

By the Committee on Rules and Calendar and Senators McKay,  
Dudley, Rossin, Ostalkiewicz, Lee and Campbell

305-1917-98

1                                   A bill to be entitled  
2           An act relating to civil actions; creating s.  
3           40.50, F.S.; specifying certain rights of  
4           jurors; authorizing discussions among jurors;  
5           authorizing jurors to take notes; authorizing  
6           certain information to be provided to jurors;  
7           authorizing jurors to submit written questions  
8           to the court and to witnesses; amending s.  
9           44.102, F.S.; requiring that the court require  
10          mediation in certain actions for monetary  
11          damages; requiring the completion of mediation  
12          before trial is set in certain civil actions;  
13          providing conditions for mediation; creating s.  
14          47.025, F.S.; specifying where certain lien  
15          actions may be brought against resident  
16          contractors, subcontractors, and  
17          sub-subcontractors; amending s. 57.105, F.S.;  
18          revising conditions under which attorney's fees  
19          may be imposed against a party and the party's  
20          attorney for presenting unsupported claims or  
21          defenses; entitling an opposing party to strike  
22          certain claims or defenses raised by a party  
23          who has been sanctioned in a specified number  
24          of actions within a specified period for  
25          presenting unsupported claims or defenses;  
26          authorizing the court to impose additional  
27          sanctions or requirements; authorizing damage  
28          awards against a party who takes specified  
29          actions for the purpose of delay; amending s.  
30          90.803, F.S.; revising the requirements under  
31          which former testimony may be allowed at trial

1 as an exception to the prohibition against  
2 hearsay evidence; amending s. 95.031, F.S.;  
3 limiting the period during which an action may  
4 be brought for product liability; providing for  
5 application; amending s. 768.075, F.S.;  
6 decreasing blood-alcohol level; changing  
7 standard of conduct from willful and wanton  
8 misconduct to intentional misconduct; providing  
9 an exemption from liability to trespassers;  
10 providing conditions and limitations on  
11 exemption; providing definitions; creating s.  
12 768.096, F.S.; providing an employer with a  
13 presumption against negligent hiring under  
14 specified conditions in an action for civil  
15 damages resulting from an intentional tort  
16 committed by an employee if the employer  
17 conducts a preemployment background  
18 investigation; prescribing the elements of such  
19 background investigation; specifying that  
20 electing not to complete the background  
21 investigation does not constitute a failure to  
22 use reasonable care in hiring an employee;  
23 amending s. 768.095, F.S.; revising the  
24 conditions under which an employer is immune  
25 from civil liability for disclosing information  
26 regarding an employee to a prospective  
27 employer; creating s. 768.098, F.S.; providing  
28 that a business owner or operator is immune  
29 from liability under certain circumstances for  
30 an intentional tort by a third party against an  
31 invitee; providing for an exception; creating

1 s. 768.1256, F.S.; creating a rebuttable  
2 presumption from liability for products, drugs,  
3 and medical devices in compliance with certain  
4 standards; providing exceptions; providing  
5 that, under certain circumstances, a state  
6 agency or political subdivision may be held  
7 liable to the same extent as a private person  
8 for failure to provide adequate security or  
9 police protection; creating s. 768.099, F.S.;  
10 limiting liability of motor vehicle owners and  
11 rental companies to specific amounts without a  
12 showing of negligence or intentional  
13 misconduct; providing exceptions; creating s.  
14 768.36, F.S.; prohibiting a plaintiff from  
15 recovering damages if the plaintiff was more  
16 than a specified percentage at fault due to the  
17 influence of an alcoholic beverage or drugs;  
18 creating s. 768.725, F.S.; providing for  
19 evidentiary standards for an award of punitive  
20 damages; amending s. 768.73, F.S.; requiring  
21 certain findings for, and providing for  
22 reduction of, subsequent punitive damage awards  
23 under specified circumstances; requiring that a  
24 specified percentage of an award for punitive  
25 damages be paid to the state; requiring the  
26 Department of Banking and Finance to collect  
27 the payments of such awards; providing for  
28 attorney's fees for the claimant to be based on  
29 the entire award of punitive damages; creating  
30 s. 768.736, F.S.; providing that ss. 768.725,  
31 768.73, F.S., relating to punitive damages, do

1 not apply to intoxicated defendants; creating  
2 s. 768.781, F.S.; providing for terms in  
3 certain contracts for an attorney's services;  
4 requiring that notice be sent to each allegedly  
5 responsible party; providing requirements for a  
6 presuit response and settlement offer; amending  
7 s. 768.79, F.S.; authorizing the court to  
8 consider whether a proposal was reasonably  
9 rejected when considering entitlement to and  
10 the amount of an award of attorney's fees;  
11 amending s. 768.81, F.S.; providing for the  
12 apportionment of damages on the basis of joint  
13 and several liability when a party's fault  
14 exceeds a certain percentage; requiring a  
15 defendant to plead that a nonparty is at fault  
16 within a certain time; requiring that the  
17 defendant must prove the nonparty has some  
18 fault; repealing s. 768.81(5), F.S., relating  
19 to the applicability of joint and several  
20 liability to actions in which the total amount  
21 of damages does not exceed a specified amount;  
22 requiring physicians and osteopathic physicians  
23 to obtain and maintain a specified amount of  
24 professional liability coverage as a condition  
25 of hospital staff privileges; providing  
26 legislative findings and intent with respect to  
27 the regulation of legal advertising; creating  
28 s. 877.023, F.S.; regulating the content of  
29 advertisements for legal services; providing a  
30 penalty; specifying that the provisions do not  
31 abrogate certain other laws, codes, ordinances,

1 rules, or penalties; requiring the clerk of  
2 court to report certain information on  
3 negligence cases to the Office of the State  
4 Court Administrator; providing for  
5 severability; providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9 Section 1. Section 40.50, Florida Statutes, is created  
10 to read:

11 40.50 Juror Bill of Rights.--

12 (1) Judges, attorneys, and court staff shall make  
13 every effort to assure that jurors in this state are:

14 (a) Informed of trial schedules that are then kept.

15 (b) Informed of the trial process and of the  
16 applicable law in plain and clear language.

17 (c) Subject to the court's discretion and in  
18 accordance with subsection (8), able to take notes during  
19 trial and to ask questions of witnesses or the judge and to  
20 have them answered as permitted by law.

21 (d) Told of the circumstances under which they may  
22 discuss the evidence during the trial among themselves in the  
23 jury room, while all are present, as long as they reserve  
24 judgment about the outcome of the case until deliberations  
25 commence.

