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Amendment No. ____ (for drafter's use only)

CHAMBER ACTION

<W>Senate</W>

<W>House</W>

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2	.
3	.
4	.

ORIGINAL STAMP BELOW

11 Representative(s) Cosgrove offered the following:

13 **Amendment (with title amendment)**

14 On page ,
15 strike everything from the bill:

17 and insert in lieu thereof:

18 Section 1. Expedited trials.--Upon the motion of any
19 party to a simplified civil proceeding or upon the joint
20 stipulation of the parties to any civil case, the court may
21 conduct an expedited trial as provided herein. A simplified
22 civil proceeding is a case involving only two parties, no more
23 than two counts to the complaint or counter claim, and where
24 the court finds there would be no prejudice to any party in
25 conducting an expedited trial. Where two or more plaintiffs or
26 defendants have a unity interest, such as a husband and wife,
27 they shall be considered one party for the purpose of this
28 section. Unless otherwise ordered by the court or agreed to by
29 the parties with approval of the court, an expedited trial
30 shall be conducted as follows:

31 (1) All discovery in the trial shall be completed

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- 1 within 60 days.
- 2 (2) All interrogatories and requests for production
- 3 will be served within 10 days and all responses will be served
- 4 within 20 days of receipt.
- 5 (3) The court shall determine the number of
- 6 depositions required.
- 7 (4) The case may be tried to a jury.
- 8 (5) The trial of the case will be tried within 30 days
- 9 after the 60 day discovery cut-off.
- 10 (6) The trial will be limited to 1 day.
- 11 (7) The jury selection will be limited to 1 hour.
- 12 (8) The plaintiff will have 3 hours to present its
- 13 case including opening, all testimony and evidence, and
- 14 closing.
- 15 (9) The defendant will have 3 hours to present its
- 16 case including opening, all testimony and evidence, and
- 17 closing.
- 18 (10) The jury will be given "plain language" jury
- 19 instructions at the beginning of the trial as well as a "plain
- 20 language" jury verdict form. The jury instructions and verdict
- 21 form will be agreed to by the parties.
- 22 (11) The parties will be permitted to introduce a
- 23 written report of any expert and the expert's curriculum vitae
- 24 instead of calling the expert live at trial.
- 25 (12) At trial the parties may use excerpts from
- 26 depositions, including video depositions, regardless of where
- 27 the deponent lives or whether they are available to testify.
- 28 (13) Except as approved by the court, the Florida
- 29 Evidence Code and the Florida Rules of Civil Procedure will
- 30 apply.
- 31 (14) A unanimous jury verdict is not necessary to

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1 resolve the case. A vote of 5-1 is sufficient.

2 (15) There will be no continuances of the trial absent
3 extraordinary circumstances.

4 Section 2. Section 40.50, Florida Statutes, is created
5 to read:

6 40.50 Jury duty and instructions in civil cases.--

7 (1) In any civil action immediately after the jury is
8 sworn, the court shall instruct the jury concerning its
9 duties, its conduct, the order of proceedings, the procedure
10 for submitting written questions of witnesses, and the
11 elementary legal principles that will govern the proceeding as
12 provided herein.

13 (2) Jurors shall be instructed that they will be
14 permitted to discuss the evidence among themselves in the jury
15 room during recesses from trial when all are present, as long
16 as they reserve judgment about the outcome of the case until
17 deliberations commence. Notwithstanding the foregoing, the
18 jurors' discussion of the evidence among themselves during
19 recesses may be limited or prohibited by the court for good
20 cause.

21 (3) The court shall instruct that the jurors may take
22 notes regarding the evidence and keep the notes for the
23 purpose of refreshing their memory for use during recesses,
24 discussions, and deliberations. The court may provide
25 materials suitable for this purpose. The confidentiality of
26 the notes should be emphasized to the jurors. After the jury
27 has rendered its verdict, the notes shall be collected by the
28 bailiff or clerk who shall promptly destroy them.

