

1                                   A bill to be entitled  
2           An act relating to civil actions; creating s.  
3           40.50, F.S.; providing for instructions to  
4           juries after the jury is sworn in; providing  
5           for the taking of notes under certain  
6           circumstances; providing for notebooks;  
7           providing for written questions; providing for  
8           final instructions; amending s. 44.102, F.S.;  
9           requiring that the court require mediation in  
10          certain actions for monetary damages; creating  
11          s. 44.1051, F.S.; providing for voluntary trial  
12          resolution; providing for the appointment of a  
13          trial resolution judge; providing for  
14          compensation; providing for fees; providing for  
15          the tolling of applicable statutes of  
16          limitation; providing for powers of trial  
17          resolution judges; providing for hearings and  
18          evidence; providing for appeal; providing for  
19          application; amending s. 57.105, F.S.; revising  
20          conditions for award of attorney's fees for  
21          presenting unsupported claims or defenses;  
22          authorizing damage awards against a party for  
23          unreasonable delay of litigation; authorizing  
24          the court to impose additional sanctions;  
25          amending s. 768.79, F.S.; providing for the  
26          applicability of offers of judgment and demand  
27          of judgment in cases involving multiple  
28          plaintiffs; providing that subsequent offers  
29          shall void previous offers; providing that  
30          prior to awarding costs and fees the court  
31          shall determine whether the offer was

1 reasonable under the circumstances known at the  
2 time the offer was made; amending s. 57.071,  
3 F.S.; providing criteria under which expert  
4 witness fees may be awarded as taxable costs;  
5 providing for expedited trials; amending s.  
6 768.77, F.S.; deleting a requirement to itemize  
7 future damages on verdict forms; amending s.  
8 768.78, F.S.; conforming provisions relating to  
9 alternative methods of payment of damage awards  
10 to changes made by the act; correcting a  
11 cross-reference; creating s. 47.025, F.S.;  
12 providing that certain venue provisions in a  
13 contract for improvement to real property are  
14 void; specifying appropriate venue for actions  
15 against resident contractors, subcontractors,  
16 and sub-subcontractors; requiring the clerk of  
17 court to report certain information on  
18 negligence cases to the Office of the State  
19 Court Administrator; amending s. 90.803, F.S.;  
20 revising the hearsay exception for former  
21 testimony; amending s. 95.031, F.S.; imposing a  
22 12-year statute of repose on actions for  
23 product liability, with certain exceptions;  
24 specifying the date by which certain actions  
25 must be brought or be otherwise barred by the  
26 statute of repose; creating s. 768.1256, F.S.;  
27 providing a government rules defense with  
28 respect to certain product liability actions;  
29 providing for a rebuttable presumption;  
30 creating s. 768.096, F.S.; providing an  
31 employer with a presumption against negligent

1 hiring under specified conditions in an action  
2 for civil damages resulting from an intentional  
3 tort committed by an employee; amending s.  
4 768.095, F.S.; revising the conditions under  
5 which an employer is immune from civil  
6 liability for disclosing information regarding  
7 an employee to a prospective employer; creating  
8 s. 768.0705, F.S.; providing limitations on  
9 premises liability for a person or organization  
10 owning or controlling an interest in a business  
11 premises; providing for a presumption against  
12 liability; providing conditions for the  
13 presumption; amending s. 768.075, F.S.;  
14 delineating the duty owed to trespassers by a  
15 person or organization owning or controlling an  
16 interest in real property; providing  
17 definitions; providing for the avoidance of  
18 liability to discovered and undiscovered  
19 trespassers under described circumstances;  
20 providing immunity from certain liability  
21 arising out of the attempt to commit or the  
22 commission of a felony; creating s. 768.36,  
23 F.S.; prohibiting a plaintiff from recovering  
24 damages if the plaintiff was more than a  
25 specified percentage at fault due to the  
26 influence of an alcoholic beverage or drugs;  
27 creating s. 768.725, F.S.; providing for  
28 evidentiary standards for an award of punitive  
29 damages; amending s. 768.72, F.S.; revising  
30 provisions with respect to claims for punitive  
31 damages in civil actions; requiring clear and

1 convincing evidence of gross negligence or  
2 intentional misconduct to support the recovery  
3 of such damages; providing definitions;  
4 providing criteria for the imposition of  
5 punitive damages with respect to employers,  
6 principals, corporations, or other legal  
7 entities for the conduct of an employee or  
8 agent; providing for the application of the  
9 section; amending s. 768.73, F.S.; revising  
10 provisions with respect to limitations on  
11 punitive damages; providing monetary  
12 limitations; providing an exception with  
13 respect to intentional misconduct; providing  
14 for the effect of certain previous punitive  
15 damages awards; specifying the basis for  
16 calculating attorney's fees on judgments for  
17 punitive damages; providing for the application  
18 of the section; creating s. 768.735, F.S.;  
19 providing that ss. 768.72(2)-(4), 768.725, and  
20 768.73, F.S., relating to punitive damages, are  
21 inapplicable to specified causes of action;  
22 limiting the amount of punitive damages that  
23 may be awarded to a claimant in certain civil  
24 actions involving abuse or arising under ch.  
25 400, F.S.; creating s. 768.736, F.S.; providing  
26 that ss. 768.725 and 768.73, F.S., relating to  
27 punitive damages, do not apply to intoxicated  
28 defendants; amending s. 768.81, F.S.; providing  
29 for the apportionment of damages on the basis  
30 of joint and several liability when a party's  
31 fault exceeds a certain percentage; limiting

1 the applicability of joint and several  
2 liability based on the amount of damages;  
3 providing for the allocation of fault to a  
4 nonparty; requiring that such fault must be  
5 proved by a preponderance of the evidence;  
6 repealing s. 768.81(5), F.S., relating to the  
7 applicability of joint and several liability to  
8 actions in which the total amount of damages  
9 does not exceed a specified amount; amending s.  
10 324.021, F.S.; providing that the lessor of a  
11 motor vehicle under certain rental agreements  
12 shall be deemed the owner of the vehicle for  
13 the purpose of determining liability for the  
14 operation of the vehicle within certain limits;  
15 providing for the liability of the owner of a  
16 motor vehicle who loans the vehicle to certain  
17 users; providing for application; amending s.  
18 400.023, F.S., relating to actions brought on  
19 behalf of nursing home residents; requiring  
20 mediation as a condition for recovery of  
21 attorney's fees; providing for application;  
22 providing a standard for any award of punitive  
23 damages; providing that the state has a  
24 substantial interest in protecting the public  
25 against intrusive advertising by attorneys;  
26 providing legislative findings; requesting that  
27 the Supreme Court regulate attorney advertising  
28 and form a task force; requesting that the  
29 Supreme Court adopt rules to effectuate the  
30 legislative expression of public policy;  
31 requiring the Department of Insurance to