26 (e) Entitled to have questions and requests that arise  
27 or are made during deliberations as fully answered and met as  
28 allowed by law.

29 (f) Able to express concerns, complaints, and  
30 recommendations to courthouse authorities.

31 (g) Fairly compensated for jury service.

1           (2) Immediately after the jury is sworn, the court may  
2 instruct the jury concerning its duties, its conduct, the  
3 order of proceedings, the procedure for submitting written  
4 questions of witnesses or of the court as set forth in  
5 subsection (8), and the elementary legal principles that will  
6 govern the proceeding.

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

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

23           (5) The court may provide a notebook for each juror.  
24 Notebooks may contain:

- 25           (a) A copy of the preliminary jury instructions;  
26           (b) Jurors' notes;  
27           (c) Witnesses' names, photographs, or biographies;  
28           (d) Copies of key documents admitted into evidence and  
29 an index of all exhibits in evidence;  
30           (e) A glossary of technical terms; and  
31           (f) A copy of the court's final instructions.

1  
2 In its discretion, the court may authorize documents and  
3 exhibits in evidence to be included in notebooks for use by  
4 the jurors during trial to aid them in performing their  
5 duties. The preliminary jury instructions should be removed,  
6 discarded, and replaced by the final jury instructions before  
7 the latter are read to the jury by the court.

8 (6) The court may permit jurors to have access to  
9 their notes and notebooks during recesses, discussions, and  
10 deliberations.

11 (7) The court may permit jurors to submit to the court  
12 written questions directed to witnesses or to the court.  
13 Opportunity shall be given to counsel to object to such  
14 questions out of the presence of the jury. The court may  
15 prohibit or limit the submission of questions to witnesses.

16 (8) The court may instruct the jury that any questions  
17 directed to witnesses or the court must be in writing,  
18 unsigned, and given to the bailiff. The court may further  
19 instruct that, if a juror has a question for a witness or the  
20 court, the juror should hand it to the bailiff during a  
21 recess, or, if the witness is about to leave the witness  
22 stand, the juror should signal to the bailiff. If the court  
23 determines that the juror's questions call for admissible  
24 evidence, the question may be asked by court or counsel in the  
25 court's discretion. Such questions may be answered by  
26 stipulation or other appropriate means, including, but not  
27 limited to, additional testimony upon such terms and  
28 limitations as the court prescribes. If the court determines  
29 that the juror's question calls for inadmissible evidence, the  
30 question may not be read or answered. If a juror's question is  
31 rejected, the jury shall be told that trial rules do not

1 permit some questions to be asked and that the jurors should  
2 not attach any significance to the failure to have their  
3 question asked.

4 (9) The court has discretion to give final  
5 instructions to the jury before closing arguments of counsel  
6 instead of after, in order to enhance jurors' ability to apply  
7 the applicable law to the facts. In that event, the court may  
8 withhold giving the necessary procedural and housekeeping  
9 instructions until after closing arguments.

10 Section 2. Section 44.102, Florida Statutes, is  
11 amended to read:

12 44.102 Court-ordered mediation.--

13 (1) Court-ordered mediation shall be conducted  
14 according to rules of practice and procedure adopted by the  
15 Supreme Court.

16 (2) A court, under rules adopted by the Supreme Court:

17 (a) Must refer to mediation any filed civil action for  
18 monetary damages, unless:

19 1. The action is a landlord and tenant dispute that  
20 does not include a claim for personal injury.

21 2. The action is filed for the purpose of collecting a  
22 debt.

23 3. The action is a claim of medical malpractice.

24 4. The action is governed by the Florida Small Claims

25 Rules.

26 5. The court determines that the action is proper for  
27 referral to nonbinding arbitration under this chapter.

28 6. The parties have agreed to binding arbitration.

29 (b)(a) May refer to mediation all or any part of a  
30 filed civil action for which mediation is not required under  
31 this section.



1            (c)~~(b)~~ In circuits in which a family mediation program  
2 has been established and upon a court finding of a dispute,  
3 shall refer to mediation all or part of custody, visitation,  
4 or other parental responsibility issues as defined in s.  
5 61.13. Upon motion or request of a party, a court shall not  
6 refer any case to mediation if it finds there has been a  
7 history of domestic violence that would compromise the  
8 mediation process.

9            (d)~~(c)~~ In circuits in which a dependency or in need of  
10 services mediation program has been established, may refer to  
11 mediation all or any portion of a matter relating to  
12 dependency or to a child in need of services or a family in  
13 need of services.

14            (3) Each party involved in a court-ordered mediation  
15 proceeding has a privilege to refuse to disclose, and to  
16 prevent any person present at the proceeding from disclosing,  
17 communications made during such proceeding. All oral or  
18 written communications in a mediation proceeding, other than  
19 an executed settlement agreement, shall be exempt from the  
20 requirements of chapter 119 and shall be confidential and  
21 inadmissible as evidence in any subsequent legal proceeding,  
22 unless all parties agree otherwise.

23            (4) There shall be no privilege and no restriction on  
24 any disclosure of communications made confidential in  
25 subsection (3) in relation to disciplinary proceedings filed  
26 against mediators pursuant to s. 44.106 and court rules, to  
27 the extent the communication is used for the purposes of such  
28 proceedings. In such cases, the disclosure of an otherwise  
29 privileged communication shall be used only for the internal  
30 use of the body conducting the investigation. Prior to the  
31 release of any disciplinary files to the public, all

1 references to otherwise privileged communications shall be  
2 deleted from the record. When an otherwise confidential  
3 communication is used in a mediator disciplinary proceeding,  
4 such communication shall be inadmissible as evidence in any  
5 subsequent legal proceeding. "Subsequent legal proceeding"  
6 means any legal proceeding between the parties to the  
7 mediation which follows the court-ordered mediation.

8 (5) The chief judge of each judicial circuit shall  
9 maintain a list of mediators who have been certified by the  
10 Supreme Court and who have registered for appointment in that  
11 circuit.

12 (a) Whenever possible, qualified individuals who have  
13 volunteered their time to serve as mediators shall be  
14 appointed. If a mediation program is funded pursuant to s.  
15 44.108, volunteer mediators shall be entitled to reimbursement  
16 pursuant to s. 112.061 for all actual expenses necessitated by  
17 service as a mediator.