29 (4) The court shall provide a notebook for each juror.
30 Notebooks shall contain:

31 (a) A copy of the preliminary jury instructions,

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1 including special instructions on the issues to be tried.
2 (b) Jurors' notes.
3 (c) Witnesses' names, photographs and/or biographies.
4 (d) Copies of key documents admitted into evidence and
5 an index of all exhibits in evidence.
6 (e) A glossary of technical terms.
7 (f) A copy of the court's final instructions.
8
9 In its discretion, the court may authorize documents and
10 exhibits in evidence to be included in notebooks for use by
11 the jurors during trial to aid them in performing their
12 duties. The preliminary jury instructions should be removed,
13 discarded, and replaced by the final jury instructions before
14 the latter are read to the jury by the court.
15 (5) The court shall permit jurors to have access to
16 their notes and notebooks during recesses, discussions, and
17 deliberations.
18 (6) The court shall permit jurors to submit to the
19 court written questions directed to witnesses or to the court.
20 Opportunity shall be given to counsel to object to such
21 questions out of the presence of the jury. The court may, as
22 appropriate, limit the submission of questions to witnesses.
23 (7) The court shall instruct the jury that any
24 questions directed to witnesses or the court must be in
25 writing, unsigned, and given to the bailiff. The court may
26 further instruct that, if a juror has a question for a witness
27 or the court, the juror should hand it to the bailiff during a
28 recess, or if the witness is about to leave the witness stand,
29 the juror should signal to the bailiff. If the court
30 determines that the juror's questions calls for admissible
31 evidence, the question may be asked by court or counsel in the

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1 court's discretion. Such question may be answered by
2 stipulation or other appropriate means, including, but not
3 limited to, additional testimony upon such terms and
4 limitations as the court prescribes. If the court determines
5 that the juror's question calls for inadmissible evidence, the
6 question shall not be read or answered. If a juror's question
7 is rejected, the jury should be told that trial rules do not
8 permit some questions to be asked and that the jurors should
9 not attach any significance to the failure of having their
10 question asked.

11 (8) The court has discretion to give final
12 instructions to the jury before closing arguments of counsel
13 instead of after, in order to enhance jurors' ability to apply
14 the applicable law to the facts. In that event, the court may
15 wish to withhold giving the necessary procedural and
16 housekeeping instructions until after closing arguments.

17 Section 3. Section 44.1051, Florida Statutes, is
18 created to read:

19 44.1051 Voluntary trial resolution.--

20 (1) Two or more parties who are involved in a civil
21 dispute may agree in writing to submit the controversy to
22 voluntary trial resolution in lieu of litigation of the issues
23 involved, prior to or after a lawsuit has been filed, provided
24 that no constitutional issue is involved.

25 (2) If the parties have entered into an agreement that
26 provides for a method for appointment of a member of The
27 Florida Bar in good standing for more than 5 years to act as
28 trial resolution judge, the court shall proceed with the
29 appointment as prescribed.

30 (3) The trial resolution judge shall be compensated by
31 the parties according to their agreement.

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1 (4) Within 10 days of the submission of the request
2 for binding voluntary trial resolution, the court shall
3 provide for the appointment of the trial resolution judge.
4 Once appointed, the trial resolution judge shall notify the
5 parties of the time and place for the hearing.

6 (5) Application for voluntary trial resolution shall
7 be filed and fees paid to the clerk of the court as if for
8 complaints initiating civil actions. The clerk of the court
9 shall handle and account for these matters in all respects as
10 if they were civil actions except that the clerk of the court
11 shall keep separate the records of the applications for
12 voluntary binding trial resolution from all other civil
13 actions.

14 (6) Filing of the application for binding voluntary
15 trial resolution will toll the running of the applicable
16 statutes of limitation.

17 (7) The appointed trial resolution judge shall have
18 such power to administer oaths or affirmation and to conduct
19 the proceedings as the rules of court shall provide. At the
20 request of any party, the trial resolution judge shall issue
21 subpoenas for the attendance of witnesses and for the
22 production of books, records, documents, and other evidence
23 and may apply to the court for orders compelling attendance
24 and production. Subpoenas shall be served and shall be
25 enforceable as provided by law.

