

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. 400.023, F.S.,
6 relating to actions brought on behalf of
7 nursing home residents; providing that a party
8 to any such action may not recover attorney's
9 fees unless the parties submit to mediation;
10 specifying requirements for such mediation;
11 providing for application; providing a standard
12 for any award of punitive damages; amending s.
13 768.075, F.S.; decreasing blood-alcohol level;
14 changing standard of conduct from willful and
15 wanton misconduct to intentional misconduct;
16 providing an exemption from liability to
17 trespassers; providing conditions and
18 limitations on exemption; providing
19 definitions; creating s. 768.096, F.S.;
20 providing an employer with a presumption
21 against negligent hiring under specified
22 conditions in an action for civil damages
23 resulting from an intentional tort committed by
24 an employee if the employer conducts a
25 preemployment background investigation;
26 prescribing the elements of such background
27 investigation; specifying that electing not to
28 complete the background investigation does not
29 constitute a failure to use reasonable care in
30 hiring an employee; amending s. 768.095, F.S.;
31 revising the conditions under which an employer

1 is immune from civil liability for disclosing
2 information regarding an employee to a
3 prospective employer; creating s. 768.098,
4 F.S.; providing that a business owner or
5 operator is immune from liability under certain
6 circumstances for an intentional tort by a
7 third party against an invitee; providing
8 standards; providing exceptions; creating s.
9 768.099, F.S.; limiting liability of motor
10 vehicle owners and rental companies to specific
11 amounts without a showing of negligence or
12 intentional misconduct; providing exceptions;
13 creating s. 768.36, F.S.; prohibiting a
14 plaintiff from recovering damages if the
15 plaintiff was more than a specified percentage
16 at fault due to the influence of an alcoholic
17 beverage or drugs; creating s. 768.725, F.S.;
18 providing for evidentiary standards for an
19 award of punitive damages; amending s. 768.73,
20 F.S.; requiring certain findings for, and
21 providing for reduction of, subsequent punitive
22 damage awards under specified circumstances;
23 requiring that a specified percentage of an
24 award for punitive damages be paid to the
25 state; requiring the Department of Banking and
26 Finance to collect the payments of such awards;
27 providing for attorney's fees for the claimant
28 to be based on the entire award of punitive
29 damages; creating s. 768.735, F.S.; providing
30 that ss. 768.72, 768.725, 768.73, F.S.,
31 relating to punitive damages, are inapplicable

1 to specified causes of action; creating s.
2 768.736, F.S.; providing that ss. 768.725,
3 768.73, F.S., relating to punitive damages, do
4 not apply to intoxicated defendants; creating
5 s. 768.781, F.S.; providing for terms in
6 certain contracts for an attorney's services;
7 requiring that notice be sent to each allegedly
8 responsible party; providing requirements for a
9 presuit response and settlement offer; amending
10 s. 768.81, F.S.; providing for the
11 apportionment of damages on the basis of joint
12 and several liability when a party's fault
13 exceeds a certain percentage; requiring a
14 defendant to plead that a nonparty is at fault
15 within a certain time; requiring that the
16 defendant must prove the nonparty has some
17 fault; repealing s. 768.81(5), F.S., relating
18 to the applicability of joint and several
19 liability to actions in which the total amount
20 of damages does not exceed a specified amount;
21 requiring physicians and osteopathic physicians
22 to obtain and maintain a specified amount of
23 professional liability coverage as a condition
24 of hospital staff privileges; providing
25 legislative findings and intent with respect to
26 the regulation of legal advertising; creating
27 s. 877.023, F.S.; regulating the content of
28 advertisements for legal services; providing a
29 penalty; specifying that the provisions do not
30 abrogate certain other laws, codes, ordinances,
31 rules, or penalties; requiring the clerk of

1 court to report certain information on
2 negligence cases to the Office of the State
3 Court Administrator; requiring that the
4 Department of Insurance contract for an
5 actuarial analysis of any reduction in
6 judgments or costs resulting from the
7 provisions of the act; requiring a report;
8 requiring insurers to make certain rate
9 filings; providing for severability; providing
10 an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 40.50, Florida Statutes, is created
15 to read:

16 40.50 Juror Bill of Rights.--

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

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

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

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

26 (d) Told of the circumstances under which they may
27 discuss the evidence during the trial among themselves in the
28 jury room, while all are present, as long as they reserve
29 judgment about the outcome of the case until deliberations
30 commence.

31

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

4 (f) Able to express concerns, complaints, and
5 recommendations to courthouse authorities.