18 (b) Nonvolunteer mediators shall be compensated  
19 according to rules adopted by the Supreme Court. If a  
20 mediation program is funded pursuant to s. 44.108, a mediator  
21 may be compensated by the county or by the parties. When a  
22 party has been declared indigent or insolvent, that party's  
23 pro rata share of a mediator's compensation shall be paid by  
24 the county at the rate set by administrative order of the  
25 chief judge of the circuit.

26 (6)(a) When an action is referred to mediation by  
27 court order, the time periods for responding to an offer of  
28 settlement pursuant to s. 45.061, or to an offer or demand for  
29 judgment pursuant to s. 768.79, respectively, shall be tolled  
30 and trial may not be commenced until:

- 31 1. An impasse has been declared by the mediator; ~~or~~

1           2. The mediator has reported to the court that no  
2 agreement was reached; or-

3           3. Only one party remains a viable litigant in the  
4 action due to circumstances, including, but not limited to,  
5 entry of a default.

6           (b) Sections 45.061 and 768.79 notwithstanding, an  
7 offer of settlement or an offer or demand for judgment may be  
8 made at any time after an impasse has been declared by the  
9 mediator, or the mediator has reported that no agreement was  
10 reached. An offer is deemed rejected as of commencement of  
11 trial.

12           (7) When a court refers to mediation a civil action  
13 for monetary damages based upon personal injury or wrongful  
14 death, the mediation is subject to the following conditions,  
15 except for good cause shown:

16           (a) The mediation must be scheduled within 90 days  
17 after the complaint was filed;

18           (b) At least 15 days prior to mediation, the parties  
19 shall exchange information in their possession for the purpose  
20 of allowing a thorough evaluation of the liability and damages  
21 being claimed, including:

22           1. The then-known names and addresses of all witnesses  
23 to the incident;

24           2. A description of the nature of the injury; the  
25 names and addresses of all physicians, other health care  
26 providers, and hospitals, clinics or other medical service  
27 entities that provided medical care to the claimant or injured  
28 party; and the date and nature of the service provided by  
29 each;

30           3. Medical records involving the injury;  
31

1           4. A list of any medical expenses, wages lost, or  
2 other special damages allegedly suffered as a consequence of  
3 the personal injury and any relevant documentation of such  
4 losses then in possession of the claimant; and

5           5. The known information in the defendant's possession  
6 which would mitigate the plaintiff's damages, provide evidence  
7 of comparative negligence of the plaintiff, and provide  
8 evidence of the comparative fault of any present party or  
9 other individual or entity.

10           (d) All parties at the mediation shall participate in  
11 good faith with a view toward resolving all claims between and  
12 among the parties. Further, both the final demand and final  
13 offer made at an early mediation must remain open for  
14 acceptance for a minimum of 15 days after the mediation is  
15 completed.

16           Section 3. Section 47.025, Florida Statutes, is  
17 created to read:

18           47.025 Actions against contractors.--Actions against  
19 resident contractors, subcontractors, or sub-subcontractors,  
20 as defined in part I of chapter 713, shall be brought only in  
21 the State of Florida, and in either the county where the  
22 defendant resides, where the cause of action occurred, or  
23 where the property in litigation is located, unless the  
24 parties agree to the contrary after the defendant has been  
25 served with an action that sets forth allegations as to venue.

26           Section 4. Section 57.105, Florida Statutes, is  
27 amended to read:

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

30           (1) The court shall award a reasonable attorney's fee  
31 to be paid to the prevailing party in equal amounts by the

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

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

7 (b) That the application of then-existing law to those  
8 material facts known to the losing party or losing party's  
9 attorney would not support the claim or defense.~~there was a~~  
10 ~~complete absence of a justiciable issue of either law or fact~~  
11 ~~raised by the complaint or defense of the losing party;~~  
12 ~~provided,~~

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

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

26 (3) If any plaintiff or defendant has been sanctioned  
27 under subsection (1) in three or more actions within the 10  
28 years immediately preceding the activity for which the  
29 sanction is sought, then in any further litigation in which  
30 that plaintiff or defendant is a party, whether or not related  
31 to the actions in which the sanctions were imposed, the

1 opposing party is entitled to have the claims or defenses of  
2 such plaintiff or defendant stricken unless such plaintiff or  
3 defendant first makes a prima facie showing that the claims or  
4 defenses are brought in good faith, applying then-existing law  
5 or applying a good-faith attempt to change the then-existing  
6 law, and supported by the material facts necessary to  
7 establish the claim or defense. Furthermore, the court may  
8 impose such additional sanctions or requirements as are just  
9 and warranted under the circumstances of the particular case.

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

23 (5)(2) If a contract contains a provision allowing  
24 attorney's fees to a party when he or she is required to take  
25 any action to enforce the contract, the court may also allow  
26 reasonable attorney's fees to the other party when that party  
27 prevails in any action, whether as plaintiff or defendant,  
28 with respect to the contract. The subsection applies to any  
29 contract entered into on or after October 1, 1988. This act  
30 shall take effect October 1, 1988, and shall apply to  
31 contracts entered into on said date or thereafter.

1           Section 5. Subsection (22) of section 90.803, Florida  
2 Statutes, is amended to read:

3           90.803 Hearsay exceptions; availability of declarant  
4 immaterial.--The provision of s. 90.802 to the contrary  
5 notwithstanding, the following are not inadmissible as  
6 evidence, even though the declarant is available as a witness:

7           (22) FORMER TESTIMONY.--Former testimony given by the  
8 declarant which testimony was given as a witness at another  
9 hearing of the same or a different proceeding, or in a  
10 deposition taken in compliance with law in the course of the  
11 same or another proceeding, if the party against whom the  
12 testimony is now offered, or, in a civil action or proceeding,  
13 a predecessor in interest, or a person with a similar  
14 interest, had an opportunity and similar motive to develop the  
15 testimony by direct examination, cross-examination, or  
16 redirect examination, provided that the court finds that the  
17 testimony is not inadmissible under s. 90.402 or s. 90.403 at  
18 ~~a civil trial, when used in a retrial of said trial involving~~  
19 ~~identical parties and the same facts.~~

20           Section 6. Subsection (2) of section 95.031, Florida  
21 Statutes, is amended to read:

22           95.031 Computation of time.--Except as provided in  
23 subsection (2) and in s. 95.051 and elsewhere in these  
24 statutes, the time within which an action shall be begun under  
25 any statute of limitations runs from the time the cause of  
26 action accrues.

