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Bill No. CS for SB 874, 1st Eng.

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

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

Representative(s) Warner offered the following:

Amendment (with title amendment)

remove from the bill: everything after the enacting clause
and insert in lieu thereof:

Section 1. Subsection (2) of section 95.031, Florida Statutes, is amended to read:

95.031 Computation of time.--Except as provided in subsection (2) and in s. 95.051 and elsewhere in these statutes, the time within which an action shall be begun under any statute of limitations runs from the time the cause of action accrues.

(2) Actions for products liability and fraud under s. 95.11(3) must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, instead of running from any date prescribed elsewhere in s. 95.11(3), but in no event may an action for product liability or fraud under s. 95.11(3) be commenced unless the complaint

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1 is served and filed within 12 years after the date of delivery
2 of the product to its first purchaser or lessee who was not
3 engaged in the business of selling or leasing the product or
4 of using the product as a component in the manufacture of
5 another product or ~~any event an action for fraud under s-~~
6 ~~95.11(3) must be begun within~~ 12 years after the date of the
7 commission of the alleged fraud, regardless of the date the
8 defect in the product or the fraud was or should have been
9 discovered. However, the 12-year limitation on filing an
10 action for products liability does not apply if the
11 manufacturer knew of a defect in the product and concealed or
12 attempted to conceal this defect. In addition, the 12-year
13 limitation does not apply if the claimant was exposed to or
14 used the product within the 12-year period, but an injury
15 caused by such exposure or use did not manifest itself until
16 after the 12-year period. Furthermore, the 12-year statute of
17 repose specified herein shall not apply to any aircraft other
18 than general aviation aircraft as defined in Title 49, Section
19 40101, United States Code, and, in the case of such aircraft
20 to which the federal law does not apply, the period of repose
21 under this section will be 18 years.

22 Section 2. Section 768.1256, Florida Statutes, is
23 created to read:

24 768.1256 Government rules defense.--

25 (1) In a product liability action brought against a
26 manufacturer or seller for harm allegedly caused by a product,
27 the jury shall be instructed that there is a rebuttable
28 presumption that the manufacturer or seller is not liable if,
29 at the time the specific unit of the product was sold or
30 delivered to the initial purchaser or user, the aspect of the
31 product that allegedly caused the harm was in compliance with

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1 standards relevant to the event causing the death or injury
2 set forth in a federal or state statute or was approved by, or
3 was in compliance with regulations or standards relevant to
4 the event causing the death or injury promulgated by, a
5 federal or state agency responsible for reviewing the safety
6 of the product. Noncompliance with a standard relevant to the
7 event causing the death or injury set forth in a federal or
8 state statute or lack of approval by, or noncompliance with
9 regulations or standards relevant to the event causing the
10 death or injury promulgated by, a federal or state agency does
11 not raise a presumption of negligence on the part of a
12 manufacturer or seller. Evidence of compliance or
13 noncompliance with a regulation or standard not relevant to
14 the event causing the death or injury is not admissible.

15 (2) In a product liability action against a
16 manufacturer or seller, a defendant may raise an affirmative
17 defense that a product that is a drug is not defective or
18 unreasonably dangerous, if the drug was approved for safety
19 and efficacy by the United States Food and Drug Administration
20 and the drug and its labeling were in compliance with the
21 United States Food and Drug Administration's approval at the
22 time the drug left the control of the manufacturer or seller.
23 However, this subsection does not apply to a drug that is sold
24 in the United States after the effective date of an order of
25 the United States Food and Drug Administration to remove the
26 drug from the market or to withdraw its approval. This
27 subsection does not apply if the defendant at any time before
28 the event that allegedly caused the injury does any of the
29 following:

30 (a) Intentionally withholds from or misrepresents to
31 the United States Food and Drug Administration information

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1 concerning the drug that is required to be submitted under the
2 Federal Food, Drug and Cosmetic Act, chapter 675, 52 Stat.
3 1040, 21 U.S.C. ss. 301 to 321, 331 to 343-2, 344 to 346a,
4 347, 348 to 353, 355 to 360, 360b to 376, and 378 to 395, and
5 the drug would not have been approved, or the United States
6 Food and Drug Administration would have withdrawn approval
7 for, the drug if the information had been accurately
8 submitted; or

9 (b) Makes an illegal payment to an official or
10 employee of the United States Food and Drug Administration for
11 the purpose of securing or maintaining approval of the drug.

12 Section 3. Any action that would not have been barred
13 under s. 95.031(2), Florida Statutes, prior to the amendments
14 to that section by this act may be commenced before June 1,
15 1999, and, if it is not commenced by that date, and is barred
16 by the amendments to s. 95.031(2), Florida Statutes, by this
17 act, shall be barred.

18 Section 4. Subsections (6), (7), and (8) are added to
19 section 400.023, Florida Statutes, to read:

20 400.023 Civil enforcement.--

21 (6) To recover attorneys' fees under this section the
22 following conditions precedent must be met:

23 (a) Within 120 days of the filing of a responsive
24 pleading or defensive motion to a complaint brought pursuant
25 to this section, and before trial, the parties or their
26 designated representatives shall meet in mediation to discuss
27 the issues of liability and damages in accordance with
28 paragraph (a) for the purpose of early resolution of the
29 matter.

30 1. The parties shall within 60 days of the filing of
31 the responsive pleading or defensive motion:

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1 a. Agree on a mediator. If the parties cannot agree on
2 a mediator, the defendant shall immediately notify the Court,
3 which shall appoint a mediator within 10 days of such notice.

4 b. Set a date for mediation.

5 c. Prepare an order for the Court identifying the
6 mediator, the scheduled date of the mediation and other terms
7 of the mediation. Absent any disagreement between the parties,
8 the Court may issue the order for the mediation submitted by
9 the parties without hearing.