6 (g) Fairly compensated for jury service.

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

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

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

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

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

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

7
8 In its discretion, the court may authorize documents and
9 exhibits in evidence to be included in notebooks for use by
10 the jurors during trial to aid them in performing their
11 duties. The preliminary jury instructions should be removed,
12 discarded, and replaced by the final jury instructions before
13 the latter are read to the jury by the court.

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

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

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

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

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

16 Section 2. Section 44.102, Florida Statutes, is
17 amended to read:

18 44.102 Court-ordered mediation.--

19 (1) Court-ordered mediation shall be conducted
20 according to rules of practice and procedure adopted by the
21 Supreme Court.

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

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

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

27 2. The action is filed for the purpose of collecting a
28 debt.

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

30 4. The action is governed by the Florida Small Claims
31 Rules.

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

3 6. The parties have agreed to binding arbitration.

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

7 (c)(b) In circuits in which a family mediation program
8 has been established and upon a court finding of a dispute,
9 shall refer to mediation all or part of custody, visitation,
10 or other parental responsibility issues as defined in s.

11 61.13. Upon motion or request of a party, a court shall not
12 refer any case to mediation if it finds there has been a
13 history of domestic violence that would compromise the
14 mediation process.

15 (d)(c) In circuits in which a dependency or in need of
16 services mediation program has been established, may refer to
17 mediation all or any portion of a matter relating to
18 dependency or to a child in need of services or a family in
19 need of services.

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

29 (4) There shall be no privilege and no restriction on
30 any disclosure of communications made confidential in
31 subsection (3) in relation to disciplinary proceedings filed

1 against mediators pursuant to s. 44.106 and court rules, to
2 the extent the communication is used for the purposes of such
3 proceedings. In such cases, the disclosure of an otherwise
4 privileged communication shall be used only for the internal
5 use of the body conducting the investigation. Prior to the
6 release of any disciplinary files to the public, all
7 references to otherwise privileged communications shall be
8 deleted from the record. When an otherwise confidential
9 communication is used in a mediator disciplinary proceeding,
10 such communication shall be inadmissible as evidence in any
11 subsequent legal proceeding. "Subsequent legal proceeding"
12 means any legal proceeding between the parties to the
13 mediation which follows the court-ordered mediation.

14 (5) The chief judge of each judicial circuit shall
15 maintain a list of mediators who have been certified by the
16 Supreme Court and who have registered for appointment in that
17 circuit.

18 (a) Whenever possible, qualified individuals who have
19 volunteered their time to serve as mediators shall be
20 appointed. If a mediation program is funded pursuant to s.
21 44.108, volunteer mediators shall be entitled to reimbursement
22 pursuant to s. 112.061 for all actual expenses necessitated by
23 service as a mediator.

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

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

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

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

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

12 (b) Sections 45.061 and 768.79 notwithstanding, an
13 offer of settlement or an offer or demand for judgment may be
14 made at any time after an impasse has been declared by the
15 mediator, or the mediator has reported that no agreement was
16 reached. An offer is deemed rejected as of commencement of
17 trial.

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

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

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

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

30 2. A description of the nature of the injury; the
31 names and addresses of all physicians, other health care

1 providers, and hospitals, clinics or other medical service
2 entities that provided medical care to the claimant or injured
3 party; and the date and nature of the service provided by
4 each;

5 3. Medical records involving the injury;

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

10 5. The known information in the defendant's possession
11 which would mitigate the plaintiff's damages, provide evidence
12 of comparative negligence of the plaintiff, and provide
13 evidence of the comparative fault of any present party or
14 other individual or entity.

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

21 Section 3. Section 47.025, Florida Statutes, is
22 created to read:

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

31

1 Section 4. Section 57.105, Florida Statutes, is
2 amended to read:

3 57.105 Attorney's fee; sanctions for raising unfounded
4 claims or defenses; damages for delay of litigation.--

5 (1) The court shall award a reasonable attorney's fee
6 to be paid to the prevailing party in equal amounts by the
7 losing party and the losing party's attorney in any civil
8 action in which the court finds that the losing party or the
9 losing party's attorney knew, or with reasonable inquiry in
10 the time available to present the claim or defense should have
11 known, before presenting the claim or defense:

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

14 (b) That the application of then-existing law to those
15 material facts known to the losing party or losing party's
16 attorney would not support the claim or defense.~~there was a~~
17 ~~complete absence of a justiciable issue of either law or fact~~
18 ~~raised by the complaint or defense of the losing party;~~
19 ~~provided,~~

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

28 (2) Subsection (1) shall not apply if the court
29 determines that the claim or defense was presented as a
30 good-faith attempt with a reasonable probability of changing
31 the then-existing law as it applied to the facts the losing

1 party or losing party's attorney knew at the time the claim or
2 defense was presented.

