to such statement.

(3) If the statement or any amendment thereto indicates that a policy or coverage defense has been or will be asserted, then the insurer may be joined as a party.

(4) After the rendition of a verdict, or final judgment by the court if the case is tried without a jury, the insurer may be joined as a party and judgment may be entered by the court based upon the statement or statements herein required.

(5) The rules of discovery shall be available to discover the existence of liability insurance coverage and its provisions.

(6)(a) This act is applicable to products liability actions based on either tort or contract causes of action.

(b) This act is applicable only to causes of action accruing on or after October 1, 1978.

History.—ss. 2, 3, ch. 78-418.