10 2. The mediation must be concluded within 120 days of
11 the filing of responsive pleading or defensive motion. This
12 date may be extended only by agreement of all parties subject
13 to mediation under this subsection.

14 3. The mediation shall be conducted in the following
15 manner:

16 a. Each party shall have present at the mediation all
17 persons necessary to have complete settlement authority.

18 b. All parties shall mediate in good faith.

19 4. All aspects of the mediation not specifically
20 established by this subsection shall be conducted according to
21 the rules of practice and procedure adopted by the Supreme
22 Court of Florida.

23 (b) If the parties do not settle the case pursuant to
24 mediation, the last offer of the defendant made at mediation
25 shall be recorded by the mediator in a written report stating
26 the amount of the offer, the date it was made in writing and
27 the date it was rejected. If the matter subsequently proceeds
28 to trial under this section and the plaintiff prevails but is
29 awarded an amount in damages exclusive of attorneys' fees
30 equal to or less than the last offer made by the defendant at
31 mediation, then the plaintiff shall not be entitled to recover

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1 any attorneys' fees.

2 (c) This subsection shall apply only to claims for
3 liability and damages and shall not apply to an action for
4 injunctive relief.

5 (d) This subsection shall apply to all causes of
6 action accruing after July 1, 1998.

7 (7) Discovery of financial information for the
8 purposes of determining the value of punitive damages may not
9 be had unless the plaintiff shows the Court by proffer or
10 evidence in the record that a reasonable basis exists to
11 support a claim for punitive damages.

12 (8) Any award of punitive damages must be reasonable
13 in light of the harm suffered by the resident and the
14 egregiousness of the conduct causing the harm.

15 Section 5. Section 768.72, Florida Statutes, is
16 amended to read:

17 768.72 Pleading in civil actions; claim for punitive
18 damages.--

19 (1) In any civil action, no claim for punitive damages
20 shall be permitted unless there is a reasonable showing by
21 evidence in the record or proffered by the claimant which
22 would provide a reasonable basis for recovery of such damages.
23 The claimant may move to amend her or his complaint to assert
24 a claim for punitive damages as allowed by the rules of civil
25 procedure. The rules of civil procedure shall be liberally
26 construed so as to allow the claimant discovery of evidence
27 which appears reasonably calculated to lead to admissible
28 evidence on the issue of punitive damages. No discovery of
29 financial worth shall proceed until after the pleading
30 concerning punitive damages is permitted.

31 (2) A defendant may be held liable for punitive

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1 damages only if the trier of fact, based on clear and
2 convincing evidence, finds that the defendant was personally
3 guilty of intentional misconduct or gross negligence.

4 (a) "Intentional misconduct" means that the defendant
5 had actual knowledge of the wrongfulness of the conduct and
6 the high probability that injury or damage to the claimant
7 would result and, despite that knowledge, intentionally
8 pursued that course of conduct, resulting in injury or damage.

9 (b) "Gross negligence" means that the defendant's
10 conduct was so reckless or wanting in care that it constituted
11 a conscious disregard or indifference to the life, safety, or
12 rights of persons exposed to such conduct.

13 (3) In the case of an employer, principal,
14 corporation, or other legal entity, punitive damages may be
15 imposed for the conduct of an employee or agent, only if the
16 conduct of the employee or agent meets the criteria specified
17 in subsection (2), and if:

18 (a) The employer, principal, corporation, or other
19 legal entity actively and knowingly participated in such
20 conduct; or

21 (b) The officers, directors, or managers of the
22 employer, principal, corporation, or other legal entity
23 knowingly condoned, ratified, or consented to such conduct; or

24 (c) The employer, principal, corporation, or other
25 legal entity engaged in conduct which constituted gross
26 negligence and which contributed to the loss, damages, or
27 injury suffered by the claimant.

28 (4) The provisions of this section are remedial in
29 nature and shall be applied to all civil actions pending on
30 the effective date of this act in which the trial or retrial
31 of the action has not commenced.

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1 (5) The provisions of this section shall not apply
2 with regard to any civil action based upon child abuse, abuse
3 of the elderly, or abuse of the developmentally disabled, or
4 arising under chapter 400.

5 Section 6. Section 768.73, Florida Statutes, is
6 amended to read:

7 768.73 Punitive damages; limitation.--

8 (1)(a) In any civil action in which the judgment for
9 compensatory damages is for \$50,000 or less, judgment for
10 punitive damages awarded to a claimant may not exceed
11 \$250,000, except as provided in paragraph (b). In any civil
12 action in which the judgment for compensatory damages exceeds
13 \$50,000, the judgment for punitive damages awarded to a
14 claimant may not exceed three times the amount of compensatory
15 damages or \$250,000, whichever is higher, except as provided
16 in paragraph (b) ~~based on negligence, strict liability,~~
17 ~~products liability, misconduct in commercial transactions,~~
18 ~~professional liability, or breach of warranty, and involving~~
19 ~~willful, wanton, or gross misconduct, the judgment for the~~
20 ~~total amount of punitive damages awarded to a claimant may not~~
21 ~~exceed three times the amount of compensatory damages awarded~~
22 ~~to each person entitled thereto by the trier of fact, except~~
23 ~~as provided in paragraph (b). However, this subsection does~~
24 ~~not apply to any class action.~~

25 (b) No award for punitive damages may exceed the
26 limitations ~~if any award for punitive damages exceeds the~~
27 ~~limitation specified in paragraph (a), the award is presumed~~
28 ~~to be excessive and the defendant is entitled to remittitur of~~
29 ~~the amount in excess of the limitation unless the claimant~~
30 ~~demonstrates to the court by clear and convincing evidence~~
31 ~~that the defendant engaged in intentional misconduct and that~~

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1 the award is not excessive in light of the facts and
2 circumstances which were presented to the trier of fact.