3 (3) If any plaintiff or defendant has been sanctioned
4 under subsection (1) in more than 25 percent of the actions
5 that are filed, or in which a defense has been filed, by that
6 party, then in any further litigation in which that plaintiff
7 or defendant is a party, whether or not related to the actions
8 in which the sanctions were imposed, the opposing party is
9 entitled to have the claims or defenses of such plaintiff or
10 defendant stricken unless such plaintiff or defendant first
11 makes a prima facie showing that the claims or defenses are
12 brought in good faith, applying then-existing law or applying
13 a good-faith attempt to change the then-existing law, and
14 supported by the material facts necessary to establish the
15 claim or defense. Furthermore, the court may impose such
16 additional sanctions or requirements as are just and warranted
17 under the circumstances of the particular case. This section
18 shall apply only if any party has been sanctioned under this
19 section at least three times in the preceding 5 years.

20 (4) In any civil proceeding in which the moving party
21 proves, by a preponderance of the evidence, that any action
22 taken by the opposing party, including, but not limited to,
23 the filing of any pleading or part thereof, the assertion of
24 or response to any discovery demand, the assertion of any
25 claim or defense, or the response to any request by any other
26 party, was taken primarily for the purpose of unreasonable
27 delay, the court shall award damages to the moving party for
28 the time necessitated by the conduct in question.

29 (5)(2) If a contract contains a provision allowing
30 attorney's fees to a party when he or she is required to take
31 any action to enforce the contract, the court may also allow

1 reasonable attorney's fees to the other party when that party
2 prevails in any action, whether as plaintiff or defendant,
3 with respect to the contract. The subsection applies to any
4 contract entered into on or after October 1, 1988. ~~This act~~
5 ~~shall take effect October 1, 1988, and shall apply to~~
6 ~~contracts entered into on said date or thereafter.~~

7 Section 5. Effective October 1, 1999, subsection (3)
8 of section 57.105, Florida Statutes, as amended by this act,
9 is amended to read:

10 57.105 Attorney's fee; sanctions for raising unfounded
11 claims or defenses; damages for delay of litigation.--

12 (3) If any plaintiff or defendant has been sanctioned
13 under subsection (1) in more than 10 ~~25~~ percent of the actions
14 that are filed, or in which a defense has been filed, by that
15 party, then in any further litigation in which that plaintiff
16 or defendant is a party, whether or not related to the actions
17 in which the sanctions were imposed, the opposing party is
18 entitled to have the claims or defenses of such plaintiff or
19 defendant stricken unless such plaintiff or defendant first
20 makes a prima facie showing that the claims or defenses are
21 brought in good faith, applying then-existing law or applying
22 a good-faith attempt to change the then-existing law, and
23 supported by the material facts necessary to establish the
24 claim or defense. Furthermore, the court may impose such
25 additional sanctions or requirements as are just and warranted
26 under the circumstances of the particular case. This section
27 shall apply only if any party has been sanctioned under this
28 section at least three times in the preceding 5 years.

29 Section 6. Subsection (22) of section 90.803, Florida
30 Statutes, is amended to read:

31

1 90.803 Hearsay exceptions; availability of declarant
2 immaterial.--The provision of s. 90.802 to the contrary
3 notwithstanding, the following are not inadmissible as
4 evidence, even though the declarant is available as a witness:

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

18 Section 7. Subsection (2) of section 95.031, Florida
19 Statutes, is amended to read:

20 95.031 Computation of time.--Except as provided in
21 subsection (2) and in s. 95.051 and elsewhere in these
22 statutes, the time within which an action shall be begun under
23 any statute of limitations runs from the time the cause of
24 action accrues.

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

1 95.11(3) must be begun within 12 years after the date of the
2 commission of the alleged fraud, regardless of the date the
3 fraud was or should have been discovered.

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

20 Section 8. Subsections (6), (7), and (8) are added to
21 section 400.023, Florida Statutes, to read:

22 400.023 Civil enforcement.--

23 (6) To recover attorney's fees under this section, the
24 following conditions precedent must be met:

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

31

1 1. Within 60 days after the filing of the responsive
2 pleading or defensive motion, the parties shall:

3 a. Agree on a mediator. If the parties cannot agree on
4 a mediator, the defendant shall immediately notify the court,
5 which shall appoint a mediator within 10 days after such
6 notice.