1 contract with an actuarial firm to conduct an  
2 actuarial analysis of expected reductions in  
3 judgments and related costs resulting from  
4 litigation reforms; specifying the basis and  
5 due date for the actuarial report; providing  
6 for review of rate filings by certain types of  
7 insurers after March 1, 2001; providing that  
8 provisions do not limit the refund of excessive  
9 profits by certain insurers; providing for  
10 severability; providing 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 Jury duty and instructions in civil cases.--

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

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

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1           (3) In any case in which the court determines that the  
2 trial could exceed 5 days, the court shall provide a notebook  
3 for each juror. Notebooks may contain:

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

6           (b) Jurors' notes.

7           (c) Witnesses' names and either photographs or  
8 biographies or both.

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

11           (e) A glossary of technical terms.

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

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

20           (4) The court shall permit jurors to have access to  
21 their notes and, in appropriate cases, notebooks during  
22 recesses and deliberations.

23           (5) The court shall permit jurors to submit to the  
24 court written questions directed to witnesses or to the court.  
25 Opportunity shall be given to counsel to object to such  
26 questions out of the presence of the jury. The court may, as  
27 appropriate, limit the submission of questions to witnesses.

28           (6) The court shall instruct the jury that any  
29 questions directed to witnesses or the court must be in  
30 writing, unsigned, and given to the bailiff. If the court  
31 determines that the juror's question calls for admissible

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

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

18 Section 2. Section 44.102, Florida Statutes, is  
19 amended to read:

20 44.102 Court-ordered mediation.--

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

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

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

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

29 2. The action is filed for the purpose of collecting a  
30 debt.

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



1           4. The action is governed by the Florida Small Claims  
2 Rules.

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

5           6. The parties have agreed to binding arbitration.

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

9           (c)(b) In circuits in which a family mediation program  
10 has been established and upon a court finding of a dispute,  
11 shall refer to mediation all or part of custody, visitation,  
12 or other parental responsibility issues as defined in s.  
13 61.13. Upon motion or request of a party, a court shall not  
14 refer any case to mediation if it finds there has been a  
15 history of domestic violence that would compromise the  
16 mediation process.

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

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

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1           (4) There shall be no privilege and no restriction on  
2 any disclosure of communications made confidential in  
3 subsection (3) in relation to disciplinary proceedings filed  
4 against mediators pursuant to s. 44.106 and court rules, to  
5 the extent the communication is used for the purposes of such  
6 proceedings. In such cases, the disclosure of an otherwise  
7 privileged communication shall be used only for the internal  
8 use of the body conducting the investigation. Prior to the  
9 release of any disciplinary files to the public, all  
10 references to otherwise privileged communications shall be  
11 deleted from the record. When an otherwise confidential  
12 communication is used in a mediator disciplinary proceeding,  
13 such communication shall be inadmissible as evidence in any  
14 subsequent legal proceeding. "Subsequent legal proceeding"  
15 means any legal proceeding between the parties to the  
16 mediation which follows the court-ordered mediation.

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

21           (a) Whenever possible, qualified individuals who have  
22 volunteered their time to serve as mediators shall be  
23 appointed. If a mediation program is funded pursuant to s.  
24 44.108, volunteer mediators shall be entitled to reimbursement  
25 pursuant to s. 112.061 for all actual expenses necessitated by  
26 service as a mediator.

27           (b) Nonvolunteer mediators shall be compensated  
28 according to rules adopted by the Supreme Court. If a  
29 mediation program is funded pursuant to s. 44.108, a mediator  
30 may be compensated by the county or by the parties. When a  
31 party has been declared indigent or insolvent, that party's

1 pro rata share of a mediator's compensation shall be paid by  
2 the county at the rate set by administrative order of the  
3 chief judge of the circuit.

4 (6)(a) When an action is referred to mediation by  
5 court order, the time periods for responding to an offer of  
6 settlement pursuant to s. 45.061, or to an offer or demand for  
7 judgment pursuant to s. 768.79, respectively, shall be tolled  
8 until:

- 9 1. An impasse has been declared by the mediator; or
- 10 2. The mediator has reported to the court that no  
11 agreement was reached.

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

20 44.1051 Voluntary trial resolution.--

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

29           (1) Upon the court's initiative or motion of any  
30 party, the court shall award a reasonable attorney's fee to be  
31 paid to the prevailing party in equal amounts by the losing

1 party and the losing party's attorney on any claim or defense  
2 at any time during a ~~in any~~ civil proceeding or action in  
3 which the court finds that ~~the losing party or the losing~~  
4 party's attorney knew or should have known that a claim or  
5 defense when initially presented to the court or at any time  
6 before trial:

7 (a) Was not supported by the material facts necessary  
8 to establish the claim or defense; or

9 (b) Would not be supported by the application of  
10 then-existing law to those material facts.~~there was a~~  
11 ~~complete absence of a justiciable issue of either law or fact~~  
12 ~~raised by the complaint or defense of the losing party;~~  
13 ~~provided,~~

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

23 (2) Subsection (1) does not apply if the court  
24 determines that the claim or defense was initially presented  
25 to the court as a good-faith attempt with a reasonable  
26 probability of changing then-existing law as it applied to the  
27 material facts.

28 (3) At any time in any civil proceeding or action in  
29 which the moving party proves by a preponderance of the  
30 evidence that any action taken by the opposing party,  
31 including, but not limited to, the filing of any pleading or

1 part thereof, the assertion of or response to any discovery  
2 demand, the assertion of any claim or defense, or the response  
3 to any request by any other party, was taken primarily for the  
4 purpose of unreasonable delay, the court shall award damages  
5 to the moving party for the time necessitated by the conduct  
6 in question.