3 (c) This subsection is not intended to prohibit an
4 appropriate court from exercising its jurisdiction under s.
5 768.74 in determining the reasonableness of an award of
6 punitive damages that is less than three times the amount of
7 compensatory damages.

8 (2)(a) If any defendant in any civil action determines
9 that it has been or may be subject to repetitive claims for
10 punitive damages arising out of the same act or course of
11 conduct, the defendant may move the court for a full
12 determination of the defendant's punitive damage liability for
13 all consequences of the act or course of conduct. Under such
14 circumstances, the issue of liability for punitive damages
15 shall be tried separately from the issue of liability for
16 compensatory damages. Evidence relating to whether punitive
17 damages should be awarded and, if so, in what amount, shall
18 not be admissible until the trier of fact has determined the
19 amount of compensatory damages. The same trier of fact that
20 tried the issues relating to compensatory damages shall try
21 the issues relating to punitive damages. In the phase of the
22 trial concerning punitive damages, if the trier of fact finds
23 that punitive damages are warranted, the trier of fact should
24 consider the national scope, if any, of the misconduct, the
25 degree of wrongfulness and duration of any misconduct, the
26 scope and severity of damages, the financial resources of the
27 defendant, the number of persons harmed, the efforts made by
28 defendant to eliminate or reduce the effects of the
29 misconduct, as well as all other measures taken by the
30 defendant to mitigate the misconduct and damages caused
31 thereby. The court shall reduce any award of punitive damages

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1 by the amount of any previous punitive damages awards imposed
2 against the defendant which arose out of the same act or
3 course of conduct.

4 (b) As soon as practicable after the defendant moves
5 for a consolidated punitive damages trial, or within a time
6 frame set by the court, the defendant shall make reasonable
7 efforts to compile a list of current and potential claimants
8 who will share any punitive award. The defendant shall make
9 reasonable efforts to identify and notify any persons or
10 entities that have been impacted by the act or course of
11 conduct under consideration in the punitive damages phase of
12 the trial. Any punitive damages awarded during a trial under
13 this subsection will, to the extent practicable, be equally
14 distributed among current and potential claimants, in a manner
15 to be decided by the trial court. Once a defendant's
16 liability for repetitive punitive damages has been determined
17 under this subsection, no further punitive damages can be
18 awarded in connection with the act or course of conduct
19 covered in this trial.

20 (c) In a consolidated punitive damages trial, the
21 claimants' aggregate attorney fee in regard to punitive
22 damages shall be limited to 15 percent of the overall punitive
23 damages award.

24 (3) If punitive damages have been awarded against a
25 defendant three or more times before the effective date of
26 this act in any state or federal court in actions alleging
27 harm from the same act or course of conduct for which a
28 claimant subsequently seeks compensatory damages, the court
29 may conduct a hearing prior to trial to determine whether the
30 previous awards are sufficient to address all consequences of
31 the act or course of conduct. In making such determination the

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1 court shall consider the factors set forth in paragraph (2)(a)
2 as well as whether any previous trier of fact considered the
3 full scope of wrongful conduct and resulting harm. If the
4 court determines that the previous awards are sufficient the
5 punitive damage claim shall not be allowed.

6 (4) The provisions of this section are remedial in
7 nature and shall be applied to all civil actions pending on
8 the effective date of this act in which the trial or retrial
9 of the action has not commenced.

10 (5)(2) The jury may neither be instructed nor informed
11 as to the provisions of this section.

12 (6) The provisions of this section shall not apply
13 with regard to any civil action based upon child abuse, abuse
14 of the elderly, or abuse of the developmentally disabled, or
15 arising under chapter 400.

16 Section 7. Section 768.0705, Florida Statutes, is
17 created to read:

18 768.0705 Limitation on premises liability.--

19 (1) If at least six of the following eight provisions
20 of this section are met, there shall be a presumption that a
21 person or organization owning or controlling an interest in
22 commercial real property, other than a convenience store, has
23 fulfilled any duty to provide adequate security for invitees,
24 guests, and other members of the public, against criminal acts
25 which occur in common areas, parking areas, and on portions of
26 the premises not occupied by buildings or structures and which
27 are committed by third parties who are not employees or agents
28 of the person or organization owning or controlling the
29 interest in commercial real property.

30 (a) Signs shall be prominently posted in the parking
31 area and other public access points on the premises indicating

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1 the hours of normal business operations and the general
2 security measures provided.

3 (b) The parking area, public walkways, public building
4 entrances and exits, shall be illuminated at an intensity of
5 at least 2 foot-candles per square foot at 18 inches above the
6 surface of the ground, pavement, or walkway.

7 (c) Crime prevention training, with a curriculum
8 approved by the local law enforcement agency or the Department
9 of Legal Affairs, shall be provided to all nonmanagement
10 on-site employees. To meet the requirements of this
11 paragraph, existing employees shall receive training within 12
12 months of the effective date of this section and new employees
13 shall receive training within 120 days of hiring. No person
14 shall be liable for ordinary negligence due to implementing
15 the approved curriculum so long as the training was actually
16 provided. Under no circumstances shall the state or the local
17 law enforcement agency be held liable for the contents of the
18 approved curriculum.

19 (d) Security cameras shall be installed and
20 maintained, and shall be monitored or recorded, covering
21 public entrances and exits to buildings and at least half the
22 parking lot. Cameras shall operate during business hours and
23 for at least 30 minutes after closing.

24 (e) An emergency call box, or an alarm system linked
25 to law enforcement, a private security agency, or a security
26 guard or other agent on the premises, shall be maintained and
27 available within 150 feet of any location in the parking lot
28 or other public place on the premises.