7 b. Set a date for mediation.

8 c. Prepare an order for the court that identifies the
9 mediator, the scheduled date of the mediation, and other terms
10 of the mediation. Absent any disagreement between the parties,
11 the court may issue the order for the mediation submitted by
12 the parties without a hearing.

13 2. The mediation must be concluded within 120 days
14 after the filing of a responsive pleading or defensive motion.
15 The date may be extended only by agreement of all parties
16 subject to mediation under this subsection.

17 3. The mediation shall be conducted in the following
18 manner:

19 a. Each party shall ensure that all persons necessary
20 for complete settlement authority are present at the
21 mediation.

22 b. Each party shall mediate in good faith.

23 4. All aspects of the mediation which are not
24 specifically established by this subsection must be conducted
25 according to the rules of practice and procedure adopted by
26 the Supreme Court of this state.

27 (b) If the parties do not settle the case pursuant to
28 mediation, the last offer of the defendant made at mediation
29 shall be recorded by the mediator in a written report that
30 states the amount of the offer, the date the offer was made in
31 writing, and the date the offer was rejected. If the matter

1 subsequently proceeds to trial under this section and the
2 plaintiff prevails but is awarded an amount in damages,
3 exclusive of attorney's fees, which is equal to or less than
4 the last offer made by the defendant at mediation, the
5 plaintiff is not entitled to recover any attorney's fees.

6 (c) This subsection applies only to claims for
7 liability and damages and does not apply to actions for
8 injunctive relief.

9 (d) This subsection applies to all causes of action
10 that accrue on or after October 1, 1998.

11 (7) Discovery of financial information for the purpose
12 of determining the value of punitive damages may not be had
13 unless the plaintiff shows the court by proffer or evidence in
14 the record that a reasonable basis exists to support a claim
15 for punitive damages.

16 (8) In addition to any other standards for punitive
17 damages, any award of punitive damages must be reasonable in
18 light of the actual harm suffered by the resident and the
19 egregiousness of the conduct that caused the actual harm to
20 the resident.

21 Section 9. Section 768.075, Florida Statutes, is
22 amended to read:

23 768.075 Immunity from liability for injury to
24 trespassers on real property; definitions; duty to
25 trespassers; immunity from liability for injuries arising out
26 of criminal acts.--

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

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

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

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

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

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 4. "Child trespasser" means a child 12 years of age or
24 younger who enters real property without either an express or
25 implied invitation.

26 (b) To avoid liability to a child trespasser, in
27 situations where the attractive nuisance doctrine would not
28 otherwise apply, a person or organization owning or
29 controlling an interest in real property must refrain from
30 gross negligence or intentional misconduct and must warn the
31 child trespasser of dangerous conditions known to the person

1 or organization controlling an interest in real property, but
2 which are not readily observable to others. To avoid liability
3 to undiscovered trespassers, a person or organization owning
4 or controlling an interest in real property must refrain from
5 intentional misconduct, but has no duty to warn of dangerous
6 conditions. To avoid liability to discovered trespassers, a
7 person or organization owning or controlling an interest in
8 real property must refrain from gross negligence or
9 intentional misconduct and must warn the trespasser of
10 dangerous conditions known to the person or organization
11 owning or controlling an interest in real property, but which
12 are not readily observable by others.

13 (c) This subsection shall not be interpreted or
14 construed to alter the common law as it pertains to the
15 attractive nuisance doctrine.

16 (4) A person or organization owning or controlling an
17 interest in real property or an agent of such person or
18 organization shall not be held liable for any civil damages
19 arising out of the attempt to or commission of a crime for
20 death of or injury or damage to a person who attempts to or
21 commits a crime.

22 Section 10. Section 768.096, Florida Statutes, is
23 created to read:

24 768.096 Employer presumption against negligent
25 hiring.--

26 (1) In a civil action for the death of, or injury or
27 damage to, a third person caused by the intentional tort of an
28 employee, such employee's employer shall be presumed not to
29 have been negligent in hiring such employee if, before hiring
30 the employee, the employer conducted a background
31 investigation of the prospective employee and the

1 investigation did not reveal any information that reasonably
2 demonstrated the unsuitability of the prospective employee for
3 the particular work to be performed or for the employment in
4 general. A background investigation under this section must
5 include:

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

8 (b) Making a reasonable effort to contact references
9 and former employers of the prospective employee concerning
10 the suitability of the prospective employee for employment;

11 (c) Requiring the prospective employee to complete a
12 job application form that includes questions concerning
13 whether he or she has ever been convicted of a crime,
14 including details concerning the type of crime; the date of
15 conviction and the penalty imposed; and whether the
16 prospective employee has ever been a defendant in a civil
17 action for intentional tort, including the nature of the
18 intentional tort and the disposition of the action;

19 (d) Obtaining, with written authorization from the
20 prospective employee, a complete check of the driver's license
21 record of the prospective employee if such a check is relevant
22 to the work the employee will be performing and if the record
23 can reasonably be obtained; and

24 (e) Interviewing the prospective employee.