7 (4) The court also may impose such additional  
8 sanctions or other remedies as are just and warranted under  
9 the circumstances of the particular case, including, but not  
10 limited to, contempt of court, award of taxable costs,  
11 striking of a claim or defense, or dismissal of the pleading.

12 (5)(2) If a contract contains a provision allowing  
13 attorney's fees to a party when he or she is required to take  
14 any action to enforce the contract, the court may also allow  
15 reasonable attorney's fees to the other party when that party  
16 prevails in any action, whether as plaintiff or defendant,  
17 with respect to the contract. This subsection applies to any  
18 contract entered into on or after October 1, 1988.~~This act~~  
19 ~~shall take effect October 1, 1988, and shall apply to~~  
20 ~~contracts entered into on said date or thereafter.~~

21 Section 5. Subsections (3), (5), and (7) of section  
22 768.79, Florida Statutes, are amended to read:

23 768.79 Offer of judgment and demand for judgment.--

24 (3) The offer shall be served upon the party to whom  
25 it is made, but it shall not be filed unless it is accepted or  
26 unless filing is necessary to enforce the provisions of this  
27 section. In any case involving multiple party plaintiffs or  
28 multiple party defendants, an offer shall specify its  
29 applicability to each party and may specify any conditions  
30 thereof. Each individual party may thereafter accept or reject  
31 the offer as the offer applies to such party.

1           (5) An offer may be withdrawn in writing which is  
2 served before the date a written acceptance is filed. Once  
3 withdrawn, an offer is void. A subsequent offer to a party  
4 shall have the effect of voiding any previous offer to that  
5 party.

6           (7)(a) Prior to awarding costs and fees pursuant to  
7 this section the court shall determine whether the offer was  
8 reasonable under the circumstances known at the time the offer  
9 was made. If a party is entitled to costs and fees pursuant to  
10 the provisions of this section, the court may, in its  
11 discretion, determine that an offer was not made in good  
12 faith. In such case, the court may disallow an award of costs  
13 and attorney's fees.

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

18           1. The then's apparent merit or lack's of merit in the  
19 claim.

20           2. The number and nature of offers made by the  
21 parties.

22           3. The closeness of questions of fact and law at  
23 issue.

24           4. Whether the person making the offer had  
25 unreasonable refused to furnish information necessary to  
26 evaluate the reasonableness of such offer.

27           5. Whether the suit was in the nature of a test case  
28 presenting questions of far-reaching's importance affecting  
29 nonparties.

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1           6. The amount of the additional delay cost and expense  
2 that the person making the offer reasonable would be expected  
3 to incur if the litigation should be prolonged.

4           Section 6. Section 57.071, Florida Statutes, is  
5 amended to read:

6           57.071 Costs; what taxable.--

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

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

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

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

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

19           (a) The party retaining the expert witness files a  
20 written notice with the court and with each opposing party  
21 within 30 days after the entry of an order setting the trial  
22 date, which notice shall specify the expertise and experience  
23 of the expert, the rate of compensation of the expert witness,  
24 the subject matters or issues on which the expert is expected  
25 to render an opinion, and an estimate of the overall fees of  
26 the expert witness, including the fee for trial testimony. If  
27 the rate of compensation is hourly, the estimated overall fee  
28 may be stated in terms of estimated hours; and

29           (b) The party retaining the expert witness furnishes  
30 each opposing party with a written report signed by the expert  
31 witness which summarizes the expert witness's opinions and the

1 factual basis of the opinions, including documentary evidence  
2 and the authorities relied upon in reaching the opinions. Such  
3 report shall be filed at least 10 days prior to discovery  
4 cut-off, 45 days prior to the trial, or as otherwise  
5 determined by the court.

6 Section 7. Expedited trials.--Upon the joint  
7 stipulation of the parties to any civil case, the court may  
8 conduct an expedited trial as provided in this section. Where  
9 two or more plaintiffs or defendants have a unity of interest,  
10 such as a husband and wife, they shall be considered one party  
11 for the purpose of this section. Unless otherwise ordered by  
12 the court or agreed to by the parties with approval of the  
13 court, an expedited trial shall be conducted as follows:

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

16 (2) All interrogatories and requests for production  
17 must be served within 10 days and all responses must be served  
18 within 20 days after receipt.

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

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

22 (5) The case must be tried within 30 days after the  
23 60-day discovery cut-off.

24 (6) The trial must be limited to 1 day.

25 (7) The jury selection must be limited to 1 hour.

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

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

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

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

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

12           (13) The Florida Evidence Code and the Florida Rules  
13 of Civil Procedure will apply.

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

16           Section 8. Section 768.77, Florida Statutes, is  
17 amended to read:

18           768.77 Itemized verdict.--

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

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

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

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

30           ~~(2) Each category of damages, other than punitive~~  
31 ~~damages, shall be further itemized into amounts intended to~~

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

10 Section 9. Paragraph (a) of subsection (1) of section  
11 768.78, Florida Statutes, is amended to read:

12 768.78 Alternative methods of payment of damage  
13 awards.--

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

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

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

31

1           Section 10. Section 47.025, Florida Statutes, is  
2 created to read:

3           47.025 Actions against contractors.--Any venue  
4 provision in a contract for improvement to real property which  
5 requires a legal action against a resident contractor,  
6 subcontractor, or sub-subcontractor, as defined in part I of  
7 chapter 713, to be brought outside this state is void as a  
8 matter of public policy if enforcement would be unreasonable  
9 and unjust. To the extent that the venue provision in the  
10 contract is void under this section, any legal action arising  
11 out of that contract shall be brought only in this state in  
12 the county where the defendant resides, where the cause of  
13 action accrued, or where the property in litigation is  
14 located, unless the parties agree to the contrary.

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

29           Section 12. 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, cross, or redirect examination, provided,  
14 however, the court finds that the testimony is not  
15 inadmissible pursuant to s. 90.402 or s. 90.403 at a civil  
16 trial, when used in a retrial of said trial involving  
17 identical parties and the same facts.