29 (f) A licensed security guard or law enforcement
30 officer is on duty at the time of the criminal occurrence and
31 is either monitoring surveillance cameras or patrolling the

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1 premises with such frequency that the parking area and common
2 areas are observed by the guard at no more than 15 minute
3 intervals.

4 (g) Perimeter fencing shall be installed and
5 maintained, which surrounds parking areas and structures, and
6 which directs pedestrian entry onto the premises.

7 (h) Landscaping shall be maintained so as to provide
8 no hiding place or obstruct the view of security personnel or
9 cameras.

10 (2) The owner or operator of a convenience business,
11 that substantially implements the applicable security measures
12 listed in ss. 812.173 and 812.174 shall gain a presumption
13 against liability in connection with criminal acts which occur
14 on the premises and which are committed by third parties who
15 are not employees or agents of the owner or operator of the
16 convenience business.

17 (3) Failure to implement a sufficient number of the
18 measures listed in subsection (1) or subsection (2) shall not
19 create a presumption of liability.

20 Section 8. Section 768.075, Florida Statutes, is
21 amended to read:

22 768.075 Immunity from liability for injury to
23 trespassers on real property; definitions; duty to
24 trespassers.--

25 (1) A person or organization owning or controlling an
26 interest in real property, or an agent of such person or
27 organization, shall not be held liable for any civil damages
28 for death of or injury or damage to a trespasser upon the
29 property ~~resulting from or arising by reason of the~~
30 ~~trespasser's commission of the offense of trespass as~~
31 ~~described in s. 810.08 or s. 810.09, when such trespasser was~~

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1 under the influence of alcoholic beverages with a
2 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such
3 trespasser was under the influence of any chemical substance
4 set forth in s. 877.111, when such trespasser was illegally
5 under the influence of any substance controlled under chapter
6 893, or if the trespasser is affected by any of the aforesaid
7 substances to the extent that her or his normal faculties are
8 impaired. For the purposes of this section, voluntary
9 intoxication or impediment of faculties by use of alcohol or
10 any of the aforementioned substances shall not excuse a party
11 bringing an action or on whose behalf an action is brought
12 from proving the elements of trespass as described in
13 paragraph (3)(a). However, the person or organization owning
14 or controlling the interest in real property shall not be
15 immune from liability if gross negligence or intentional
16 ~~willful and wanton~~ misconduct on the part of such person or
17 organization or agent thereof is a proximate cause of the
18 death of or injury or damage to the trespasser.

19 (2) A person or organization owning or controlling an
20 interest in real property, or an agent of such person or
21 organization, shall not be held liable for any civil damages
22 for death of or injury or damage to any discovered or
23 undiscovered trespasser, except as provided in paragraphs
24 (3)(a), (b), and (c), and regardless of whether the trespasser
25 was intoxicated or otherwise impaired.

26 (3)(a) As used in this subsection:

27 1. "Implied invitation" means that the visitor
28 entering the premises has an objectively reasonable belief
29 that he or she has been invited or is otherwise welcome on
30 that portion of the real property where injury occurs.

31 2. "Discovered trespasser" means a person who enters

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1 real property without invitation, either express or implied,
2 and whose actual physical presence was detected within 24
3 hours preceding the accident, by the person or organization
4 owning or controlling an interest in real property, or to
5 whose actual physical presence the person or organization
6 owning or controlling an interest in real property was alerted
7 by a reliable source within 24 hours preceding the accident.
8 The status of a person who enters real property shall not be
9 elevated to that of an invitee, unless the person or
10 organization owning or controlling an interest in real
11 property has issued an express invitation to enter the
12 property or has manifested a clear intent to hold the property
13 open to use by persons pursuing purposes such as those pursued
14 by the person whose status is at issue.

15 3. "Undiscovered trespasser" means a person who enters
16 property without invitation, either express or implied, and
17 whose actual physical presence was not detected within 24
18 hours preceding the accident, by the person or organization
19 owning or controlling an interest in real property.

20 (b) To avoid liability to undiscovered trespassers, a
21 person or organization owning or controlling an interest in
22 real property must refrain from intentional misconduct, but
23 has no duty to warn of dangerous conditions. To avoid
24 liability to discovered trespassers, a person or organization
25 owning or controlling an interest in real property must
26 refrain from gross negligence or intentional misconduct, and
27 must warn the trespasser of dangerous conditions, known to the
28 person or organization owning or controlling an interest in
29 real property, but which are not readily observable by others.

30 (c) This subsection shall not be interpreted or
31 construed to alter the common law as it pertains to the

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1 attractive nuisance doctrine.

2 Section 9. Paragraph (b) of subsection (9) of section
3 324.021, Florida Statutes, is amended to read:

4 324.021 Definitions; minimum insurance required.--The
5 following words and phrases when used in this chapter shall,
6 for the purpose of this chapter, have the meanings
7 respectively ascribed to them in this section, except in those
8 instances where the context clearly indicates a different
9 meaning:

10 (9) OWNER; OWNER/LESSOR.--

11 (b) Owner/lessor.--Notwithstanding any other provision
12 of the Florida Statutes or existing case law:7

13 1. The lessor, under an agreement to lease a motor
14 vehicle for 1 year or longer which requires the lessee to
15 obtain insurance acceptable to the lessor which contains
16 limits not less than \$100,000/\$300,000 bodily injury liability
17 and \$50,000 property damage liability or not less than
18 \$500,000 combined property damage liability and bodily injury
19 liability, shall not be deemed the owner of said motor vehicle
20 for the purpose of determining financial responsibility for
21 the operation of said motor vehicle or for the acts of the
22 operator in connection therewith; further, this subparagraph
23 ~~paragraph~~ shall be applicable so long as the insurance meeting
24 these requirements is in effect. The insurance meeting such
25 requirements may be obtained by the lessor or lessee,
26 provided, if such insurance is obtained by the lessor, the
27 combined coverage for bodily injury liability and property
28 damage liability shall contain limits of not less than \$1
29 million and may be provided by a lessor's blanket policy.