25 (2) To satisfy the criminal-background-investigation
26 requirement of this section, an employer must obtain a local
27 criminal records check through local law enforcement agencies,
28 a statewide criminal records check through the Department of
29 Law Enforcement, or a federal criminal records check through
30 the Federal Bureau of Investigation.

31

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

5 Section 11. Section 768.095, Florida Statutes, is
6 amended to read:

7 768.095 Employer immunity from liability; disclosure
8 of information regarding former or current employees.--An
9 employer who discloses information about a former or current
10 employee ~~employee's job performance~~ to a prospective employer
11 of the former or current employee upon request of the
12 prospective employer or of the former or current employee is
13 ~~presumed to be acting in good faith and, unless lack of good~~
14 ~~faith is shown by clear and convincing evidence, is immune~~
15 from civil liability for such disclosure or its consequences
16 ~~unless it is shown by clear and convincing evidence. For~~
17 ~~purposes of this section, the presumption of good faith is~~
18 ~~rebutted upon a showing~~ that the information disclosed by the
19 former or current employer was knowingly false ~~or deliberately~~
20 ~~misleading, was rendered with malicious purpose, or violated~~
21 any civil right of the former or current employee protected
22 under chapter 760.

23 Section 12. Section 768.098, Florida Statutes, is
24 created to read:

25 768.098 Immunity from liability for intentional torts
26 of a third person.--The owner or person in possession and
27 control of business premises, or an agent thereof, is not
28 liable for any civil damages for the death of, or injury or
29 damage to, an invitee on the premises which resulted from an
30 intentional tort committed by a third person who is not an
31 agent or employee of the owner or person in possession and

1 control of the premises. The immunity from liability under
2 this section does not apply if the conduct on the part of the
3 owner or a person in possession and control of the premises,
4 or agent thereof, demonstrated a reckless disregard for the
5 consequences so as to cause the injury to or death of an
6 invitee. As used in this section, the term "reckless
7 disregard" means conduct that the owner or person in
8 possession and control of the premises, or agent thereof, knew
9 or should have known would likely result in injury of or death
10 to an invitee.

11 Section 13. Section 768.099, Florida Statutes, is
12 created to read:

13 768.099 Limited liability based on ownership of a
14 motor vehicle.--

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

22 (2) Notwithstanding any other provision of law, a
23 rental company that rents or leases motor vehicles for a term
24 of less than 1 year shall not be liable for damages greater
25 than \$100,000 per person and \$300,000 per occurrence for
26 bodily injury and \$50,000 for property damage due ot the
27 operation of the motor vehicle by a person other than the
28 owner without a showing of negligence or intentional
29 misconduct on the part of the rental company.

30 (3) The limits on liability in this section do not
31 apply to an owner of motor vehicles that are used for

1 commercial activity in the owner's ordinary course of
2 business, other than a rental company that rents or leases
3 motor vehicles. For purposes of this subsection, "rental
4 company" shall only include an entity engaged in the business
5 of renting or leasing motor vehicles to the general public,
6 and which annually rents or leases a majority of its motor
7 vehicles to persons with no direct or indirect affiliation
8 with the rental company.

9 Section 14. Section 768.36, Florida Statutes, is
10 created to read:

11 768.36 Alcohol or drug defense.--

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

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

16 (b) "Drug" means any chemical substance set forth in
17 s. 877.111, or any substance controlled under chapter 893. The
18 term does not include any drug or medication obtained by the
19 plaintiff pursuant to a prescription, as defined in s. 893.02,
20 which was taken in accordance with the prescription, or any
21 medication that is authorized pursuant to state or federal law
22 for general distribution and use without a prescription in
23 treating human diseases, ailments, or injuries, and that was
24 taken in the recommended dosage.

25 (2) In any civil action, a plaintiff who, at the time
26 he or she was injured, was under the influence of any
27 alcoholic beverage or drug to the extent that the plaintiff's
28 normal faculties were impaired, or who had a blood or breath
29 alcohol level of 0.08 percent or higher, and, as a result of
30 the influence of such alcoholic beverage or drug, was more
31 than 50 percent at fault for such plaintiff's harm, may not

1 recover any damages for loss or injury to his or her person or
2 property.