27           (2)(a) Actions for ~~products liability and~~ fraud under  
28 s. 95.11(3) must be begun within the period prescribed in this  
29 chapter, with the period running from the time the facts  
30 giving rise to the cause of action were discovered or should  
31 have been discovered with the exercise of due diligence,

1 instead of running from any date prescribed elsewhere in s.  
2 95.11(3), but in any event an action for fraud under s.  
3 95.11(3) must be begun within 12 years after the date of the  
4 commission of the alleged fraud, regardless of the date the  
5 fraud was or should have been discovered.

6 (b) An action for products liability under s. 95.11(3)  
7 must be begun within the period prescribed in this chapter,  
8 with the period running from the date that the facts giving  
9 rise to the cause of action were discovered, or should have  
10 been discovered with the exercise of due diligence, rather  
11 than running from any other date prescribed elsewhere in s.  
12 95.11(3), but, in any event, for a completed product delivered  
13 to the original purchaser on or after October 1, 1998, an  
14 action for products liability under s. 95.11(3) must be begun  
15 within 12 years after the date of delivery of the completed  
16 product to its original purchaser, regardless of the date that  
17 the defect in the product was or should have been discovered.  
18 However, the 12-year limitation on filing an action for  
19 products liability does not apply if the manufacturer knew of  
20 a defect in the product and concealed or attempted to conceal  
21 this defect.

22 Section 7. Section 768.075, Florida Statutes, is  
23 amended to read:

24 768.075 Immunity from liability for injury to  
25 trespassers on real property; definitions; duty to  
26 trespassers; immunity from liability for injuries arising out  
27 of criminal acts.--

28 (1) A person or organization owning or controlling an  
29 interest in real property, or an agent of such person or  
30 organization, shall not be held liable for any civil damages  
31 for death of or injury or damage to a trespasser upon the



1 property ~~resulting from or arising by reason of the~~  
2 ~~trespasser's commission of the offense of trespass as~~  
3 ~~described in s. 810.08 or s. 810.09~~, when such trespasser was  
4 under the influence of alcoholic beverages with a  
5 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such  
6 trespasser was under the influence of any chemical substance  
7 set forth in s. 877.111, when such trespasser was illegally  
8 under the influence of any substance controlled under chapter  
9 893, or if the trespasser is affected by any of the aforesaid  
10 substances to the extent that her or his normal faculties are  
11 impaired. For the purposes of this section, voluntary  
12 intoxication or impediment of faculties by use of alcohol or  
13 any of the aforementioned substances shall not excuse a party  
14 bringing an action or on whose behalf an action is brought  
15 from proving the elements of trespass as described in  
16 paragraph (3)(a). However, the person or organization owning  
17 or controlling the interest in real property shall not be  
18 immune from liability if gross negligence or intentional  
19 ~~willful and wanton~~ misconduct on the part of such person or  
20 organization or agent thereof is a proximate cause of the  
21 death of or injury or damage to the trespasser.

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

29 (3)(a) As used in this subsection, the term:

30 1. "Implied invitation" means that the visitor  
31 entering the premises has an objectively reasonable belief

1 that he or she has been invited or is otherwise welcome on  
2 that portion of the real property where injury occurs.

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

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

23 (b) To avoid liability to undiscovered trespassers, a  
24 person or organization owning or controlling an interest in  
25 real property must refrain from intentional misconduct, but  
26 has no duty to warn of dangerous conditions. To avoid  
27 liability to discovered trespassers, a person or organization  
28 owning or controlling an interest in real property must  
29 refrain from gross negligence or intentional misconduct and  
30 must warn the trespasser of dangerous conditions known to the  
31

1 person or organization owning or controlling an interest in  
2 real property, but which are not readily observable by others.

3 (c) This subsection shall not be interpreted or  
4 construed to alter the common law as it pertains to the  
5 attractive nuisance doctrine.

6 (4) A person or organization owning or controlling an  
7 interest in real property or an agent of such person or  
8 organization shall not be held liable for any civil damages  
9 arising out of the attempt to or commission of a crime for  
10 death of or injury or damage to a person who attempts to or  
11 commits a crime.

12 Section 8. Section 768.096, Florida Statutes, is  
13 created to read:

14 768.096 Employer presumption against negligent  
15 hiring.--

16 (1) In a civil action for the death of, or injury or  
17 damage to, a third person caused by the intentional tort of an  
18 employee, such employee's employer shall be presumed not to  
19 have been negligent in hiring such employee if, before hiring  
20 the employee, the employer conducted a background  
21 investigation of the prospective employee and the  
22 investigation did not reveal any information that reasonably  
23 demonstrated the unsuitability of the prospective employee for  
24 the particular work to be performed or for the employment in  
25 general. A background investigation under this section must  
26 include:

27 (a) Obtaining a criminal background investigation on  
28 the prospective employee pursuant to subsection (2);

29 (b) Making a reasonable effort to contact references  
30 and former employers of the prospective employee concerning  
31 the suitability of the prospective employee for employment;

1           (c) Requiring the prospective employee to complete a  
2 job application form that includes questions concerning  
3 whether he or she has ever been convicted of a crime,  
4 including details concerning the type of crime; the date of  
5 conviction and the penalty imposed; and whether the  
6 prospective employee has ever been a defendant in a civil  
7 action for intentional tort, including the nature of the  
8 intentional tort and the disposition of the action;

9           (d) Obtaining, with written authorization from the  
10 prospective employee, a complete check of the driver's license  
11 record of the prospective employee if such a check is relevant  
12 to the work the employee will be performing and if the record  
13 can reasonably be obtained; and

14           (e) Interviewing the prospective employee.

15           (2) To satisfy the criminal-background-investigation  
16 requirement of this section, an employer must obtain a local  
17 criminal records check through local law enforcement agencies,  
18 a statewide criminal records check through the Department of  
19 Law Enforcement, or a federal criminal records check through  
20 the Federal Bureau of Investigation.

21           (3) The election by an employer not to conduct the  
22 investigation specified in subsection (1) does not raise any  
23 presumption that the employer failed to use reasonable care in  
24 hiring an employee.

25           Section 9. Section 768.095, Florida Statutes, is  
26 amended to read:

27           768.095 Employer immunity from liability; disclosure  
28 of information regarding former or current employees.--An  
29 employer who discloses information about a former or current  
30 employee ~~employee's job performance~~ to a prospective employer  
31 of the former or current employee upon request of the

1 prospective employer or of the former or current employee is  
2 ~~presumed to be acting in good faith and, unless lack of good~~  
3 ~~faith is shown by clear and convincing evidence, is immune~~  
4 from civil liability for such disclosure or its consequences  
5 unless it is shown by clear and convincing evidence. ~~For~~  
6 ~~purposes of this section, the presumption of good faith is~~  
7 ~~rebutted upon a showing~~ that the information disclosed by the  
8 former or current employer was knowingly false ~~or deliberately~~  
9 ~~misleading, was rendered with malicious purpose, or violated~~  
10 any civil right of the former or current employee protected  
11 under chapter 760.