26 (8) The hearing shall be conducted by the trial
27 resolution judge, who may determine any question and render a
28 final decision.

29 (9) The Florida Evidence Code shall apply to all
30 proceedings under this section.

31 (10) Any party may enforce a final decision rendered

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1 in a voluntary trial by filing a petition for final judgment
2 in the circuit court in the circuit in which the voluntary
3 trial took place. Upon entry of final judgment by the circuit
4 court an appeal may be taken to the appropriate appellate
5 court. The harmless error doctrine shall apply in all appeals.
6 No further review shall be permitted unless a constitutional
7 issue is raised. Factual findings determined in the voluntary
8 trial shall not be subject to appeal.

9 (11) If no appeal is taken within the time provided by
10 rules promulgated by the Supreme Court, then the decision
11 shall be referred to the presiding court judge in the case, or
12 if one has not been assigned, then to the chief judge of the
13 circuit for assignment to a circuit judge, who shall enter
14 such orders and judgments as are required to carry out the
15 terms of decision, which orders shall be enforceable by the
16 contempt powers of the court and for which judgments
17 executions shall issue on request of a party.

18 (12) This section shall not apply to any dispute
19 involving child custody, visitation, or child support, or to
20 any dispute that involves the rights of a third party not a
21 party to the voluntary trial resolution.

22 Section 4. Section 57.071, Florida Statutes, is
23 amended to read:

24 57.071 Costs; what taxable.--

25 (1) If costs are awarded to any party the following
26 shall also be allowed:

27 (a)~~(1)~~ The reasonable premiums or expenses paid on all
28 bonds or other security furnished by such party.

29 (b)~~(2)~~ The expense of the court reporter for per diem,
30 transcribing proceedings and depositions, including opening
31 statements and arguments by counsel.

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1 ~~(c)(3)~~ Any sales or use tax due on legal services
2 provided to such party, notwithstanding any other provision of
3 law to the contrary.

4 (2) Expert witness fees shall not be awarded as
5 taxable costs unless:

6 (a) The party retaining the expert witness files a
7 written notice with the court and each opposing party within
8 30 days of the retention of the expert witness, which notice
9 shall provide the expertise and experience of the expert, the
10 rate of compensation of the expert witness, the subject
11 matters or issues on which the expert is expected to render an
12 opinion, and an estimate of the overall fee of the expert
13 witness, including trial testimony; and

14 (b) The party retaining the expert witness furnishes
15 each opposing party with a written report signed by the expert
16 witness which summarizes the expert witness's opinions, the
17 factual basis of the opinions including documentary evidence,
18 and the authorities relied upon in reaching the opinions, such
19 report shall be filed at least 30 days prior to discovery
20 cut-off, or 45 days prior to the trial, or as otherwise
21 determined by the court.

22 Section 5. Section 57.105, Florida Statutes, is
23 amended to read:

24 57.105 Attorney's fee; sanctions for raising unfounded
25 claims or defenses; damages for delay of litigation.--

26 (1) The court shall award a reasonable attorney's fee
27 to be paid to the prevailing party in equal amounts by the
28 losing party and the losing party's attorney on any claim or
29 defense in any civil action in which the court finds that the
30 losing party or the losing party's attorney knew or should
31 have known at the time a claim or defense was presented:

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1 (a) That the claim or defense was not supported by the
2 material facts necessary to establish the claim or defense; or

3 (b) That the application of then existing law to the
4 facts the losing party or losing party's attorney knew or
5 should have known would not support the claim or defense.
6 ~~there was a complete absence of a justiciable issue of either~~
7 ~~law or fact raised by the complaint or defense of the losing~~
8 ~~party.~~

9
10 Provided, however, that the losing party's attorney is not
11 personally responsible if he or she has acted in good faith,
12 based on the representations of his or her client as to the
13 existence of material facts. If the court awards fees to a
14 claimant pursuant to this subsection ~~finds that there was a~~
15 ~~complete absence of a justiciable issue of either law or fact~~
16 ~~raised by the defense,~~ the court shall also award prejudgment
17 interest.