3 Section 15. Section 768.725, Florida Statutes, is
4 created to read:

5 768.725 Punitive damages; burden of proof.--At trial,
6 the plaintiff must establish by clear and convincing evidence
7 its entitlement to an award of punitive damages. The greater
8 weight of the evidence burden of proof shall apply to the
9 determination regarding the amount of damages.

10 Section 16. Effective October 1, 1998, and applicable
11 to all civil actions pending on that date for which the
12 initial trial or retrial of the action has not commenced and
13 all civil actions commenced on or after that date, section
14 768.73, Florida Statutes, is amended to read:

15 768.73 Punitive damages; limitation.--

16 (1)(a) In any civil action based on negligence, strict
17 liability, products liability, misconduct in commercial
18 transactions, professional liability, or breach of warranty,
19 and involving willful, wanton, or gross misconduct, the
20 judgment for the total amount of punitive damages awarded to a
21 claimant may not exceed three times the amount of compensatory
22 damages awarded to each person entitled thereto by the trier
23 of fact, except as provided in paragraph (b). However, this
24 subsection does not apply to any class action.

25 (b) If any award for punitive damages exceeds the
26 limitation specified in paragraph (a), the award is presumed
27 to be excessive and the defendant is entitled to remittitur of
28 the amount in excess of the limitation unless the claimant
29 demonstrates to the court by clear and convincing evidence
30 that the award is not excessive in light of the facts and
31 circumstances which were presented to the trier of fact.

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

6 (2)(a) Except as provided in paragraph (b), punitive
7 damages shall not be awarded against a defendant in a tort
8 action if that defendant establishes, before trial, that
9 punitive damages have previously been awarded against that
10 defendant in any state or federal court in any action alleging
11 harm from the same act or single course of conduct for which
12 the claimant seeks compensatory damages and that the
13 defendant's act or course of conduct had ceased. For purposes
14 of a tort action, the term "the same act or single course of
15 conduct" includes acts resulting in the same manufacturing
16 defects, acts resulting in the same defects in design, or
17 failure to warn of the same hazards, with respect to similar
18 units of a product.

19 (b) In subsequent tort actions involving the same act
20 or single course of conduct for which punitive damages have
21 already been awarded, if the court determines by clear and
22 convincing evidence that the amount of prior punitive damages
23 awarded was insufficient to punish that defendant's behavior,
24 the court may award subsequent punitive damages. In awarding
25 subsequent punitive damages, the court shall make specific
26 findings of fact in the record to support its conclusion. Any
27 subsequent punitive damage awards shall be reduced by the
28 amount of any earlier punitive damage awards rendered in state
29 or federal court.

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

1 (a) Sixty-five percent of the award is payable to the
2 claimant.

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

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

11 (5) A settlement agreement entered into between the
12 original parties to the action after a verdict has been
13 returned must provide a proportionate share payable to the
14 fund specified in paragraph (3)(b). For purposes of this
15 subsection, a proportionate share is a 35-percent share of
16 that percentage of the settlement amount which the portion of
17 the verdict for punitive damages bears to the total amount
18 awarded for compensatory and punitive damages.

19 (6) The Department of Banking and Finance shall
20 collect or cause to be collected all payments due the state
21 under this section. Such payments shall be made to the
22 Comptroller and deposited in the appropriate fund specified in
23 subsection (3).

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

28 (8) The claimant attorney's fees, if payable from the
29 judgment, are, to the extent that the fees are based on the
30 punitive damages, calculated based on the entire judgment for
31 punitive damages, notwithstanding the provisions of subsection

1 (3). This subsection does not limit the payment of attorney's
2 fees based upon an award of damages other than punitive
3 damages.

4 ~~(9)(2)~~ The jury may neither be instructed nor informed
5 as to the provisions of this section.

6 Section 17. Section 768.735, Florida Statutes, is
7 created to read:

8 768.735 Punitive damages; exceptions.--Sections
9 768.725 and 768.73(2)-(8) do not apply to any civil action
10 based upon child abuse, abuse of the elderly, or abuse of the
11 developmentally disabled or arising under chapter 400.