12 Section 10. Section 768.098, Florida Statutes, is  
13 created to read:

14 768.098 Immunity from liability for intentional torts  
15 of a third person.--The owner or person in possession and  
16 control of business premises, or an agent thereof, is not  
17 liable for any civil damages for the death of, or injury or  
18 damage to, an invitee on the premises which resulted from an  
19 intentional tort committed by a third person who is not an  
20 agent or employee of the owner or person in possession and  
21 control of the premises. The immunity from liability under  
22 this section does not apply if the conduct on the part of the  
23 owner or a person in possession and control of the premises,  
24 or agent thereof, demonstrated a reckless disregard for the  
25 consequences so as to cause the injury to or death of an  
26 invitee. As used in this section, the term "reckless  
27 disregard" means conduct that the owner or person in  
28 possession and control of the premises, or agent thereof, knew  
29 or should have known would likely result in injury of or death  
30 to an invitee.

31

1           Section 11. Section 768.1256, Florida Statutes, is  
2 created to read:

3           768.1256 Government rules defense.--

4           (1) In a product liability action brought against a  
5 manufacturer or seller for harm allegedly caused by a product,  
6 the jury shall be instructed that there is a rebuttable  
7 presumption that the product is not defective or unreasonably  
8 dangerous and the manufacturer or seller is not liable if:

9           (a) At the time the specific unit of the product was  
10 sold or delivered to the initial purchaser or user, the aspect  
11 of the product that allegedly caused the harm was in  
12 compliance with product design, construction, or safety  
13 standards relevant to the event causing the death or injury  
14 promulgated by a federal or state statute or rule and such  
15 standards are designed to prevent the type of harm that  
16 allegedly occurred; or

17           (b) The product was approved by a federal or state  
18 agency responsible for reviewing the safety of the product.

19  
20 Noncompliance with standards or regulations relevant to the  
21 event causing the death or injury set forth in a state or  
22 federal statute or rule, or lack of approval by a federal or  
23 state agency responsible for reviewing the safety of the  
24 product, does not raise a presumption of negligence on the  
25 part of a manufacturer or seller.

26           (2) In a product liability action brought against a  
27 manufacturer or seller of a drug as defined in s. 201(g)(1) of  
28 the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321(g)(1),  
29 as amended, or a medical device as defined in s. 201(h) of the  
30 Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321(h), as  
31 amended, the jury shall be instructed that there is a

1 rebuttable presumption that the drug or medical device is not  
2 defective or unreasonably dangerous and the defendant is not  
3 liable, if the drug or medical device was approved for safety  
4 and efficacy by the United States Food and Drug Administration  
5 and the drug or medical device and its labeling were in  
6 compliance with the United States Food and Drug  
7 Administration's approval at the time the drug or medical  
8 device left the control of the manufacturer or seller.  
9 However, this subsection does not apply after the effective  
10 date of an order of the United States Food and Drug  
11 Administration to remove the product from the market or to  
12 withdraw its approval. This subsection does not apply if the  
13 defendant at any time before the event that allegedly caused  
14 the injury does any of the following:

15 (a) Intentionally withholds from, or misrepresents to,  
16 the United States Food and Drug Administration information  
17 concerning the drug or medical device that is material and  
18 relevant to the harm suffered by the claimant which is  
19 required to be submitted under the Federal Food, Drug and  
20 Cosmetic Act or s. 351 of the Public Health Service Act; or

21 (b) Fraudulently gains approval of the drug or medical  
22 device from the United States Food and Drug Administration.

23 Section 12. A state agency or political subdivision  
24 may be held liable in the same manner and to the same extent  
25 as a private individual under like circumstances for failure  
26 to provide adequate security or police protection when the  
27 death of or injury or damage to a business invitee occurs on a  
28 business premises under the jurisdiction of the state agency  
29 or political subdivision and results from an intentional tort  
30 committed by a person who is not a person or organization

31

1 owning or controlling an interest in the property or an agent  
2 or employee of such person or organization.

3 Section 13. Section 768.099, Florida Statutes, is  
4 created to read:

5 768.099 Limited liability based on ownership of a  
6 motor vehicle.--

7 (1) Notwithstanding any other provision of law, a  
8 motor vehicle owner shall not be liable for damages to a third  
9 party greater than \$100,000 per person and \$300,000 per  
10 occurrence for bodily injury and \$50,000 for property damage  
11 due to the operation of the motor vehicle by a person other  
12 than the owner without a showing of negligence or intentional  
13 misconduct on the part of the owner.

14 (2) Notwithstanding any other provision of law, a  
15 rental company that rents or leases motor vehicles for a term  
16 of less than 1 year shall not be liable for damages to a third  
17 party greater than \$100,000 per person and \$300,000 per  
18 occurrence for bodily injury and \$50,000 for property damage  
19 due ot the operation of the motor vehicle by a person other  
20 than the owner without a showing of negligence or intentional  
21 misconduct on the part of the rental company.

22 (3) The limits on liability in this section do not  
23 apply to an owner of motor vehicles that are used for  
24 commercial activity in the owner's ordinary course of  
25 business, other than a rental company that rents or leases  
26 motor vehicles.

27 Section 14. Section 768.36, Florida Statutes, is  
28 created to read:

29 768.36 Alcohol or drug defense.--

30 (1) As used in this section, the term:

31



1           (a) "Alcoholic beverage" means distilled spirits and  
2 any beverage that contains 0.5 percent or more alcohol by  
3 volume as determined in accordance with s. 561.01(4)(b).

4           (b) "Drug" means any chemical substance set forth in  
5 s. 877.111, or any substance controlled under chapter 893. The  
6 term does not include any drug or medication obtained by the  
7 plaintiff pursuant to a prescription, as defined in s. 893.02,  
8 which was taken in accordance with the prescription, or any  
9 medication that is authorized pursuant to state or federal law  
10 for general distribution and use without a prescription in  
11 treating human diseases, ailments, or injuries, and that was  
12 taken in the recommended dosage.