18 (2) Subsection (1) shall not apply if the court
19 determines that the claim or defense was presented as a good
20 faith attempt to change the then existing law as it applied to
21 the facts the losing party or losing party's attorney knew or
22 should have known at the time the claim or defense was
23 presented.

24 (3) In any civil proceeding in which the moving party
25 proves, by a preponderance of the evidence, that any action
26 taken by the opposing party, including, but not limited to,
27 the filing of any pleading or part thereof, the assertion of
28 or response to any discovery demand, the assertion of any
29 claim or defense, or the response to any request by any other
30 party, was taken primarily for the purpose of delay, the court
31 shall award damages to the moving party for the time

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1 necessitated by the conduct in question. The absence of a
2 justiciable basis for the action taken shall be prima facie
3 evidence of such a purpose; but such a purpose may also be
4 proved, in proper cases, notwithstanding an objective
5 justiciable basis for the action taken.

6 (4) If a contract contains a provision allowing
7 attorney's fees to a party when he or she is required to take
8 any action to enforce the contract, the court may also allow
9 reasonable attorney's fees to the other party when that party
10 prevails in any action, whether as plaintiff or defendant,
11 with respect to the contract. This act shall take effect
12 October 1, 1988, and shall apply to contracts entered into on
13 said date or thereafter.

14 Section 6. Section 768.77, Florida Statutes, is
15 amended to read:

16 768.77 Itemized verdict.--

17 ~~(1)~~ In any action to which this part applies in which
18 the trier of fact determines that liability exists on the part
19 of the defendant, the trier of fact shall, as a part of the
20 verdict, itemize the amounts to be awarded to the claimant
21 into the following categories of damages:

22 (1)~~(a)~~ Amounts intended to compensate the claimant for
23 economic losses;

24 (2)~~(b)~~ Amounts intended to compensate the claimant for
25 noneconomic losses; and

26 (3)~~(c)~~ Amounts awarded to the claimant for punitive
27 damages, if applicable.

28 ~~(2) Each category of damages, other than punitive~~
29 ~~damages, shall be further itemized into amounts intended to~~
30 ~~compensate for losses which have been incurred prior to the~~
31 ~~verdict and into amounts intended to compensate for losses to~~

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1 ~~be incurred in the future. Future damages itemized under~~
2 ~~paragraph (1)(a) shall be computed before and after reduction~~
3 ~~to present value. Damages itemized under paragraph (1)(b) or~~
4 ~~paragraph (1)(c) shall not be reduced to present value. In~~
5 ~~itemizing amounts intended to compensate for future losses,~~
6 ~~the trier of fact shall set forth the period of years over~~
7 ~~which such amounts are intended to provide compensation.~~

8 Section 7. Paragraph (a) of subsection (1) of section
9 768.78, Florida Statutes, is amended to read:

10 768.78 Alternative methods of payment of damage
11 awards.--

12 (1)(a) In any action to which this part applies in
13 which the court determines that ~~trier of fact makes~~ an award
14 to compensate the claimant includes ~~for~~ future economic losses
15 which exceed \$250,000, payment of amounts intended to
16 compensate the claimant for these losses shall be made by one
17 of the following means, unless an alternative method of
18 payment of damages is provided in this section:

19 1. The defendant may make a lump-sum payment for all
20 damages so assessed, with future economic losses and expenses
21 reduced to present value; or

22 2. Subject to the provisions of this subsection, the
23 court shall, at the request of either party, unless the court
24 determines that manifest injustice would result to any party,
25 enter a judgment ordering future economic damages, as itemized
26 pursuant to s. 768.77(1)~~(a)~~, in excess of \$250,000 to be paid
27 in whole or in part by periodic payments rather than by a
28 lump-sum payment.