30 2. The lessor, under an agreement to rent or lease a
31 motor vehicle for a period of less than 1 year, shall be

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1 deemed the owner of the motor vehicle for the purpose of
2 determining liability for the operation of said vehicle or the
3 acts of the operator in connection therewith only up to
4 \$100,000 per person and up to \$300,000 per incident for bodily
5 injury and up to \$50,000 for property damage. In the event
6 the lessee or the operator of the motor vehicle is uninsured
7 or has any insurance with limits less than \$500,000 combined
8 property damage and bodily injury liability, the lessor shall
9 be liable for up to an additional \$500,000 in economic damages
10 only arising out of the use of the motor vehicle. The
11 additional specified liability of the lessor for economic
12 damages shall be reduced by amounts actually recovered from
13 the lessee, the operator, and from any insurance or self
14 insurance covering the lessee or operator. Nothing in this
15 paragraph shall be construed to affect the liability of the
16 lessor for its own negligence.

17 Section 10. Subsections (1) and (2) of section 768.76,
18 Florida Statutes, is amended to read:

19 768.76 Collateral sources of indemnity.--

20 (1) In any action to which this part applies in which
21 liability is admitted or is determined by the trier of fact
22 and in which damages are awarded to compensate the claimant
23 for losses sustained, the court shall reduce the amount of
24 such award by the total of all amounts which have been paid
25 for the benefit of the claimant, or which are otherwise
26 available to the claimant, from all collateral sources;
27 however, except in the case of compensation received or
28 payable under workers' compensation, there shall be no
29 reduction for collateral sources for which a subrogation or
30 reimbursement right exists. Such reduction shall be offset to
31 the extent of any amount which has been paid, contributed, or

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1 forfeited by, or on behalf of, the claimant or members of the
2 claimant's immediate family to secure her or his right to any
3 collateral source benefit which the claimant is receiving as a
4 result of her or his injury.

5 (2) For purposes of this section:

6 (a) "Collateral sources" means any payments made to
7 the claimant, or made on the claimant's behalf, by or pursuant
8 to:

9 1. The United States Social Security Act, except Title
10 XVIII and Title XIX; any federal, state, or local income
11 disability act; or any other public programs providing medical
12 expenses, disability payments, or other similar benefits,
13 except those prohibited by federal law and those expressly
14 excluded by law as collateral sources.

15 2. Any health, sickness, or income disability
16 insurance; automobile accident insurance that provides health
17 benefits or income disability coverage; and any other similar
18 insurance benefits, except life insurance benefits available
19 to the claimant, whether purchased by her or him or provided
20 by others.

21 3. Any contract or agreement of any group,
22 organization, partnership, or corporation to provide, pay for,
23 or reimburse the costs of hospital, medical, dental, or other
24 health care services.

25 4. Any contractual or voluntary wage continuation plan
26 provided by employers or by any other system intended to
27 provide wages during a period of disability.

28 5. Any compensation received or payable under worker's
29 compensation as defined in s. 440.02(6).

30 (b) Notwithstanding any other provision of this
31 section, benefits received under Medicare, or any other

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1 federal program providing for a Federal Government lien on or
 2 right of reimbursement from the plaintiff's recovery, ~~the~~
 3 ~~Workers' Compensation Law~~, the Medicaid program of Title XIX
 4 of the Social Security Act or from any medical services
 5 program administered by the Department of Health and
 6 Rehabilitative Services shall not be considered a collateral
 7 source.

8 Section 11. Subsection (5) of section 768.81, Florida
 9 Statutes, is amended, present subsection (6) is renumbered as
 10 subsection (7) and a new subsection (6) is added to said
 11 section to read:

12 768.81 Comparative fault.--

13 (5) WORKER'S COMPENSATION.--For the purposes of this
 14 section, an employer as defined in s. 440.02(14),
 15 participating in a worker's compensation eligibility program,
 16 shall not be considered a party in a negligence action and
 17 shall not be listed as a tortfeasor on the jury verdict form
 18 with respect to accidents arising out of work performed in the
 19 course and scope of employment, as described in s. 440.09. Any
 20 payments made by an employer covered by worker's compensation
 21 shall be considered collateral sources as provided in s.

22 ~~768.76. APPLICABILITY OF JOINT AND SEVERAL~~

23 ~~LIABILITY.--Notwithstanding the provisions of this section,~~
 24 ~~the doctrine of joint and several liability applies to all~~
 25 ~~actions in which the total amount of damages does not exceed~~
 26 ~~\$25,000.~~

27 (6) APPLICABILITY OF JOINT AND SEVERAL

28 LIABILITY.--Notwithstanding the provisions of this section,
 29 the doctrine of joint and several liability shall not apply to
 30 that portion of economic damages in excess of \$250,000.

31 Section 12. Expedited trials.--Upon the motion of any

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1 party to a simplified civil proceeding or upon the joint
2 stipulation of the parties to any civil case, the court may
3 conduct an expedited trial as provided herein. A simplified
4 civil proceeding is a case involving only two parties, no more
5 than two counts to the complaint or counter claim, and where
6 the court finds there would be no prejudice to any party in
7 conducting an expedited trial. Where two or more plaintiffs or
8 defendants have a unity interest, such as a husband and wife,
9 they shall be considered one party for the purpose of this
10 section. Unless otherwise ordered by the court or agreed to by
11 the parties with approval of the court, an expedited trial
12 shall be conducted as follows:

13 (1) All discovery in the trial shall be completed
14 within 60 days.