13           (2) In any civil action, a plaintiff who, at the time  
14 he or she was injured, was under the influence of any  
15 alcoholic beverage or drug to the extent that the plaintiff's  
16 normal faculties were impaired, or who had a blood or breath  
17 alcohol level of 0.08 percent or higher, and, as a result of  
18 the influence of such alcoholic beverage or drug, was more  
19 than 50 percent at fault for such plaintiff's harm, may not  
20 recover any damages for loss or injury to his or her person or  
21 property.

22           Section 15. Section 768.725, Florida Statutes, is  
23 created to read:

24           768.725 Punitive damages; burden of proof.--At trial,  
25 the plaintiff must establish by clear and convincing evidence  
26 its entitlement to an award of punitive damages. The greater  
27 weight of the evidence burden of proof shall apply to the  
28 determination regarding the amount of damages.

29           Section 16. Effective October 1, 1998, and applicable  
30 to all civil actions pending on that date for which the  
31 initial trial or retrial of the action has not commenced and

1 all civil actions commenced on or after that date, section  
2 768.73, Florida Statutes, is amended to read:

3 768.73 Punitive damages; limitation.--

4 (1)(a) In any civil action based on negligence, strict  
5 liability, products liability, misconduct in commercial  
6 transactions, professional liability, or breach of warranty,  
7 and involving willful, wanton, or gross misconduct, the  
8 judgment for the total amount of punitive damages awarded to a  
9 claimant may not exceed three times the amount of compensatory  
10 damages awarded to each person entitled thereto by the trier  
11 of fact, except as provided in paragraph (b). However, this  
12 subsection does not apply to any class action.

13 (b) If any award for punitive damages exceeds the  
14 limitation specified in paragraph (a), the award is presumed  
15 to be excessive and the defendant is entitled to remittitur of  
16 the amount in excess of the limitation unless the claimant  
17 demonstrates to the court by clear and convincing evidence  
18 that the award is not excessive in light of the facts and  
19 circumstances which were presented to the trier of fact.

20 (c) This subsection is not intended to prohibit an  
21 appropriate court from exercising its jurisdiction under s.  
22 768.74 in determining the reasonableness of an award of  
23 punitive damages that is less than three times the amount of  
24 compensatory damages.

25 (2)(a) Except as provided in paragraph (b), punitive  
26 damages shall not be awarded against a defendant in a tort  
27 action if that defendant establishes, before trial, that  
28 punitive damages have previously been awarded against that  
29 defendant in any state or federal court in any action alleging  
30 harm from the same act or single course of conduct for which  
31 the claimant seeks compensatory damages and that the

1 defendant's act or course of conduct had ceased. For purposes  
2 of a tort action, the term "the same act or single course of  
3 conduct" includes acts resulting in the same manufacturing  
4 defects, acts resulting in the same defects in design, or  
5 failure to warn of the same hazards, with respect to similar  
6 units of a product.

7 (b) In subsequent tort actions involving the same act  
8 or single course of conduct for which punitive damages have  
9 already been awarded, if the court determines by clear and  
10 convincing evidence that the amount of prior punitive damages  
11 awarded was insufficient to punish that defendant's behavior,  
12 the court may award subsequent punitive damages. In awarding  
13 subsequent punitive damages, the court shall make specific  
14 findings of fact in the record to support its conclusion. Any  
15 subsequent punitive damage awards shall be reduced by the  
16 amount of any earlier punitive damage awards rendered in state  
17 or federal court.

18 (3) In any civil action, an award of punitive damages  
19 is payable as follows:

20 (a) Sixty-five percent of the award is payable to the  
21 claimant.

22 (b) If the cause of action was based on personal  
23 injury or wrongful death, 35 percent of the award is payable  
24 to the Public Medical Assistance Trust Fund; otherwise, 35  
25 percent of the award is payable to the General Revenue Fund.

26 (4) The clerk of the court shall transmit a copy of  
27 the jury verdict to the Treasurer by certified mail. In the  
28 final judgment, the court shall order the percentages of the  
29 award to be paid as provided in subsection (3).

30 (5) A settlement agreement entered into between the  
31 original parties to the action after a verdict has been

1 returned must provide a proportionate share payable to the  
2 fund specified in paragraph (3)(b). For purposes of this  
3 subsection, a proportionate share is a 35-percent share of  
4 that percentage of the settlement amount which the portion of  
5 the verdict for punitive damages bears to the total amount  
6 awarded for compensatory and punitive damages.

7 (6) The Department of Banking and Finance shall  
8 collect or cause to be collected all payments due the state  
9 under this section. Such payments shall be made to the  
10 Comptroller and deposited in the appropriate fund specified in  
11 subsection (3).

12 (7) If the full amount of punitive damages awarded  
13 cannot be collected, the claimant and the other recipient  
14 designated pursuant to paragraph (3)(b) are each entitled to a  
15 proportional share of the punitive damages collected.

16 (8) The claimant attorney's fees, if payable from the  
17 judgment, are, to the extent that the fees are based on the  
18 punitive damages, calculated based on the entire judgment for  
19 punitive damages, notwithstanding the provisions of subsection  
20 (3). This subsection does not limit the payment of attorney's  
21 fees based upon an award of damages other than punitive  
22 damages.

23 (9)(2) The jury may neither be instructed nor informed  
24 as to the provisions of this section.

25 Section 17. Section 768.736, Florida Statutes, is  
26 created to read:

27 768.736 Punitive damages; exceptions for  
28 intoxication.--Sections 768.725 and 768.73 shall not apply to  
29 any defendant who, at the time of the act or omission for  
30 which punitive damages are sought, was under the influence of  
31 any alcoholic beverage or drug to the extent that the

1 defendant's normal faculties were impaired, or who had a blood  
2 or breath alcohol level of 0.08 percent or higher.

3 Section 18. Subsection (7) of section 768.79, Florida  
4 Statutes, is amended to read:

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

6 (7)(a) If a party is entitled to costs and fees  
7 pursuant to the provisions of this section, the court may, in  
8 its discretion, determine that an offer was not made in good  
9 faith. In such case, the court may disallow an award of costs  
10 and attorney's fees.

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

15 1. The then apparent merit or lack of merit in the  
16 claim.

17 2. The number and nature of offers made by the  
18 parties.

19 3. The closeness of questions of fact and law at  
20 issue.

21 4. Whether the proposal was reasonably rejected.

22 ~~5.4.~~ Whether the person making the offer had  
23 unreasonably refused to furnish information necessary to  
24 evaluate the reasonableness of such offer.

25 ~~6.5.~~ Whether the suit was in the nature of a test case  
26 presenting questions of far-reaching importance affecting  
27 nonparties.