29 Section 8. Subsections (3), (5), and (7) of section
30 768.79, Florida Statutes, are amended to read:

31 768.79 Offer of judgment and demand for judgment.--

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1 (3) The offer shall be served upon the party to whom
2 it is made, but it shall not be filed unless it is accepted or
3 unless filing is necessary to enforce the provisions of this
4 section. In any case involving multiple party plaintiffs or
5 multiple party defendants, an offer shall specify its
6 applicability to each party. Each individual party may
7 thereafter accept or reject the offer as the offer applies to
8 such party. However, a plaintiff may make a global offer to
9 all defendants without specifying amounts applicable to each
10 defendant.

11 (5) An offer may be withdrawn in writing which is
12 served before the date a written acceptance is filed. Once
13 withdrawn, an offer is void. A subsequent offer shall have the
14 effect of voiding any previous offer.

15 (7)(a) Prior to awarding costs and fees pursuant to
16 this section the court shall determine whether the offer was
17 reasonable under the circumstances known at the time the offer
18 was made. If a party is entitled to costs and fees pursuant to
19 the provisions of this section, the court may, in its
20 discretion, determine that an offer was not made in good
21 faith. In such case, the court may disallow an award of costs
22 and attorney's fees.

23 (b) When determining the entitlement to and
24 reasonableness of an award of attorney's fees pursuant to this
25 section, the court shall consider, along with all other
26 relevant criteria, the following additional factors:

- 27 1. The then's apparent merit or lack's of merit in the
28 claim.
- 29 2. The number and nature of offers made by the
30 parties.
- 31 3. The closeness of questions of fact and law at

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1 issue.

2 4. Whether the proposal was reasonably rejected.

3 ~~5.4.~~ Whether the person making the offer had
4 unreasonable refused to furnish information necessary to
5 evaluate the reasonableness of such offer.

6 ~~6.5.~~ Whether the suit was in the nature of a test case
7 presenting questions of far-reaching's importance affecting
8 nonparties.

9 ~~7.6.~~ The amount of the additional delay cost and
10 expense that the person making the offer reasonable would be
11 expected to incur if the litigation should be prolonged.

12 Section 9. If any provision of this act or the
13 application thereof to any person or circumstance is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the act which can be given effect without the
16 invalid provision or application, and to this end the
17 provision of this act are declared severable.

18 Section 10. This act shall take effect October 1 of
19 the year in which enacted.

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21
22

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

24 And the title is amended as follows:

25 On page ,
26 remove from the title of the bill:

27

28 and insert in lieu thereof:

29 An act relating to litigation reform; providing
30 for expedited trials; providing timeframes for
31 the conduct of such trials; creating s. 40.50,

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1 F.S.; providing for instructions to juries
2 after the jury is sworn in; providing for the
3 discussion of evidence under certain
4 circumstances; providing for the taking of
5 notes under certain circumstances; providing
6 for notebooks; providing for written questions;
7 providing for final instructions; creating s.
8 44.1051, F.S.; providing for voluntary trial
9 resolution; providing for the appointment of a
10 trial resolution judge; providing for
11 compensation; providing for fees; providing for
12 the tolling of applicable statutes of
13 limitation; providing for powers of trial
14 resolution judges; providing for hearings and
15 evidence; providing for appeal; providing for
16 application; amending s. 57.071, F.S.;
17 providing criteria under which expert witness
18 fees may be awarded as taxable costs; amending
19 s. 57.105, F.S.; providing sanctions for
20 raising unfounded claims or defenses; providing
21 exceptions; providing for damages in certain
22 circumstances; amending s. 768.77, F.S.;
23 revising language with respect to itemized
24 verdicts to delete reference to future damages;
25 amending s. 768.78, F.S.; conforming to the
26 act; correcting a cross reference; amending s.
27 768.79, F.S.; providing for the applicability
28 of offers of judgment and demand of judgment in
29 cases involving multiple plaintiffs; providing
30 that subsequent offers shall void previous
31 offers; providing that prior to awarding costs

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1 and fees the court shall determine whether the
2 offer was reasonable under the circumstances
3 known at the time the offer was made;
4 authorizing the court to consider whether or
5 not a proposal was reasonably rejected when
6 considering entitlement to and the amount of an
7 award of attorneys' fees; providing
8 severability; providing an effective date.

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