18           Section 13. 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) An action ~~Actions~~ for ~~products liability and~~  
26 fraud under s. 95.11(3) must be begun within the period  
27 prescribed in this chapter, with the period running from the  
28 time the facts giving rise to the cause of action were  
29 discovered or should have been discovered with the exercise of  
30 due diligence, instead of running from any date prescribed  
31 elsewhere in s. 95.11(3), but in any event an action for fraud

1 under s. 95.11(3) must be begun within 12 years after the date  
2 of the commission of the alleged fraud, regardless of the date  
3 the 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 no event may an action for products liability  
11 under s. 95.11(3) be commenced unless the complaint is served  
12 and filed within 12 years after the date of delivery of the  
13 product to its first purchaser or lessee who was not engaged  
14 in the business of selling or leasing the product or of using  
15 the product as a component in the manufacture of another  
16 product, regardless of the date that the defect in the product  
17 was or should have been discovered. However, the 12-year  
18 limitation on filing an action for products liability does not  
19 apply if the manufacturer knew of a defect in the product and  
20 concealed or attempted to conceal this defect. In addition,  
21 the 12-year limitation does not apply if the claimant was  
22 exposed to or used the product within the 12-year period, but  
23 an injury caused by such exposure or use did not manifest  
24 itself until after the 12-year period.

25 Section 14. Any action for products liability which  
26 would not have been barred under section 95.031(2), Florida  
27 Statutes, prior to the amendments to that section made by this  
28 act may be commenced before July 1, 2003, and, if it is not  
29 commenced by that date and is barred by the amendments to  
30 section 95.031(2), Florida Statutes, made by this act, it  
31 shall be barred.

1           Section 15. Section 768.1256, Florida Statutes, is  
2 created to read:

3           768.1256 Government rules defense.--In a product  
4 liability action brought against a manufacturer or seller for  
5 harm allegedly caused by a product, there is a rebuttable  
6 presumption that the product is not defective or unreasonably  
7 dangerous and the manufacturer or seller is not liable if, at  
8 the time the specific unit of the product was sold or  
9 delivered to the initial purchaser or user, the aspect of the  
10 product that allegedly caused the harm was in compliance with  
11 product design, construction, or safety standards relevant to  
12 the event causing the death or injury promulgated by a federal  
13 or state statute or rule, such standards are designed to  
14 prevent the type of harm that allegedly occurred, and  
15 compliance with such standards is required as a condition for  
16 selling or otherwise distributing the product.

17           Section 16. Section 768.096, Florida Statutes, is  
18 created to read:

19           768.096 Employer presumption against negligent  
20 hiring.--

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



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

3           (b) Making a reasonable effort to contact references  
4 and former employers of the prospective employee concerning  
5 the suitability of the prospective employee for employment;

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

14           (d) Obtaining, with written authorization from the  
15 prospective employee, a check of the driver's license record  
16 of the prospective employee if such a check is relevant to the  
17 work the employee will be performing and if the record can  
18 reasonably be obtained; and

19           (e) Interviewing the prospective employee.

20           (2) To satisfy the criminal-background-investigation  
21 requirement of this section, an employer must request and  
22 obtain from the Department of Law Enforcement a check of the  
23 information as reported and reflected in the Florida Crime  
24 Information Center system as of the date of the request.

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

29           Section 17. Section 768.095, Florida Statutes, is  
30 amended to read:

31

1           768.095 Employer immunity from liability; disclosure  
2 of information regarding former or current employees.--An  
3 employer who discloses information about a former or current  
4 employee ~~employee's job performance~~ to a prospective employer  
5 of the former or current employee upon request of the  
6 prospective employer or of the former or current employee is  
7 ~~presumed to be acting in good faith and, unless lack of good~~  
8 ~~faith is shown by clear and convincing evidence, is~~ immune  
9 from civil liability for such disclosure or its consequences  
10 ~~unless it is shown by clear and convincing evidence.~~ For  
11 ~~purposes of this section, the presumption of good faith is~~  
12 ~~rebutted upon a showing that the information disclosed by the~~  
13 former or current employer was knowingly false ~~or deliberately~~  
14 ~~misleading, was rendered with malicious purpose, or violated~~  
15 any civil right of the former or current employee protected  
16 under chapter 760.

17           Section 18. Section 768.0705, Florida Statutes, is  
18 created to read:

19           768.0705 Limitation on premises liability.--

20           (1) A person or organization owning or controlling an  
21 interest in a business premises is not liable for civil  
22 damages sustained by invitees, guests, or other members of the  
23 public which are caused by criminal acts that occur on the  
24 premises and which are committed by third parties who are not  
25 employees or agents of such person or organization, if the  
26 person or organization owning or controlling the interest in a  
27 business premises maintains a reasonably safe premises in  
28 light of the foreseeability of the occurrence of the  
29 particular criminal act.

30           (2) If at least six provisions contained in the  
31 following nine paragraphs of this subsection are substantially

1 met, there shall be a presumption that a person or  
2 organization owning or controlling an interest in a business  
3 premises, other than a convenience store, has fulfilled any  
4 duty to provide adequate security for invitees, guests, and  
5 other members of the public against criminal acts that occur  
6 in common areas, in parking areas, or on portions of the  
7 premises not occupied by buildings or structures and that are  
8 committed by third parties who are not employees or agents of  
9 the person or organization owning or controlling the interest  
10 in a business premises.

11 (a) Signs shall be prominently posted in the parking  
12 area and other public-access points on the premises indicating  
13 the hours of normal business operations and the general  
14 security measures provided.

15 (b) The parking area, public walkways, and public  
16 building entrances and exits shall be illuminated at an  
17 intensity of at least 2 foot-candles per square foot at 18  
18 inches above the surface of the ground, pavement, or walkway  
19 or, if zoning requirements do not permit such levels of  
20 illumination, to the highest intensity permitted.

21 (c) Crime prevention training, with a curriculum  
22 approved by the local law enforcement agency or the Department  
23 of Legal Affairs, shall be provided to all nonmanagement  
24 on-site employees. To meet the requirements of this paragraph,  
25 persons employed at the business premises before October 1,  
26 1998, must receive training by October 1, 1999, and persons  
27 employed at the business premises on or after October 1, 1998,  
28 must receive training within 120 days after hiring. No person  
29 shall be liable for ordinary negligence due to implementing  
30 the approved curriculum so long as the training was actually  
31 provided. Under no circumstances shall the state or the local

1 law enforcement agency be held liable for the contents of the  
2 approved curriculum.

3 (d) Security cameras shall be installed and  
4 maintained, and shall be monitored or recorded, covering  
5 public entrances and exits to buildings and at least half the  
6 parking lot. Cameras shall operate during business hours and  
7 for at least 30 minutes after closing.