28 ~~7.6.~~ The amount of the additional delay cost and  
29 expense that the person making the offer reasonably would be  
30 expected to incur if the litigation should be prolonged.

31

1           Section 19. The Legislature finds that it has a  
2 substantial governmental interest in protecting the privacy,  
3 well-being, and tranquility of the public against intrusive  
4 elements of advertising by attorneys. The Legislature further  
5 finds that its substantial interest extends to ensuring that  
6 advertising by attorneys presents the public with complete and  
7 accurate information necessary to make informed decisions  
8 about employing the legal services of an attorney and to  
9 ensuring that advertising does not reflect poorly upon the  
10 legal profession, the legal system, or the administration of  
11 justice. Research presented by The Florida Bar, and recognized  
12 by the Supreme Court of the United States in Florida Bar v.  
13 Went For It, Inc., 515 U.S. 618, demonstrates that members of  
14 the public view elements of attorney advertising and  
15 solicitation as being an intrusion on privacy and as  
16 contributing to negative images of the legal profession. The  
17 Florida Bar's research also demonstrates that electronic  
18 advertising by attorneys does not provide the public with  
19 useful and factual information with which to make informed  
20 decisions about hiring an attorney. The Legislature finds that  
21 television advertising diminishes the public's respect for the  
22 fairness and integrity of the legal system. In light of these  
23 findings, it is the intent of the Legislature to regulate  
24 attorney advertising in a narrow but necessary fashion in  
25 order to directly and materially advance the state's  
26 governmental interest.

27           Section 20. Subsection (3) of section 768.81, Florida  
28 Statutes, is amended, and subsection (5) of that section is  
29 repealed, to read:

30           768.81 Comparative fault.--

31

1           (3) APPORTIONMENT OF DAMAGES.--In cases to which this  
2 section applies, the court shall enter judgment against each  
3 party liable on the basis of such party's percentage of fault  
4 and not on the basis of the doctrine of joint and several  
5 liability; provided that with respect to any party whose  
6 percentage of fault equals or exceeds that of a particular  
7 claimant and whose fault is thirty-three percent or more, the  
8 court shall enter judgment with respect to economic damages  
9 against that party on the basis of the doctrine of joint and  
10 several liability.

11           (a) A defendant alleging that a nonparty is at fault  
12 shall affirmatively plead that defense in the answer or  
13 amended answer not later than 30 days before the actual  
14 initiation of trial, absent a showing of good cause.

15           (b) It is the defendant's burden to prove by a  
16 preponderance of the evidence that the nonparty has some fault  
17 in causing the claimant's injuries. If the defendant does not  
18 meet the burden of proof, no fault shall be allocated to that  
19 nonparty.

20           ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~  
21 ~~LIABILITY.--Notwithstanding the provisions of this section,~~  
22 ~~the doctrine of joint and several liability applies to all~~  
23 ~~actions in which the total amount of damages does not exceed~~  
24 ~~\$25,000.~~

25           Section 21. Notwithstanding the provisions of section  
26 489.0085(2)(5)(g) and section 458.320(2)(5)(g), Florida  
27 Statutes, as a condition of hospital staff privileges at a  
28 hospital licensed under chapter 395, Florida Statutes,  
29 physicians licensed under chapter 458 or chapter 459, Florida  
30 Statutes, shall be required to obtain and maintain  
31 professional liability coverage in an amount not less than

1 \$250,000 per claim, with a minimum annual aggregate of not  
2 less than \$750,000.

3 Section 22. Section 877.023, Florida Statutes, is  
4 created to read:

5 877.023 Advertisement of legal services; penalty.--

6 (1) GENERAL PROVISIONS.--

7 (a) An advertisement for legal services must include  
8 the following information:

9 1. The name of at least one lawyer or the lawyer  
10 referral service responsible for the content of the  
11 advertisement.

12 2. The location, by municipality, of one or more  
13 bonafide office locations of the lawyer or lawyers who will  
14 actually perform the services advertised. If the office is  
15 located outside a municipality, the county in which the office  
16 is located must be identified.

17 3. A statement of disclosure, printed or oral, that  
18 the initiation or maintenance of a legal action that is  
19 presented for an improper purpose, is frivolous, or is  
20 unsupported by the evidence may result in the imposition of  
21 sanctions by a court of law.

22 4. A statement of disclosure, printed or oral, whether  
23 the lawyer whose services are being advertised or any lawyer  
24 in the law firm whose services are being advertised has been  
25 the subject of a disciplinary proceeding that resulted in  
26 reprimand, suspension, or disbarment and that related to a  
27 violation of the rules that regulate members of The Florida  
28 Bar.

29 5. A statement of disclosure, printed or oral, which  
30 encourages the public to contact The Florida Bar to determine  
31



1 whether a lawyer is in good standing and to review public  
2 records that relate to disciplinary actions against lawyers.

3 6. A statement of disclosure, printed or oral, which  
4 states that individual results in a legal action may vary and  
5 that past recoveries under similar factual or legal situations  
6 are not necessarily indicative of the prospects for recovery  
7 in the future.

8 7. A statement of disclosure, printed or oral, as to  
9 whether the client will be liable for any expenses in addition  
10 to the fee charged by the lawyer who provides the legal  
11 services.

12 (b) An advertisement for legal services may not  
13 include the following information:

14 1. Any misleading or deceptive factual statement.

15 2. Information that contains any reference to past  
16 successes or results obtained by the lawyer or that is  
17 otherwise likely to create an unjustified expectation about  
18 results the lawyer can achieve.

19 3. Visual or verbal descriptions, depictions, or  
20 portrayals of persons, things, or events that are not  
21 objectively relevant to the selection of a lawyer or that are  
22 deceptive, misleading, or manipulative.

23 4. Information that advertises for legal employment in  
24 an area of practice in which the advertising lawyer or law  
25 firm does not practice law.

26 5. Any statement that describes or characterizes the  
27 quality of the lawyer's services.

28 (c) The following information may be included in an  
29 advertisement:

30 1. The name of the lawyer or law firm, a listing of  
31 lawyers associated with the firm, office locations and parking

1 arrangements, disability accommodations, telephone numbers,  
2 office and telephone service hours, and a designation such as  
3 "attorney" or "law firm."

4 2. The date of admission to The Florida Bar and any  
5 other bars, years of experience practicing law, number of  
6 lawyers in the advertising law firm, and a listing of federal  
7 courts and jurisdictions other than those in this state where  
8 the lawyer is licensed to practice.

9 3. Technical and professional licenses granted by the  
10 state or other recognized licensing authorities and  
11 educational degrees received, including dates and  
12 institutions.

