

By the Committee on Civil Justice & Claims and
Representatives Warner, Ritter, Flanagan and Thrasher

1 A bill to be entitled
2 An act relating to litigation reform; providing
3 for expedited trials; providing timeframes for
4 the conduct of such trials; creating s. 40.50,
5 F.S.; providing for instructions to juries
6 after the jury is sworn in; providing for the
7 discussion of evidence under certain
8 circumstances; providing for the taking of
9 notes under certain circumstances; providing
10 for notebooks; providing for written questions;
11 providing for final instructions; creating s.
12 44.1051, F.S.; providing for voluntary trial
13 resolution; providing for the appointment of a
14 trial resolution judge; providing for
15 compensation; providing for fees; providing for
16 the tolling of applicable statutes of
17 limitation; providing for powers of trial
18 resolution judges; providing for hearings and
19 evidence; providing for appeal; providing for
20 application; amending s. 57.071, F.S.;
21 providing criteria under which expert witness
22 fees may be awarded as taxable costs; amending
23 s. 57.105, F.S.; providing sanctions for
24 raising unfounded claims or defenses; providing
25 exceptions; providing for damages in certain
26 circumstances; amending s. 627.428, F.S.;
27 revising a provision relating to attorney's
28 fees to exempt certain actions; amending s.
29 768.77, F.S.; revising language with respect to
30 itemized verdicts to delete reference to future
31 damages; amending s. 768.78, F.S.; conforming

1 to the act; correcting a cross reference;
2 amending s. 768.79, F.S.; providing for the
3 applicability of offers of judgment and demand
4 of judgment in cases involving multiple
5 plaintiffs; providing that subsequent offers
6 shall void previous offers; providing that
7 prior to awarding costs and fees the court
8 shall determine whether the offer was
9 reasonable under the circumstances known at the
10 time the offer was made; authorizing the court
11 to consider whether or not a proposal was
12 reasonably rejected when considering
13 entitlement to and the amount of an award of
14 attorneys' fees; providing severability;
15 providing an effective date.

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

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

- 1 (1) All discovery in the trial shall be completed
2 within 60 days.
- 3 (2) All interrogatories and requests for production
4 will be served within 10 days and all responses will be served
5 within 20 days of receipt.
- 6 (3) The court shall determine the number of
7 depositions required.
- 8 (4) The case may be tried to a jury.
- 9 (5) The trial of the case will be tried within 30 days
10 after the 60 day discovery cut-off.
- 11 (6) The trial will be limited to 1 day.
- 12 (7) The jury selection will be limited to 1 hour.
- 13 (8) The plaintiff will have 3 hours to present its
14 case including opening, all testimony and evidence, and
15 closing.
- 16 (9) The defendant will have 3 hours to present its
17 case including opening, all testimony and evidence, and
18 closing.
- 19 (10) The jury will be given "plain language" jury
20 instructions at the beginning of the trial as well as a "plain
21 language" jury verdict form. The jury instructions and verdict
22 form will be agreed to by the parties.
- 23 (11) The parties will be permitted to introduce a
24 written report of any expert and the expert's curriculum vitae
25 instead of calling the expert live at trial.
- 26 (12) At trial the parties may use excerpts from
27 depositions, including video depositions, regardless of where
28 the deponent lives or whether they are available to testify.
- 29 (13) Except as approved by the court, the Florida
30 Evidence Code and the Florida Rules of Civil Procedure will
31 apply.

1 (14) A unanimous jury verdict is not necessary to
2 resolve the case. A vote of 5-1 is sufficient.

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

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

7 40.50 Jury duty and instructions in civil cases.--

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

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

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

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

1 (a) A copy of the preliminary jury instructions,
2 including special instructions on the issues to be tried.

3 (b) Jurors' notes.

4 (c) Witnesses' names, photographs and/or biographies.

5 (d) Copies of key documents admitted into evidence and
6 an index of all exhibits in evidence.