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

13 (f) A licensed security guard or law enforcement  
14 officer is on duty at the time of the criminal occurrence and  
15 is either monitoring surveillance cameras or patrolling the  
16 premises with such frequency that the parking area and common  
17 areas are observed by the guard at not more than 15-minute  
18 intervals.

19 (g) Perimeter fencing shall be installed and  
20 maintained which surrounds parking areas and structures and  
21 directs pedestrian entry onto the premises.

22 (h) Landscaping shall be maintained which does not  
23 substantially obstruct the view of security personnel or  
24 cameras, and landscaping adjacent to areas frequented by the  
25 public shall be maintained in a manner that provides no hiding  
26 place sufficient to conceal an adult person.

27 (i) A public address system shall be installed and  
28 maintained which is capable of reaching portions of the  
29 premises regularly frequented by the public.

30 (3) The owner or operator of a convenience business  
31 that substantially implements the applicable security measures

1 listed in ss. 812.173 and 812.174 shall gain a presumption  
2 against liability in connection with criminal acts that occur  
3 on the premises and that are committed by third parties who  
4 are not employees or agents of the owner or operator of the  
5 convenience business.

6 (4) Failure to implement a sufficient number of the  
7 measures listed in subsection (2) or ss. 812.173 and 812.174  
8 shall not create a presumption of liability and no inference  
9 may be drawn from such failure or from the substance of  
10 measures listed within this section.

11 Section 19. Section 768.075, Florida Statutes, is  
12 amended to read:

13 768.075 Immunity from liability for injury to  
14 trespassers on real property; definitions; duty to  
15 trespassers.--

16 (1) 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 for death of or injury or damage to a trespasser upon the  
20 property ~~resulting from or arising by reason of the~~  
21 ~~trespasser's commission of the offense of trespass as~~  
22 ~~described in s. 810.08 or s. 810.09~~, when such trespasser was  
23 under the influence of alcoholic beverages with a  
24 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such  
25 trespasser was under the influence of any chemical substance  
26 set forth in s. 877.111, when such trespasser was illegally  
27 under the influence of any substance controlled under chapter  
28 893, or if the trespasser is affected by any of the aforesaid  
29 substances to the extent that her or his normal faculties are  
30 impaired. For the purposes of this section, voluntary  
31 intoxication or impediment of faculties by use of alcohol or

1 any of the aforementioned substances shall not excuse a party  
2 bringing an action or on whose behalf an action is brought  
3 from proving the elements of trespass. However, the person or  
4 organization owning or controlling the interest in real  
5 property shall not be immune from liability if gross  
6 negligence or intentional ~~willful and wanton~~ misconduct on the  
7 part of such person or organization or agent thereof is a  
8 proximate cause of the death of or injury or damage to the  
9 trespasser.

10 (2) A person or organization owning or controlling an  
11 interest in real property, or an agent of such person or  
12 organization, shall not be held liable for any civil damages  
13 for death of or injury or damage to any discovered or  
14 undiscovered trespasser, except as provided in paragraphs  
15 (3)(a), (b), and (c), and regardless of whether the trespasser  
16 was intoxicated or otherwise impaired.

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

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

22 2. "Discovered trespasser" means a person who enters  
23 real property without invitation, either express or implied,  
24 and whose actual physical presence was detected, within 24  
25 hours preceding the accident, by the person or organization  
26 owning or controlling an interest in real property or to whose  
27 actual physical presence the person or organization owning or  
28 controlling an interest in real property was alerted by a  
29 reliable source within 24 hours preceding the accident. The  
30 status of a person who enters real property shall not be  
31 elevated to that of an invitee, unless the person or

1 organization owning or controlling an interest in real  
2 property has issued an express invitation to enter the  
3 property or has manifested a clear intent to hold the property  
4 open to use by persons pursuing purposes such as those pursued  
5 by the person whose status is at issue.

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

11 (b) To avoid liability to undiscovered trespassers, a  
12 person or organization owning or controlling an interest in  
13 real property must refrain from intentional misconduct, but  
14 has no duty to warn of dangerous conditions. To avoid  
15 liability to discovered trespassers, a person or organization  
16 owning or controlling an interest in real property must  
17 refrain from gross negligence or intentional misconduct, and  
18 must warn the trespasser of dangerous conditions that are  
19 known to the person or organization owning or controlling an  
20 interest in real property but that are not readily observable  
21 by others.

22 (c) This subsection shall not be interpreted or  
23 construed to alter the common law as it pertains to the  
24 "attractive nuisance doctrine."

25 (4) A person or organization owning or controlling an  
26 interest in real property, or an agent of such person or  
27 organization, shall not be held liable for negligence that  
28 results in the death of, injury to, or damage to a person who  
29 is attempting to commit a felony or who is engaged in the  
30 commission of a felony on the property.

31

1           Section 20. Section 768.36, Florida Statutes, is  
2 created to read:

3           768.36 Alcohol or drug defense.--

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

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

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

17           (2) In any civil action, a plaintiff may not recover  
18 any damages for loss or injury to his or her person or  
19 property if the trier of fact finds that, at the time the  
20 plaintiff was injured, the plaintiff was under the influence  
21 of any alcoholic beverage or drug to the extent that the  
22 plaintiff's normal faculties were impaired or the plaintiff  
23 had a blood or breath alcohol level of 0.08 percent or higher,  
24 and that as a result of the influence of such alcoholic  
25 beverage or drug the plaintiff was more than 50 percent at  
26 fault for his or her own harm.

27           Section 21. Section 768.725, Florida Statutes, is  
28 created to read:

29           768.725 Punitive damages; burden of proof.--In all  
30 civil actions the plaintiff must establish at trial by clear  
31 and convincing evidence its entitlement to an award of



1 punitive damages. The "greater weight of the evidence" burden  
2 of proof shall apply to the determination regarding the amount  
3 of damages.