12 Section 18. Section 768.736, Florida Statutes, is
13 created to read:

14 768.736 Punitive damages; exceptions for
15 intoxication.--Sections 768.725 and 768.73 shall not apply to
16 any defendant who, at the time of the act or omission for
17 which punitive damages are sought, was under the influence of
18 any alcoholic beverage or drug to the extent that the
19 defendant's normal faculties were impaired, or who had a blood
20 or breath alcohol level of 0.08 percent or higher.

21 Section 19. The Legislature finds that it has a
22 substantial governmental interest in protecting the privacy,
23 well-being, and tranquility of the public against intrusive
24 elements of advertising by attorneys. The Legislature further
25 finds that its substantial interest extends to ensuring that
26 advertising by attorneys presents the public with complete and
27 accurate information necessary to make informed decisions
28 about employing the legal services of an attorney and to
29 ensuring that advertising does not reflect poorly upon the
30 legal profession, the legal system, or the administration of
31 justice. Research presented by The Florida Bar, and recognized

1 by the Supreme Court of the United States in Florida Bar v.
2 Went For It, Inc., 515 U.S. 618, demonstrates that members of
3 the public view elements of attorney advertising and
4 solicitation as being an intrusion on privacy and as
5 contributing to negative images of the legal profession. The
6 Florida Bar's research also demonstrates that electronic
7 advertising by attorneys does not provide the public with
8 useful and factual information with which to make informed
9 decisions about hiring an attorney. The Legislature finds that
10 television advertising diminishes the public's respect for the
11 fairness and integrity of the legal system. In light of these
12 findings, it is the intent of the Legislature to regulate
13 attorney advertising in a narrow but necessary fashion in
14 order to directly and materially advance the state's
15 governmental interest.

16 Section 20. Subsection (3) of section 768.81, Florida
17 Statutes, is amended, and subsection (5) of that section is
18 repealed, to read:

19 768.81 Comparative fault.--

20 (3) APPORTIONMENT OF DAMAGES.--In cases to which this
21 section applies, the court shall enter judgment against each
22 party liable on the basis of such party's percentage of fault
23 and not on the basis of the doctrine of joint and several
24 liability; provided that with respect to any party whose
25 percentage of fault equals or exceeds that of a particular
26 claimant and whose fault is thirty-three percent or more, the
27 court shall enter judgment with respect to economic damages
28 against that party on the basis of the doctrine of joint and
29 several liability.

30
31

1 (a) A defendant alleging that a nonparty is at fault
2 shall affirmatively plead that defense in the answer, absent a
3 showing of good cause.

4 (b) It is the defendant's burden to prove by a
5 preponderance of the evidence that the nonparty has some fault
6 in causing the claimant's injuries. If the defendant does not
7 meet the burden of proof, no fault shall be allocated to that
8 nonparty.

9 ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~
10 ~~LIABILITY.--Notwithstanding the provisions of this section,~~
11 ~~the doctrine of joint and several liability applies to all~~
12 ~~actions in which the total amount of damages does not exceed~~
13 ~~\$25,000.~~

14 Section 21. Notwithstanding the provisions of section
15 489.0085(2), (5)(g) and section 458.320(2), (5)(g), Florida
16 Statutes, as a condition of hospital staff privileges at a
17 hospital licensed under chapter 395, Florida Statutes,
18 physicians licensed under chapter 458 or chapter 459, Florida
19 Statutes, shall be required to obtain and maintain
20 professional liability coverage in an amount not less than
21 \$250,000 per claim, with a minimum annual aggregate of not
22 less than \$750,000.

23 Section 22. Section 877.023, Florida Statutes, is
24 created to read:

25 877.023 Advertisement of legal services; penalty.--

26 (1) GENERAL PROVISIONS.--

27 (a) An advertisement for legal services must include
28 the following information:

29 1. The name of at least one lawyer or the lawyer
30 referral service responsible for the content of the
31 advertisement.

1 2. The location, by municipality, of one or more
2 bonafide office locations of the lawyer or lawyers who will
3 actually perform the services advertised. If the office is
4 located outside a municipality, the county in which the office
5 is located must be identified.

6 3. A statement of disclosure, printed or oral, that
7 the initiation or maintenance of a legal action that is
8 presented for an improper purpose, is frivolous, or is
9 unsupported by the evidence may result in the imposition of
10 sanctions by a court of law.

11 4. A statement of disclosure, printed or oral, whether
12 the lawyer whose services are being advertised or any lawyer
13 in the law firm whose services are being advertised has been
14 the subject of a disciplinary proceeding that resulted in
15 reprimand, suspension, or disbarment and that related to a
16 violation of the rules that regulate members of The Florida
17 Bar.