15 (2) All interrogatories and requests for production
16 will be served within 10 days and all responses will be served
17 within 20 days of receipt.

18 (3) The court shall determine the number of
19 depositions required.

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

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

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

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

25 (8) The plaintiff will have 3 hours to present its
26 case including opening, all testimony and evidence, and
27 closing.

28 (9) The defendant will have 3 hours to present its
29 case including opening, all testimony and evidence, and
30 closing.

31 (10) The jury will be given "plain language" jury

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1 instructions at the beginning of the trial as well as a "plain
2 language" jury verdict form. The jury instructions and verdict
3 form will be agreed to by the parties.

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

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

10 (13) Except as approved by the court, the Florida
11 Evidence Code and the Florida Rules of Civil Procedure will
12 apply.

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

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

17 Section 13. Section 40.50, Florida Statutes, is
18 created to read:

19 40.50 Jury duty and instructions in civil cases.--

20 (1) In any civil action immediately after the jury is
21 sworn, the court shall instruct the jury concerning its
22 duties, its conduct, the order of proceedings, the procedure
23 for submitting written questions of witnesses, and the
24 elementary legal principles that will govern the proceeding as
25 provided herein.

26 (2) Jurors shall be instructed that they will be
27 permitted to discuss the evidence among themselves in the jury
28 room during recesses from trial when all are present, as long
29 as they reserve judgment about the outcome of the case until
30 deliberations commence. Notwithstanding the foregoing, the
31 jurors' discussion of the evidence among themselves during

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1 recesses may be limited or prohibited by the court for good
2 cause.

3 (3) The court shall instruct that the jurors may take
4 notes regarding the evidence and keep the notes for the
5 purpose of refreshing their memory for use during recesses,
6 discussions, and deliberations. The court may provide
7 materials suitable for this purpose. The confidentiality of
8 the notes should be emphasized to the jurors. After the jury
9 has rendered its verdict, the notes shall be collected by the
10 bailiff or clerk who shall promptly destroy them.

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

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

15 (b) Jurors' notes.

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

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

19 (e) A glossary of technical terms.

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

21
22 In its discretion, the court may authorize documents and
23 exhibits in evidence to be included in notebooks for use by
24 the jurors during trial to aid them in performing their
25 duties. The preliminary jury instructions should be removed,
26 discarded, and replaced by the final jury instructions before
27 the latter are read to the jury by the court.

28 (5) The court shall permit jurors to have access to
29 their notes and notebooks during recesses, discussions, and
30 deliberations.

31 (6) The court shall permit jurors to submit to the

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1 court written questions directed to witnesses or to the court.
2 Opportunity shall be given to counsel to object to such
3 questions out of the presence of the jury. The court may, as
4 appropriate, limit the submission of questions to witnesses.

5 (7) The court shall instruct the jury that any
6 questions directed to witnesses or the court must be in
7 writing, unsigned, and given to the bailiff. The court may
8 further instruct that, if a juror has a question for a witness
9 or the court, the juror should hand it to the bailiff during a
10 recess, or if the witness is about to leave the witness stand,
11 the juror should signal to the bailiff. If the court
12 determines that the juror's questions calls for admissible
13 evidence, the question may be asked by court or counsel in the
14 court's discretion. Such question may be answered by
15 stipulation or other appropriate means, including, but not
16 limited to, additional testimony upon such terms and
17 limitations as the court prescribes. If the court determines
18 that the juror's question calls for inadmissible evidence, the
19 question shall not be read or answered. If a juror's question
20 is rejected, the jury should be told that trial rules do not
21 permit some questions to be asked and that the jurors should
22 not attach any significance to the failure of having their
23 question asked.

24 (8) The court has discretion to give final
25 instructions to the jury before closing arguments of counsel
26 instead of after, in order to enhance jurors' ability to apply
27 the applicable law to the facts. In that event, the court may
28 wish to withhold giving the necessary procedural and
29 housekeeping instructions until after closing arguments.

30 Section 14. Section 44.1051, Florida Statutes, is
31 created to read:

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- 1 44.1051 Voluntary trial resolution.--
2 (1) Two or more parties who are involved in a civil
3 dispute may agree in writing to submit the controversy to
4 voluntary trial resolution in lieu of litigation of the issues
5 involved, prior to or after a lawsuit has been filed, provided
6 that no constitutional issue is involved.
7 (2) If the parties have entered into an agreement that
8 provides for a method for appointment of a member of The
9 Florida Bar in good standing for more than 5 years to act as
10 trial resolution judge, the court shall proceed with the
11 appointment as prescribed.
12 (3) The trial resolution judge shall be compensated by
13 the parties according to their agreement.
14 (4) Within 10 days of the submission of the request
15 for binding voluntary trial resolution, the court shall
16 provide for the appointment of the trial resolution judge.
17 Once appointed, the trial resolution judge shall notify the
18 parties of the time and place for the hearing.
19 (5) Application for voluntary trial resolution shall
20 be filed and fees paid to the clerk of the court as if for
21 complaints initiating civil actions. The clerk of the court
22 shall handle and account for these matters in all respects as
23 if they were civil actions except that the clerk of the court
24 shall keep separate the records of the applications for
25 voluntary binding trial resolution from all other civil
26 actions.
27 (6) Filing of the application for binding voluntary
28 trial resolution will toll the running of the applicable
29 statutes of limitation.
30 (7) The appointed trial resolution judge shall have
31 such power to administer oaths or affirmation and to conduct

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1 the proceedings as the rules of court shall provide. At the
2 request of any party, the trial resolution judge shall issue
3 subpoenas for the attendance of witnesses and for the
4 production of books, records, documents, and other evidence
5 and may apply to the court for orders compelling attendance
6 and production. Subpoenas shall be served and shall be
7 enforceable as provided by law.