4 Section 22. Section 768.72, Florida Statutes, is  
5 amended to read:

6 768.72 Pleading in civil actions; claim for punitive  
7 damages.--

8 (1) In any civil action, no claim for punitive damages  
9 shall be permitted unless there is a reasonable showing by  
10 evidence in the record or proffered by the claimant which  
11 would provide a reasonable basis for recovery of such damages.  
12 The claimant may move to amend her or his complaint to assert  
13 a claim for punitive damages as allowed by the rules of civil  
14 procedure. The rules of civil procedure shall be liberally  
15 construed so as to allow the claimant discovery of evidence  
16 which appears reasonably calculated to lead to admissible  
17 evidence on the issue of punitive damages. No discovery of  
18 financial worth shall proceed until after the pleading  
19 concerning punitive damages is permitted.

20 (2) A defendant may be held liable for punitive  
21 damages only if the trier of fact, based on clear and  
22 convincing evidence, finds that the defendant was personally  
23 guilty of intentional misconduct or gross negligence. As used  
24 in this section, the term:

25 (a) "Intentional misconduct" means that the defendant  
26 had actual knowledge of the wrongfulness of the conduct and  
27 the high probability that injury or damage to the claimant  
28 would result and, despite that knowledge, intentionally  
29 pursued that course of conduct, resulting in injury or damage.

30 (b) "Gross negligence" means that the defendant's  
31 conduct was so reckless or wanting in care that it constituted

1 a conscious disregard or indifference to the life, safety, or  
2 rights of persons exposed to such conduct.

3 (3) In the case of an employer, principal,  
4 corporation, or other legal entity, punitive damages may be  
5 imposed for the conduct of an employee or agent, only if the  
6 conduct of the employee or agent meets the criteria specified  
7 in subsection (2) and:

8 (a) The employer, principal, corporation, or other  
9 legal entity actively and knowingly participated in such  
10 conduct;

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

14 (c) The employer, principal, corporation, or other  
15 legal entity engaged in conduct that constituted gross  
16 negligence and that contributed to the loss, damages, or  
17 injury suffered by the claimant.

18 (4) The provisions of this section are remedial in  
19 nature and shall be applied to all civil actions pending on  
20 October 1, 1998, in which the trial or retrial of the action  
21 has not commenced.

22 Section 23. Section 768.73, Florida Statutes, is  
23 amended to read:

24 768.73 Punitive damages; limitation.--

25 (1)(a) In any civil action in which the judgment for  
26 compensatory damages is for \$50,000 or less, judgment for  
27 punitive damages awarded to a claimant may not exceed  
28 \$250,000, except as provided in paragraph (b). In any civil  
29 action in which the judgment for compensatory damages exceeds  
30 \$50,000, the judgment for punitive damages awarded to a  
31 claimant may not exceed three times the amount of compensatory

1 damages or \$250,000, whichever is higher, except as provided  
2 in paragraph (b)~~based on negligence, strict liability,~~  
3 ~~products liability, misconduct in commercial transactions,~~  
4 ~~professional liability, or breach of warranty, and involving~~  
5 ~~willful, wanton, or gross misconduct, the judgment for the~~  
6 ~~total amount of punitive damages awarded to a claimant may not~~  
7 ~~exceed three times the amount of compensatory damages awarded~~  
8 ~~to each person entitled thereto by the trier of fact, except~~  
9 ~~as provided in paragraph (b). However, this subsection does~~  
10 ~~not apply to any class action.~~

11 (b) No award for punitive damages may exceed the  
12 limitations ~~if any award for punitive damages exceeds the~~  
13 ~~limitation specified in paragraph (a), the award is presumed~~  
14 ~~to be excessive and the defendant is entitled to remittitur of~~  
15 ~~the amount in excess of the limitation unless the claimant~~  
16 ~~demonstrates to the court by clear and convincing evidence~~  
17 ~~that the defendant engaged in intentional misconduct and that~~  
18 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 civil  
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. For purposes of a

1 civil action, the term "the same act or single course of  
2 conduct" includes acts resulting in the same manufacturing  
3 defects, acts resulting in the same defects in design, or  
4 failure to warn of the same hazards, with respect to similar  
5 units of a product.

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

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

24 (4)(2) The jury may neither be instructed nor informed  
25 as to the provisions of this section.

26 (5) The provisions of this section are remedial in  
27 nature and shall be applied to all civil actions pending on  
28 October 1, 1998, in which the trial or retrial of the action  
29 has not commenced.

30 Section 24. Section 768.735, Florida Statutes, is  
31 created to read:

1           768.735 Punitive damages; exceptions; limitation.--

2           (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not  
3 apply to any civil action based upon child abuse, abuse of the  
4 elderly, or abuse of the developmentally disabled, or arising  
5 under chapter 400. Such actions shall be governed by  
6 applicable statutes and controlling judicial precedent.

7           (2)(a) In any civil action based upon child abuse,  
8 abuse of the elderly, or abuse of the developmentally  
9 disabled, or arising under chapter 400, and involving the  
10 award of punitive damages, the judgment for the total amount  
11 of punitive damages awarded to a claimant may not exceed three  
12 times the amount of compensatory damages awarded to each  
13 person entitled thereto by the trier of fact, except as  
14 provided in paragraph (b). However, this subsection does not  
15 apply to any class action.

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

23           (c) This subsection is not intended to prohibit an  
24 appropriate court from exercising its jurisdiction under s.  
25 768.74 in determining the reasonableness of an award of  
26 punitive damages that is less than three times the amount of  
27 compensatory damages.

28           (d) The jury may not be instructed or informed as to  
29 the provisions of this section.

30           Section 25. Section 768.736, Florida Statutes, is  
31 created to read:

1           768.736 Punitive damages; exceptions for  
2 intoxication.--Sections 768.725 and 768.73 shall not apply to  
3 any defendant who, at the time of the act or omission for  
4 which punitive damages are sought, was under the influence of  
5 any alcoholic beverage or drug to the extent that the  
6 defendant's normal faculties were impaired, or who had a blood  
7 or breath alcohol level of 0.08 percent or higher.

