

1
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.

31

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.

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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,~~

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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.

31

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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