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

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

13 (10) Any party may enforce a final decision rendered
14 in a voluntary trial by filing a petition for final judgment
15 in the circuit court in the circuit in which the voluntary
16 trial took place. Upon entry of final judgment by the circuit
17 court an appeal may be taken to the appropriate appellate
18 court. The harmless error doctrine shall apply in all appeals.
19 No further review shall be permitted unless a constitutional
20 issue is raised. Factual findings determined in the voluntary
21 trial shall not be subject to appeal.

22 (11) If no appeal is taken within the time provided by
23 rules promulgated by the Supreme Court, then the decision
24 shall be referred to the presiding court judge in the case, or
25 if one has not been assigned, then to the chief judge of the
26 circuit for assignment to a circuit judge, who shall enter
27 such orders and judgments as are required to carry out the
28 terms of decision, which orders shall be enforceable by the
29 contempt powers of the court and for which judgments
30 executions shall issue on request of a party.

31 (12) This section shall not apply to any dispute

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1 involving child custody, visitation, or child support, or to
2 any dispute that involves the rights of a third party not a
3 party to the voluntary trial resolution.

4 Section 15. Section 57.071, Florida Statutes, is
5 amended to read:

6 57.071 Costs; what taxable.--

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

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

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

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

17 (2) Expert witness fees shall not be awarded as
18 taxable costs unless:

19 (a) The party retaining the expert witness files a
20 written notice with the court and each opposing party within
21 30 days of the retention of the expert witness, which notice
22 shall provide the expertise and experience of the expert, the
23 rate of compensation of the expert witness, the subject
24 matters or issues on which the expert is expected to render an
25 opinion, and an estimate of the overall fee of the expert
26 witness, including trial testimony; and

27 (b) The party retaining the expert witness furnishes
28 each opposing party with a written report signed by the expert
29 witness which summarizes the expert witness's opinions, the
30 factual basis of the opinions including documentary evidence,
31 and the authorities relied upon in reaching the opinions, such

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1 report shall be filed at least 10 days prior to discovery
2 cut-off, or 45 days prior to the trial, or as otherwise
3 determined by the court.

4 Section 16. Section 57.105, Florida Statutes, is
5 amended to read:

6 57.105 Attorney's fee; sanctions for raising unfounded
7 claims or defenses; damages for delay of litigation.--

8 (1) The court shall award a reasonable attorney's fee
9 to be paid to the prevailing party in equal amounts by the
10 losing party and the losing party's attorney on any claim or
11 defense in any civil action in which the court finds that the
12 losing party or the losing party's attorney knew or should
13 have known at the time a claim or defense was presented:

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

16 (b) That the application of then existing law to the
17 facts the losing party or losing party's attorney knew or
18 should have known would not support the claim or defense.
19 ~~there was a complete absence of a justiciable issue of either~~
20 ~~law or fact raised by the complaint or defense of the losing~~
21 ~~party;~~

22
23 Provided, however, that the losing party's attorney is not
24 personally responsible if he or she has acted in good faith,
25 based on the representations of his or her client as to the
26 existence of material facts. If the court awards fees to a
27 claimant pursuant to this subsection ~~finds that there was a~~
28 ~~complete absence of a justiciable issue of either law or fact~~
29 ~~raised by the defense~~, the court shall also award prejudgment
30 interest.

31 (2) Subsection (1) shall not apply if the court

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1 determines that the claim or defense was presented as a good
2 faith attempt to change the then existing law as it applied to
3 the facts the losing party or losing party's attorney knew or
4 should have known at the time the claim or defense was
5 presented.

6 (3) In any civil proceeding in which the moving party
7 proves, by a preponderance of the evidence, that any action
8 taken by the opposing party, including, but not limited to,
9 the filing of any pleading or part thereof, the assertion of
10 or response to any discovery demand, the assertion of any
11 claim or defense, or the response to any request by any other
12 party, was taken primarily for the purpose of delay, the court
13 shall award damages to the moving party for the time
14 necessitated by the conduct in question. The absence of a
15 justiciable basis for the action taken shall be prima facie
16 evidence of such a purpose; but such a purpose may also be
17 proved, in proper cases, notwithstanding an objective
18 justiciable basis for the action taken.

19 (4) If a contract contains a provision allowing
20 attorney's fees to a party when he or she is required to take
21 any action to enforce the contract, the court may also allow
22 reasonable attorney's fees to the other party when that party
23 prevails in any action, whether as plaintiff or defendant,
24 with respect to the contract. This act shall take effect
25 October 1, 1988, and shall apply to contracts entered into on
26 said date or thereafter.

27 Section 17. Section 768.77, Florida Statutes, is
28 amended to read:

29 768.77 Itemized verdict.--

30 ~~(1)~~ In any action to which this part applies in which
31 the trier of fact determines that liability exists on the part

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1 of the defendant, the trier of fact shall, as a part of the
2 verdict, itemize the amounts to be awarded to the claimant
3 into the following categories of damages:

4 (1)~~(a)~~ Amounts intended to compensate the claimant for
5 economic losses;

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

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

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

21 Section 18. Paragraph (a) of subsection (1) of section
22 768.78, Florida Statutes, is amended to read:

23 768.78 Alternative methods of payment of damage
24 awards.--

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

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

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

11 Section 19. Subsections (3), (5), and (7) of section
12 768.79, Florida Statutes, are amended to read:

13 768.79 Offer of judgment and demand for judgment.--

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

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

28 (7)(a) Prior to awarding costs and fees pursuant to
29 this section the court shall determine whether the offer was
30 reasonable under the circumstances known at the time the offer
31 was made. If a party is entitled to costs and fees pursuant to

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1 the provisions of this section, the court may, in its
2 discretion, determine that an offer was not made in good
3 faith. In such case, the court may disallow an award of costs
4 and attorney's fees.