7 (e) A glossary of technical terms.

8 (f) A copy of the court's final instructions.

9
10 In its discretion, the court may authorize documents and
11 exhibits in evidence to be included in notebooks for use by
12 the jurors during trial to aid them in performing their
13 duties. The preliminary jury instructions should be removed,
14 discarded, and replaced by the final jury instructions before
15 the latter are read to the jury by the court.

16 (5) The court shall permit jurors to have access to
17 their notes and notebooks during recesses, discussions, and
18 deliberations.

19 (6) The court shall permit jurors to submit to the
20 court written questions directed to witnesses or to the court.
21 Opportunity shall be given to counsel to object to such
22 questions out of the presence of the jury. The court may, as
23 appropriate, limit the submission of questions to witnesses.

24 (7) The court shall instruct the jury that any
25 questions directed to witnesses or the court must be in
26 writing, unsigned, and given to the bailiff. The court may
27 further instruct that, if a juror has a question for a witness
28 or the court, the juror should hand it to the bailiff during a
29 recess, or if the witness is about to leave the witness stand,
30 the juror should signal to the bailiff. If the court
31 determines that the juror's questions calls for admissible

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

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

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

20 44.1051 Voluntary trial resolution.--

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

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

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

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

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

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

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

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

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

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

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

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

25 Section 4. Section 57.071, Florida Statutes, is
26 amended to read:

27 57.071 Costs; what taxable.--

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

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

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

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

7 (2) Expert witness fees shall not be awarded as
8 taxable costs unless:

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

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

25 Section 5. Section 57.105, Florida Statutes, is
26 amended to read:

27 57.105 Attorney's fee; sanctions for raising unfounded
28 claims or defenses; damages for delay of litigation.--

29 (1) The court shall award a reasonable attorney's fee
30 to be paid to the prevailing party in equal amounts by the
31 losing party and the losing party's attorney on any claim or

1 defense in any civil action in which the court finds that the
2 losing party or the losing party's attorney knew or should
3 have known at the time a claim or defense was presented:

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

6 (b) That the application of then existing law to the
7 facts the losing party or losing party's attorney knew or
8 should have known would not support the claim or defense.

9 ~~there was a complete absence of a justiciable issue of either~~
10 ~~law or fact raised by the complaint or defense of the losing~~
11 ~~party†~~

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

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

27 (3) In any civil proceeding in which the moving party
28 proves, by a preponderance of the evidence, that any action
29 taken by the opposing party, including, but not limited to,
30 the filing of any pleading or part thereof, the assertion of
31 or response to any discovery demand, the assertion of any

1 claim or defense, or the response to any request by any other
2 party, was taken primarily for the purpose of delay, the court
3 shall award damages to the moving party for the time
4 necessitated by the conduct in question. The absence of a
5 justiciable basis for the action taken shall be prima facie
6 evidence of such a purpose; but such a purpose may also be
7 proved, in proper cases, notwithstanding an objective
8 justiciable basis for the action taken.

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

17 Section 6. Subsection (4) is added to section 627.428,
18 Florida Statutes, to read:

19 627.428 Attorney's fee.--

20 (4) This section shall not apply to any action in
21 which a defendant tenders an offer of judgment pursuant to s.
22 768.81, unless the judgment for actual damages rendered in
23 favor of the plaintiff is in an amount greater than 25 percent
24 above that offered by the defendant within 90 days after the
25 date on which suit is filed. In that event the fee must be
26 reasonable in light of the difference between the offer and
27 the judgment.