18 5. A statement of disclosure, printed or oral, which
19 encourages the public to contact The Florida Bar to determine
20 whether a lawyer is in good standing and to review public
21 records that relate to disciplinary actions against lawyers.

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

27 7. A statement of disclosure, printed or oral, as to
28 whether the client will be liable for any expenses in addition
29 to the fee charged by the lawyer who provides the legal
30 services.

31

1 (b) An advertisement for legal services may not
2 include the following information:

3 1. Any misleading or deceptive factual statement.

4 2. Information that contains any reference to past
5 successes or results obtained by the lawyer or that is
6 otherwise likely to create an unjustified expectation about
7 results the lawyer can achieve.

8 3. Visual or verbal descriptions, depictions, or
9 portrayals of persons, things, or events that are not
10 objectively relevant to the selection of a lawyer or that are
11 deceptive, misleading, or manipulative.

12 4. Information that advertises for legal employment in
13 an area of practice in which the advertising lawyer or law
14 firm does not practice law.

15 5. Any statement that describes or characterizes the
16 quality of the lawyer's services.

17 (c) The following information may be included in an
18 advertisement:

19 1. The name of the lawyer or law firm, a listing of
20 lawyers associated with the firm, office locations and parking
21 arrangements, disability accommodations, telephone numbers,
22 office and telephone service hours, and a designation such as
23 "attorney" or "law firm."

24 2. The date of admission to The Florida Bar and any
25 other bars, years of experience practicing law, number of
26 lawyers in the advertising law firm, and a listing of federal
27 courts and jurisdictions other than those in this state where
28 the lawyer is licensed to practice.

29 3. Technical and professional licenses granted by the
30 state or other recognized licensing authorities and
31

1 educational degrees received, including dates and
2 institutions.

3 4. Foreign language ability.
4 5. Areas of law in which the lawyer practices.
5 6. Prepaid or group legal service plans in which the
6 lawyer participates.

7 7. Acceptance of credit cards.
8 8. Fee for initial consultation and fee schedule.
9 9. The name and geographic location of a lawyer or law
10 firm as a sponsor of a public service announcement or
11 charitable, civic, or community program or event.

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

14 (2) ADVERTISING IN ELECTRONIC MEDIA.--
15 (a) An advertisement for legal services in the
16 electronic media may not contain information other than the
17 information required by paragraph (1)(a) and any of the
18 information authorized by paragraph (1)(c).

19 (b) The information must be articulated by a human
20 voice or voices, or on-screen text, with no background sound
21 other than instrumental music. A voice or image other than
22 that of a lawyer who is a member of the firm whose services
23 are being advertised may not be used in an advertisement in
24 the electronic media. A person who is not a member of the firm
25 whose services are being advertised may not appear on screen
26 or on radio. Visual images that may appear in a television
27 advertisement are limited to the advertising lawyer in front
28 of a background consisting of a solid color, a set of law
29 books in an unadorned bookcase, or the lawyer's own office
30 with no other office personnel shown. In an advertisement for
31 a lawyer referral service, a person may not speak or appear

1 who is not a lawyer who is a member of a law firm that
2 receives referrals from the service.

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

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

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

22 Section 24. The Department of Insurance shall issue a
23 request for proposals and contract with an independent
24 actuarial firm to conduct an actuarial analysis of the
25 expected reduction in liability judgments, settlements, and
26 related costs resulting from the provisions of this act. As
27 part of the report, an analysis shall include an estimate of
28 the percentage decrease by type of coverage affected by the
29 provisions of this act, including the time period when such
30 savings or reductions are expected. The report shall be
31 completed and submitted to the department by March 1, 1999.

1 Each authorized insurer issuing any of the types of coverage
2 addressed in the analysis shall make a rate filing after March
3 1, 1999, but not later than October 1, 1999, that includes the
4 premium rate reduction percentages contained in the actuarial
5 analysis. The effective date of such premium reductions shall
6 be consistent with the time periods contained in the actuarial
7 analysis. The rate filing may also reflect other relevant
8 factors, as consistent with laws or rules affecting the rate
9 filing. If the insurer disputes the conclusions of the
10 actuarial analysis, the insurer shall establish in an
11 administrative, judicial, or other proceeding that the impact
12 of this act on such insurer's type of coverage is different
13 than the expected effects contained in the actuarial analysis.

14 Section 25. If any provision of this act or the
15 application thereof to any person or circumstance is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the act which can be given effect without the
18 invalid provision or application, and to this end the
19 provisions of this act are declared severable.

20 Section 26. This act shall take effect October 1,
21 1998.

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