8           Section 26. Subsection (3) of section 768.81, Florida  
9 Statutes, is amended, and subsection (5) of that section is  
10 repealed, to read:

11           768.81 Comparative fault.--

12           (3) APPORTIONMENT OF DAMAGES.--In cases to which this  
13 section applies, the court shall enter judgment against each  
14 party liable on the basis of such party's percentage of fault  
15 and not on the basis of the doctrine of joint and several  
16 liability; provided that with respect to any party whose  
17 percentage of fault equals or exceeds that of a particular  
18 claimant and whose fault exceeds 20 percent, the court shall  
19 enter judgment with respect to economic damages against that  
20 party on the basis of the doctrine of joint and several  
21 liability. However, the doctrine of joint and several  
22 liability shall not apply to that portion of economic damages  
23 in excess of \$300,000. A party against whom the court enters  
24 judgment with respect to economic damages on the basis of the  
25 doctrine of joint and several liability shall also be liable,  
26 on the basis of such party's percentage of fault, for the  
27 portion of the economic damages in excess of \$300,000. Nothing  
28 in this subsection shall be construed to entitle a claimant to  
29 recover more than the total amount awarded to that claimant  
30 for economic damages.

1           (a) In order to allocate any or all fault to a  
2 nonparty, a defendant must affirmatively plead the fault of a  
3 nonparty and, absent a showing of good cause, identify the  
4 nonparty, if known, or describe the nonparty as specifically  
5 as practicable, either by motion or in the initial responsive  
6 pleading when defenses are first presented, subject to  
7 amendment any time before trial in accordance with the Florida  
8 Rules of Civil Procedure.

9           (b) In order to allocate any or all fault to a  
10 nonparty and include the named or unnamed nonparty on the  
11 verdict form for purposes of apportioning damages, a defendant  
12 must prove at trial, by a preponderance of the evidence, any  
13 or all fault of the nonparty in causing the plaintiff's  
14 injuries.

15           ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~  
16 ~~LIABILITY.--Notwithstanding the provisions of this section,~~  
17 ~~the doctrine of joint and several liability applies to all~~  
18 ~~actions in which the total amount of damages does not exceed~~  
19 ~~\$25,000.~~

20           Section 27. Paragraph (b) of subsection (9) of section  
21 324.021, Florida Statutes, is amended, and paragraph (c) is  
22 added to that subsection, to read:

23           324.021 Definitions; minimum insurance required.--The  
24 following words and phrases when used in this chapter shall,  
25 for the purpose of this chapter, have the meanings  
26 respectively ascribed to them in this section, except in those  
27 instances where the context clearly indicates a different  
28 meaning:

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

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

1           1. The lessor, under an agreement to lease a motor  
2 vehicle for 1 year or longer which requires the lessee to  
3 obtain insurance acceptable to the lessor which contains  
4 limits not less than \$100,000/\$300,000 bodily injury liability  
5 and \$50,000 property damage liability or not less than  
6 \$500,000 combined property damage liability and bodily injury  
7 liability, shall not be deemed the owner of said motor vehicle  
8 for the purpose of determining financial responsibility for  
9 the operation of said motor vehicle or for the acts of the  
10 operator in connection therewith; further, this subparagraph  
11 ~~paragraph~~ shall be applicable so long as the insurance meeting  
12 these requirements is in effect. The insurance meeting such  
13 requirements may be obtained by the lessor or lessee,  
14 provided, if such insurance is obtained by the lessor, the  
15 combined coverage for bodily injury liability and property  
16 damage liability shall contain limits of not less than \$1  
17 million and may be provided by a lessor's blanket policy.

18           2. The lessor, under an agreement to rent or lease a  
19 motor vehicle for a period of less than 1 year, shall be  
20 deemed the owner of the motor vehicle for the purpose of  
21 determining liability for the operation of the vehicle or the  
22 acts of the operator in connection therewith only up to  
23 \$100,000 per person and up to \$300,000 per incident for bodily  
24 injury and up to \$50,000 for property damage. If the lessee or  
25 the operator of the motor vehicle is uninsured or has any  
26 insurance with limits less than \$500,000 combined property  
27 damage and bodily injury liability, the lessor shall be liable  
28 for up to an additional \$500,000 in economic damages only  
29 arising out of the use of the motor vehicle. The additional  
30 specified liability of the lessor for economic damages shall  
31 be reduced by amounts actually recovered from the lessee, from



1 the operator, and from any insurance or self insurance  
2 covering the lessee or operator. Nothing in this subparagraph  
3 shall be construed to affect the liability of the lessor for  
4 its own negligence.

5 3. The owner who is a natural person and loans a motor  
6 vehicle to any permissive user other than a relative residing  
7 in the same household as defined in s. 627.732(4) shall be  
8 liable for the operation of the vehicle or the acts of the  
9 operator in connection therewith only up to \$100,000 per  
10 person and up to \$300,000 per incident for bodily injury and  
11 up to \$50,000 for property damage. If the permissive user of  
12 the motor vehicle is uninsured or has any insurance with  
13 limits less than \$500,000 combined property damage and bodily  
14 injury liability, the owner shall be liable for up to an  
15 additional \$500,000 in economic damages only arising out of  
16 the use of the motor vehicle. The additional specified  
17 liability of the owner for economic damages shall be reduced  
18 by amounts actually recovered from the permissive user and  
19 from any insurance or self-insurance covering the permissive  
20 user. Nothing in this subparagraph shall be construed to  
21 affect the liability of the owner for his or her own  
22 negligence.

23 (c) Application.--The limits on liability in  
24 subparagraphs (b)2. and (b)3. do not apply to an owner of  
25 motor vehicles that are used for commercial activity in the  
26 owner's ordinary course of business, other than a rental  
27 company that rents or leases motor vehicles. For purposes of  
28 this paragraph, the term "rental company" includes only an  
29 entity that is engaged in the business of renting or leasing  
30 motor vehicles to the general public and that rents or leases  
31 a majority of its motor vehicles to persons with no direct or

1 indirect affiliation with the rental company. The term also  
2 includes a motor vehicle dealer that provides temporary  
3 replacement vehicles to its customers for up to 10 days.

4 Section 28. Subsections (6), (7), and (8) are added to  
5 section 400.023, Florida Statutes, to read:

6 400.023 Civil enforcement.--

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

9 (a) Within 120 days after the filing of a responsive  
10 pleading or defensive motion to a complaint brought under this  
11 section and before trial, the parties or their designated  
12 representatives shall meet in mediation to discuss the issues  
13 of liability and damages in accordance with this paragraph for  
14 the purpose of an early resolution of the matter.

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

17 a. Agree on a mediator. If the parties cannot agree on  
18 a mediator, the defendant shall immediately notify the court,  
19 which shall appoint a mediator within 10 days after such  
20 notice.

21 b. Set a date for mediation.