13 4. Foreign language ability.

14 5. Areas of law in which the lawyer practices.

15 6. Prepaid or group legal service plans in which the  
16 lawyer participates.

17 7. Acceptance of credit cards.

18 8. Fee for initial consultation and fee schedule.

19 9. The name and geographic location of a lawyer or law  
20 firm as a sponsor of a public service announcement or  
21 charitable, civic, or community program or event.

22 10. Common salutary language, such as "best wishes,"  
23 "good luck," "happy holidays," or "pleased to announce."

24 (2) ADVERTISING IN ELECTRONIC MEDIA.--

25 (a) An advertisement for legal services in the  
26 electronic media may not contain information other than the  
27 information required by paragraph (1)(a) and any of the  
28 information authorized by paragraph (1)(c).

29 (b) The information must be articulated by a human  
30 voice or voices, or on-screen text, with no background sound  
31 other than instrumental music. A voice or image other than

1 that of a lawyer who is a member of the firm whose services  
2 are being advertised may not be used in an advertisement in  
3 the electronic media. A person who is not a member of the firm  
4 whose services are being advertised may not appear on screen  
5 or on radio. Visual images that may appear in a television  
6 advertisement are limited to the advertising lawyer in front  
7 of a background consisting of a solid color, a set of law  
8 books in an unadorned bookcase, or the lawyer's own office  
9 with no other office personnel shown. In an advertisement for  
10 a lawyer referral service, a person may not speak or appear  
11 who is not a lawyer who is a member of a law firm that  
12 receives referrals from the service.

13 (3) PENALTY.--Any person who violates this section  
14 commits a misdemeanor of the first degree, punishable as  
15 provided in s. 775.082 or s. 775.083.

16 (4) SCOPE.--This section does not alter or abrogate  
17 any other valid law, code, ordinance, rule, or penalty in  
18 effect on October 1, 1998.

19 Section 23. Through the state case-reporting system,  
20 the clerk of court shall report to the Office of the State  
21 Courts Administrator information from each settlement or jury  
22 verdict and final judgment in negligence cases as defined in  
23 section 768.81(4), Florida Statutes, as the President of the  
24 Senate and the Speaker of the House of Representatives deem  
25 necessary from time to time. The information shall include,  
26 but need not be limited to: the name of each plaintiff and  
27 defendant; the verdict; the percentage of fault of each; the  
28 amount of economic damages and noneconomic damages awarded to  
29 each plaintiff and which damages are to be paid jointly and  
30 severally by which defendants; and the amount of any punitive  
31 damages to be paid by each defendant.

1           Section 24. If any provision of this act or the  
2 application thereof to any person or circumstance is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the act which can be given effect without the  
5 invalid provision or application, and to this end the  
6 provisions of this act are declared severable.

7           Section 25. This act shall take effect October 1,  
8 1998.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 Senate Bill 874

4 The committee substitute:

- 5 - Provides that for joint and several liability to apply to  
6 any party, not only must the percentage of fault of that  
7 party equal or exceed that of a particular claimant, it  
8 must also be 33 percent or more;
- 9 - Requires that, absent a showing of good cause, a  
10 defendant who alleges that a non-party is at fault must  
11 affirmatively plead that defense in the answer or amended  
12 answer not later than 30 days before trial and must prove  
13 by a preponderance of the evidence that the non-party has  
14 some fault in causing the claimant's injuries;
- 15 - Provides that actions against resident contractors,  
16 sub-contractors, or sub-subcontractors may be brought  
17 only in the State of Florida and only in either the  
18 county where the defendant resides, where the cause of  
19 action occurred, or where the property in litigation is  
20 located, unless the parties agree to the contrary after  
21 the defendant has been served.
- 22 - Provides definitions relating to liability to trespassers  
23 on real property and provides conditions for liability.
- 24 - Provides that a person or organization owning or  
25 controlling an interest in real property is not liable  
26 for civil damages to a person arising out of the person's  
27 commission or attempt to commit a crime.
- 28 - Provides that when a court refers a civil action for  
29 monetary damages based upon personal injury or wrongful  
30 death to mediation, the mediation is subject to specified  
31 conditions unless good cause is shown to vary from these  
requirements.
- Provides that for a defendant to escape multiple awards  
of punitive damages, the defendant must establish that  
the defendant's act or course of conduct which caused the  
injury has ceased.
- Prohibits application of ss. 768.725 and 768.73, F.S.,  
which contain the provisions relating to burden of proof,  
limitation of punitive damages, and division of punitive  
damages among the claimant and the state, to any  
defendant who, at the time of the act or omission for  
which punitive damages are sought, was under the  
influence of any alcoholic beverage or drug to the extent  
that the defendant's normal faculties were impaired, or  
who had a blood or breath alcohol level of 0.08 percent  
or higher.
- Removes from the bill the statement that the bill's  
limitations on premises liability do not relieve the  
owner or person in control of the business premises from  
liability for the reasonably foreseeable risk of harm to

- 1 | invitees.
- 2 | - Provides a rebuttable presumption that a product is not  
3 | defective if at the time the product was sold to the  
4 | initial purchaser the aspect of the product that  
5 | allegedly caused the harm was in compliance with  
6 | applicable government standards or if the product had  
7 | secured government approval, and provides a similar  
8 | rebuttable presumption that a drug or medical device is  
9 | not defective if it had Food and Drug Administration  
10 | approval and was in compliance with that approval.
- 11 | - Limits the liability of certain motor vehicle owners and  
12 | rental companies for damages caused by the operation of  
13 | the motor vehicle by a person other than the owner to  
14 | \$100,000 per person and \$300,000 per occurrence for  
15 | bodily injury and \$50,000 for property damage, without a  
16 | showing of negligence or intentional misconduct on the  
17 | owner's or rental company's part.
- 18 | - Removes from the bill the requirement that a contract for  
19 | attorney services in a negligence case provide for  
20 | claimant's attorney to send to any alleged responsible  
21 | party a notice containing specified information as to the  
22 | claimant, the injury, a statement as to the basis for  
23 | claiming that the recipient of the notice is partially  
24 | responsible for causation of the injury, witness  
25 | information, and medical information.
- 26 | - Establishes that as a condition of hospital staff  
27 | privileges at a state-licensed hospital, physicians shall  
28 | be required to obtain and maintain professional liability  
29 | coverage in an amount not less than \$250,000 per claim,  
30 | with a minimum annual aggregate of not less than  
31 | \$750,000.