28 Section 7. Section 768.77, Florida Statutes, is
29 amended to read:

30 768.77 Itemized verdict.--

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

6 (1)~~(a)~~ Amounts intended to compensate the claimant for
7 economic losses;

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

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

12 ~~(2) Each category of damages, other than punitive~~
13 ~~damages, shall be further itemized into amounts intended to~~
14 ~~compensate for losses which have been incurred prior to the~~
15 ~~verdict and into amounts intended to compensate for losses to~~
16 ~~be incurred in the future. Future damages itemized under~~
17 ~~paragraph (1)(a) shall be computed before and after reduction~~
18 ~~to present value. Damages itemized under paragraph (1)(b) or~~
19 ~~paragraph (1)(c) shall not be reduced to present value. In~~
20 ~~itemizing amounts intended to compensate for future losses,~~
21 ~~the trier of fact shall set forth the period of years over~~
22 ~~which such amounts are intended to provide compensation.~~

23 Section 8. Paragraph (a) of subsection (1) of section
24 768.78, Florida Statutes, is amended to read:

25 768.78 Alternative methods of payment of damage
26 awards.--

27 (1)(a) In any action to which this part applies in
28 which the court determines that ~~trier of fact makes~~ an award
29 to compensate the claimant includes for future economic losses
30 which exceed \$250,000, payment of amounts intended to
31 compensate the claimant for these losses shall be made by one

1 of the following means, unless an alternative method of
2 payment of damages is provided in this section:

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

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

13 Section 9. Subsections (3), (5), and (7) of section
14 768.79, Florida Statutes, are amended to read:

15 768.79 Offer of judgment and demand for judgment.--

16 (3) The offer shall be served upon the party to whom
17 it is made, but it shall not be filed unless it is accepted or
18 unless filing is necessary to enforce the provisions of this
19 section. In any case involving multiple party plaintiffs or
20 multiple party defendants, an offer shall specify its
21 applicability to each party. Each individual party may
22 thereafter accept or reject the offer as the offer applies to
23 such party. However, a plaintiff may make a global offer to
24 all defendants without specifying amounts applicable to each
25 defendant.

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

30 (7)(a) Prior to awarding costs and fees pursuant to
31 this section the court shall determine whether the offer was

1 reasonable under the circumstances known at the time the offer
2 was made. If a party is entitled to costs and fees pursuant to
3 the provisions of this section, the court may, in its
4 discretion, determine that an offer was not made in good
5 faith. In such case, the court may disallow an award of costs
6 and attorney's fees.

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

11 1. The then's apparent merit or lack's of merit in the
12 claim.

13 2. The number and nature of offers made by the
14 parties.

15 3. The closeness of questions of fact and law at
16 issue.

17 4. Whether the proposal was reasonably rejected.

18 ~~5.4.~~ Whether the person making the offer had
19 unreasonable refused to furnish information necessary to
20 evaluate the reasonableness of such offer.

21 ~~6.5.~~ Whether the suit was in the nature of a test case
22 presenting questions of far-reaching's importance affecting
23 nonparties.

24 ~~7.6.~~ The amount of the additional delay cost and
25 expense that the person making the offer reasonable would be
26 expected to incur if the litigation should be prolonged.

27 Section 10. If any provision of this act or the
28 application thereof to any person or circumstance is held
29 invalid, the invalidity does not affect other provisions or
30 applications of the act which can be given effect without the
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1 invalid provision or application, and to this end the
2 provision of this act are declared severable.

3 Section 11. This act shall take effect October 1 of
4 the year in which enacted.

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7 HOUSE SUMMARY

8 Revises various provisions of law relating to litigation
9 to:

- 10 1. Provide for expedited trials.
11 2. Provide requirements with respect to
instructions to juries.
12 3. Provide for voluntary trial resolution.
13 4. Provide sanctions for raising unfounded claims
or defenses and damages for delay of litigation.
14 5. Provide criteria under which expert witness fees
may be awarded as taxable costs.
15 6. Revise the itemized verdict to delete reference
to future damages.
16 7. Revise provisions relating to offers of judgment
to provide for cases involving multiple party plaintiffs
or defendants, to provide that a subsequent offer voids a
17 previous offer, and that prior to awarding costs and fees
the court shall determine whether the offer was
reasonable under the circumstances known at the time the
offer was made.

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19 See bill for details.
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