22 c. Prepare an order for the court that identifies the  
23 mediator, the scheduled date of the mediation, and other terms  
24 of the mediation. Absent any disagreement between the parties,  
25 the court may issue the order for the mediation submitted by  
26 the parties without a hearing.

27 2. The mediation must be concluded within 120 days  
28 after the filing of a responsive pleading or defensive motion.

29 The date may be extended only by agreement of all parties  
30 subject to mediation under this subsection.

31

1           3. The mediation shall be conducted in the following  
2 manner:

3           a. Each party shall ensure that all persons necessary  
4 for complete settlement authority are present at the  
5 mediation.

6           b. Each party shall mediate in good faith.

7           4. All aspects of the mediation which are not  
8 specifically established by this subsection must be conducted  
9 according to the rules of practice and procedure adopted by  
10 the Supreme Court of this state.

11           (b) If the parties do not settle the case pursuant to  
12 mediation, the last offer of the defendant made at mediation  
13 shall be recorded by the mediator in a written report that  
14 states the amount of the offer, the date the offer was made in  
15 writing, and the date the offer was rejected. If the matter  
16 subsequently proceeds to trial under this section and the  
17 plaintiff prevails but is awarded an amount in damages,  
18 exclusive of attorney's fees, which is equal to or less than  
19 the last offer made by the defendant at mediation, the  
20 plaintiff is not entitled to recover any attorney's fees.

21           (c) This subsection applies only to claims for  
22 liability and damages and does not apply to actions for  
23 injunctive relief.

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

26           (7) Discovery of financial information for the purpose  
27 of determining the value of punitive damages may not be had  
28 unless the plaintiff shows the court by proffer or evidence in  
29 the record that a reasonable basis exists to support a claim  
30 for punitive damages.

31

1           (8) In addition to any other standards for punitive  
2 damages, any award of punitive damages must be reasonable in  
3 light of the actual harm suffered by the resident and the  
4 egregiousness of the conduct that caused the actual harm to  
5 the resident.

6           Section 29. The Legislature declares as a matter of  
7 public policy that the state has a substantial interest in  
8 protecting the privacy, well-being, and tranquility of the  
9 public against intrusive elements of advertising by attorneys.  
10 The Legislature further declares as a matter of public policy  
11 that the state's substantial interest includes ensuring that  
12 advertising by attorneys presents the public with complete and  
13 accurate information necessary to make informed decisions  
14 about employing the legal services of an attorney and also  
15 ensuring that advertising does not negatively reflect upon the  
16 legal profession, the legal system, or the administration of  
17 justice. The Legislature finds that research conducted by The  
18 Florida Bar, and recognized by the United States Supreme Court  
19 in the case of The Florida Bar v. Went For It, Inc., 515 U.S.  
20 618 (1995), shows that people of the State of Florida view  
21 elements of attorney advertising and solicitation as being  
22 intrusive on privacy and contributing to negative images of  
23 the legal profession. The Legislature also finds that The  
24 Florida Bar's research shows that electronic advertising by  
25 attorneys does not provide the public with useful and factual  
26 information with which to make informed decisions about hiring  
27 an attorney. The Legislature further finds that television  
28 advertising diminishes the public's respect for the fairness  
29 and integrity of the legal system. In light of these findings,  
30 it is the request of the Legislature that the Florida Supreme  
31 Court, through The Florida Bar, regulate attorney advertising

1 in a limited but necessary manner that will directly and  
2 materially advance the state's public policy interests as  
3 declared by the Legislature. The Legislature further requests  
4 The Florida Bar to form a task force to address the adoption  
5 of rules prohibiting advertising by members of its voluntary  
6 sections and to consider creating additional voluntary  
7 components the members of which would be prohibited from  
8 advertising.

9           Section 30. Because the Legislature finds that  
10 comprehensive litigation reform is of the utmost importance,  
11 the Legislature also requests that the Florida Supreme Court  
12 consider adopting rules to effectuate the legislative  
13 expression of public policy as set forth in this act.

14           Section 31. (1) The Department of Insurance shall,  
15 after issuing a request for proposals, contract with a  
16 national independent actuarial firm to conduct an actuarial  
17 analysis, consistent with generally accepted actuarial  
18 practices, of the expected reduction in liability judgments,  
19 settlements, and related costs resulting from the provisions  
20 of this act. The analysis shall be based on credible loss cost  
21 data derived from settlement or adjudication of liability  
22 claims, other than liability claims insured under private  
23 passenger automobile insurance or personal lines residential  
24 property insurance, accruing after the effective date of this  
25 act. The analysis shall include an estimate of the percentage  
26 decrease in such judgments, settlements, and costs by type of  
27 coverage affected by this act, including the time period when  
28 such savings or reductions are expected.

29           (2) The report shall be completed and submitted to the  
30 department by March 1, 2001.

31

1           (3) After March 1, 2001, the department shall review  
2 the filed rates of insurers and underwriting profits and  
3 losses for Florida liability insurance businesses, and shall  
4 require any prospective rate modifications that the department  
5 deems to be necessary, consistent with the applicable rating  
6 law, to cause the rates of any specific insurer to comply with  
7 the applicable rating law. The department shall require each  
8 liability insurer's first rate filing after March 1, 2001,  
9 other than rate filings for private passenger automobile  
10 insurance or personal lines residential property insurance, to  
11 include specific data on the impact of this act on the  
12 insurer's liability judgments, settlements, and costs for the  
13 purpose of enabling the department and the Legislature to  
14 accurately monitor and evaluate the effects of this act.

15           (4) The report under subsection (1) shall be  
16 admissible in any proceedings relating to a liability  
17 insurance rate filing if the actuary who prepared the report  
18 is made available by the department to testify regarding the  
19 report's preparation and validity. Each party shall otherwise  
20 bear its own cost of any such proceeding.

21           (5) The provisions of this section do not limit the  
22 authority of the department to order an insurer to refund  
23 excessive profits, as provided in sections 627.066 and  
24 627.215, Florida Statutes.

25           Section 32. If any provision of this act or the  
26 application thereof to any person or circumstance is held  
27 invalid, the invalidity does not affect other provisions or  
28 applications of the act which can be given effect without the  
29 invalid provision or application, and to this end the  
30 provisions of this act are declared severable.

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1           Section 33. This act shall take effect October 1,  
2 1998.  
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