

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. 768.77, F.S.;
27 revising language with respect to itemized
28 verdicts to delete reference to future damages;
29 amending s. 768.78, F.S.; conforming to the
30 act; correcting a cross reference; amending s.
31 768.79, F.S.; providing for the applicability

1 of offers of judgment and demand of judgment in
2 cases involving multiple plaintiffs; providing
3 that subsequent offers shall void previous
4 offers; providing that prior to awarding costs
5 and fees the court shall determine whether the
6 offer was reasonable under the circumstances
7 known at the time the offer was made;
8 authorizing the court to consider whether or
9 not a proposal was reasonably rejected when
10 considering entitlement to and the amount of an
11 award of attorneys' fees; providing
12 severability; providing an effective date.
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14 Be It Enacted by the Legislature of the State of Florida:
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16 Section 1. Expedited trials.--Upon the motion of any
17 party to a simplified civil proceeding or upon the joint
18 stipulation of the parties to any civil case, the court may
19 conduct an expedited trial as provided herein. A simplified
20 civil proceeding is a case involving only two parties, no more
21 than two counts to the complaint or counter claim, and where
22 the court finds there would be no prejudice to any party in
23 conducting an expedited trial. Where two or more plaintiffs or
24 defendants have a unity interest, such as a husband and wife,
25 they shall be considered one party for the purpose of this
26 section. Unless otherwise ordered by the court or agreed to by
27 the parties with approval of the court, an expedited trial
28 shall be conducted as follows:

29 (1) All discovery in the trial shall be completed
30 within 60 days.
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1 (2) All interrogatories and requests for production
2 will be served within 10 days and all responses will be served
3 within 20 days of receipt.

4 (3) The court shall determine the number of
5 depositions required.

6 (4) The case may be tried to a jury.

7 (5) The trial of the case will be tried within 30 days
8 after the 60 day discovery cut-off.

9 (6) The trial will be limited to 1 day.

10 (7) The jury selection will be limited to 1 hour.

11 (8) The plaintiff will have 3 hours to present its
12 case including opening, all testimony and evidence, and
13 closing.

14 (9) The defendant will have 3 hours to present its
15 case including opening, all testimony and evidence, and
16 closing.

17 (10) The jury will be given "plain language" jury
18 instructions at the beginning of the trial as well as a "plain
19 language" jury verdict form. The jury instructions and verdict
20 form will be agreed to by the parties.

21 (11) The parties will be permitted to introduce a
22 written report of any expert and the expert's curriculum vitae
23 instead of calling the expert live at trial.

24 (12) At trial the parties may use excerpts from
25 depositions, including video depositions, regardless of where
26 the deponent lives or whether they are available to testify.

27 (13) Except as approved by the court, the Florida
28 Evidence Code and the Florida Rules of Civil Procedure will
29 apply.

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

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

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

5 40.50 Jury duty and instructions in civil cases.--

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

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

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

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

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

- 1 (b) Jurors' notes.
- 2 (c) Witnesses' names, photographs and/or biographies.
- 3 (d) Copies of key documents admitted into evidence and
4 an index of all exhibits in evidence.
- 5 (e) A glossary of technical terms.
- 6 (f) A copy of the court's final instructions.

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

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

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

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

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

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

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

18 44.1051 Voluntary trial resolution.--

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

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

29 (3) The trial resolution judge shall be compensated by
30 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.

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

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

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

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

25 57.071 Costs; what taxable.--

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

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

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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 10 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. Section 768.77, Florida Statutes, is
18 amended to read:

19 768.77 Itemized verdict.--

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

25 (1)~~(a)~~ Amounts intended to compensate the claimant for
26 economic losses;

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

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

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1 ~~(2) Each category of damages, other than punitive~~
2 ~~damages, shall be further itemized into amounts intended to~~
3 ~~compensate for losses which have been incurred prior to the~~
4 ~~verdict and into amounts intended to compensate for losses to~~
5 ~~be incurred in the future. Future damages itemized under~~
6 ~~paragraph (1)(a) shall be computed before and after reduction~~
7 ~~to present value. Damages itemized under paragraph (1)(b) or~~
8 ~~paragraph (1)(c) shall not be reduced to present value. In~~
9 ~~itemizing amounts intended to compensate for future losses,~~
10 ~~the trier of fact shall set forth the period of years over~~
11 ~~which such amounts are intended to provide compensation.~~

12 Section 7. Paragraph (a) of subsection (1) of section
13 768.78, Florida Statutes, is amended to read:

14 768.78 Alternative methods of payment of damage
15 awards.--

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

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

26 2. Subject to the provisions of this subsection, the
27 court shall, at the request of either party, unless the court
28 determines that manifest injustice would result to any party,
29 enter a judgment ordering future economic damages, as itemized
30 pursuant to s. 768.77(1)~~(a)~~, in excess of \$250,000 to be paid

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1 in whole or in part by periodic payments rather than by a
2 lump-sum payment.

3 Section 8. Subsections (3), (5), and (7) of section
4 768.79, Florida Statutes, are amended to read:

5 768.79 Offer of judgment and demand for judgment.--

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

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

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

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

- 1 1. The then's apparent merit or lack's of merit in the
2 claim.
- 3 2. The number and nature of offers made by the
4 parties.
- 5 3. The closeness of questions of fact and law at
6 issue.
- 7 4. Whether the proposal was reasonably rejected.
8 ~~5.4.~~ Whether the person making the offer had
9 unreasonable refused to furnish information necessary to
10 evaluate the reasonableness of such offer.
- 11 ~~6.5.~~ Whether the suit was in the nature of a test case
12 presenting questions of far-reaching's importance affecting
13 nonparties.
- 14 ~~7.6.~~ The amount of the additional delay cost and
15 expense that the person making the offer reasonable would be
16 expected to incur if the litigation should be prolonged.
- 17 Section 9. If any provision of this act or the
18 application thereof to any person or circumstance is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the act which can be given effect without the
21 invalid provision or application, and to this end the
22 provision of this act are declared severable.
- 23 Section 10. This act shall take effect October 1 of
24 the year in which enacted.
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