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

9 1. The then's apparent merit or lack's of merit in the
10 claim.

11 2. The number and nature of offers made by the
12 parties.

13 3. The closeness of questions of fact and law at
14 issue.

15 4. Whether the proposal was reasonably rejected.

16 ~~5.4.~~ Whether the person making the offer had
17 unreasonable refused to furnish information necessary to
18 evaluate the reasonableness of such offer.

19 ~~6.5.~~ Whether the suit was in the nature of a test case
20 presenting questions of far-reaching's importance affecting
21 nonparties.

22 ~~7.6.~~ The amount of the additional delay cost and
23 expense that the person making the offer reasonable would be
24 expected to incur if the litigation should be prolonged.

25 Section 20. If any provision of this act or the
26 application thereof to any person or circumstance is held
27 invalid, the invalidity does not affect other provisions or
28 applications of the act which can be given effect without the
29 invalid provision or application, and to this end the
30 provision of this act are declared severable.

31 Section 21. Except as otherwise provided in this act,

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1 this act shall take effect October 1 of the year in which
2 enacted.

3
4

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

6 And the title is amended as follows:

7 On page ,
8 remove from the title of the bill: the entire title

9
10 and insert in lieu thereof:

11 A bill to be entitled
12 An act relating to civil causes of action;
13 amending s. 95.031, F.S.; providing a time
14 period for bringing an action for product
15 liability or fraud; providing an exception;
16 creating s. 768.1256, F.S.; providing a
17 government rules defense with respect to
18 certain product liability actions; providing
19 for a rebuttable presumption; providing
20 requirements with respect to products which are
21 drugs; amending s. 400.023, F.S.; providing
22 conditions for the recovery of attorneys' fees
23 with respect to civil enforcement of certain
24 infractions related to nursing homes; providing
25 for application; providing for discovery;
26 providing for punitive damages; amending s.
27 768.72, F.S.; revising language with respect to
28 claims for punitive damages in civil actions;
29 requiring clear and convincing evidence of
30 gross negligence or intentional misconduct to
31 support the recovery of such damages; providing

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1 definitions; providing criteria for the
2 imposition of punitive damages with respect to
3 employers, principals, corporations, or other
4 legal entities for the conduct of an employee
5 or agent; providing for the application of the
6 section; providing an exception; amending s.
7 768.73, F.S.; revising language with respect to
8 limitations on punitive damages; providing
9 monetary limitations; providing an exception
10 with respect to intentional misconduct;
11 providing for consolidated punitive damages
12 trials; providing for the effect of certain
13 previous punitive damages awards; providing a
14 limitation on attorney fees; providing for the
15 application of the section; providing an
16 exception; creating s. 768.0705, F.S.;
17 providing limitations on premises liability for
18 a person or organization owning or controlling
19 an interest in commercial real property;
20 providing for a presumption against liability;
21 providing conditions for the presumption;
22 amending s. 768.075, F.S.; delineating the duty
23 owed to trespassers by a person or organization
24 owning or controlling an interest in real
25 property; providing definitions; providing for
26 the avoidance of liability to discovered and
27 undiscovered trespassers under described
28 circumstances; providing for the application of
29 s. 768.075(3), F.S., with respect to the common
30 law; amending s. 324.021, F.S.; providing that
31 the lessor of a motor vehicle under certain

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1 rental agreements shall be deemed the owner of
2 the vehicle for the purpose of determining
3 liability for the operation of the vehicle
4 within certain limits; providing for
5 construction; amending s. 768.76, F.S.;
6 exempting compensation under workers'
7 compensation from certain reductions for
8 collateral sources; revising language with
9 respect to collateral sources of indemnity to
10 redefine the term "collateral sources" with
11 respect to negligence actions; amending s.
12 768.81, F.S.; revising language with respect to
13 the applicability of joint and several
14 liability to certain actions; providing that
15 certain employers participating in a worker's
16 compensation eligibility program shall not be
17 considered a party in a negligence action and
18 shall not be listed as a tortfeasor on certain
19 jury verdicts; providing for expedited trials;
20 providing timeframes for the conduct of such
21 trials; creating s. 40.50, F.S.; providing for
22 instructions to juries after the jury is sworn
23 in; providing for the discussion of evidence
24 under certain circumstances; providing for the
25 taking of notes under certain circumstances;
26 providing for notebooks; providing for written
27 questions; providing for final instructions;
28 creating s. 44.1051, F.S.; providing for
29 voluntary trial resolution; providing for the
30 appointment of a trial resolution judge;
31 providing for compensation; providing for fees;

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1 providing for the tolling of applicable
2 statutes of limitation; providing for powers of
3 trial resolution judges; providing for hearings
4 and evidence; providing for appeal; providing
5 for application; amending s. 57.071, F.S.;
6 providing criteria under which expert witness
7 fees may be awarded as taxable costs; amending
8 s. 57.105, F.S.; providing sanctions for
9 raising unfounded claims or defenses; providing
10 exceptions; providing for damages in certain
11 circumstances; amending s. 768.77, F.S.;
12 revising language with respect to itemized
13 verdicts to delete reference to future damages;
14 amending s. 768.78, F.S.; conforming to the
15 act; correcting a cross reference; amending s.
16 768.79, F.S.; providing for the applicability
17 of offers of judgment and demand of judgment in
18 cases involving multiple plaintiffs; providing
19 that subsequent offers shall void previous
20 offers; providing that prior to awarding costs
21 and fees the court shall determine whether the
22 offer was reasonable under the circumstances
23 known at the time the offer was made;
24 authorizing the court to consider whether or
25 not a proposal was reasonably rejected when
26 considering entitlement to and the amount of an
27 award of attorneys' fees; providing
28 severability; providing effective dates.
29
30
31