

By the Committee on Judiciary and Senator Campbell

308-2086-98

1                                   A bill to be entitled  
2           An act relating to litigation reform; providing  
3           for expedited trials; providing timeframes for  
4           the conduct of such trials; creating s. 40.50,  
5           F.S.; providing for instructions to juries  
6           after the jury is sworn in; providing for the  
7           discussion of evidence under certain  
8           circumstances; providing for the taking of  
9           notes under certain circumstances; providing  
10          for notebooks; providing for written questions;  
11          providing for final instructions; creating s.  
12          44.1051, F.S.; providing for voluntary trial  
13          resolution; providing for the appointment of a  
14          trial resolution judge; providing for  
15          compensation; providing for fees; providing for  
16          the tolling of applicable statutes of  
17          limitation; providing for powers of trial  
18          resolution judges; providing for hearings and  
19          evidence; providing for appeal; providing for  
20          application; amending s. 57.071, F.S.;  
21          providing criteria under which expert witness  
22          fees may be awarded as taxable costs; amending  
23          s. 57.105, F.S.; providing sanctions for  
24          raising unfounded claims or defenses; providing  
25          exceptions; providing for damages in certain  
26          circumstances; amending s. 627.428, F.S.;  
27          revising a provision relating to attorney's  
28          fees to exempt certain actions; amending s.  
29          768.77, F.S.; revising provisions with respect  
30          to itemized verdicts to delete reference to  
31          future damages; amending s. 768.78, F.S.;

1 conforming to the act; conforming a  
2 cross-reference; amending s. 768.79, F.S.;  
3 providing for the applicability of offers of  
4 judgment and demand of judgment in cases  
5 involving multiple plaintiffs; providing that  
6 subsequent offers shall void previous offers;  
7 providing that prior to awarding costs and fees  
8 the court shall determine whether the offer was  
9 reasonable under the circumstances known at the  
10 time the offer was made; authorizing the court  
11 to consider whether or not a proposal was  
12 reasonably rejected when considering  
13 entitlement to and the amount of an award of  
14 attorneys' fees; providing severability;  
15 providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Expedited trials.--Upon the motion of any  
20 party to a simplified civil proceeding or upon the joint  
21 stipulation of the parties to any civil case, the court may  
22 conduct an expedited trial as provided herein. A simplified  
23 civil proceeding is a case involving only two parties, no more  
24 than two counts to the complaint or counter claim, and where  
25 the court finds there would be no prejudice to any party in  
26 conducting an expedited trial. Where two or more plaintiffs or  
27 defendants have a unity interest, such as a husband and wife,  
28 they shall be considered one party for the purpose of this  
29 section. Unless otherwise ordered by the court or agreed to by  
30 the parties with approval of the court, an expedited trial  
31 shall be conducted as follows:

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

3           (2) All interrogatories and requests for production  
4 will be served within 10 days and all responses will be served  
5 within 20 days of receipt.

6           (3) The court shall determine the number of  
7 depositions required.

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

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

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

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

13           (8) The plaintiff will have 3 hours to present its  
14 case including opening, all testimony and evidence, and  
15 closing.

16           (9) The defendant will have 3 hours to present its  
17 case including opening, all testimony and evidence, and  
18 closing.

19           (10) The jury will be given "plain language" jury  
20 instructions at the beginning of the trial as well as a "plain  
21 language" jury verdict form. The jury instructions and verdict  
22 form will be agreed to by the parties.

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

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

29           (13) Except as approved by the court, the Florida  
30 Evidence Code and the Florida Rules of Civil Procedure will  
31 apply.

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

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

5       Section 2. Section 40.50, Florida Statutes, is created  
6 to read:

7       40.50 Jury duty and instructions in civil cases.--

8       (1) In any civil action immediately after the jury is  
9 sworn, the court shall instruct the jury concerning its  
10 duties, its conduct, the order of proceedings, the procedure  
11 for submitting written questions of witnesses, and the  
12 elementary legal principles that will govern the proceeding as  
13 provided herein.

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

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

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

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

3           (b) Jurors' notes.

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

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

7           (e) A glossary of technical terms.

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

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

16           (5) The court shall permit jurors to have access to  
17 their notes and notebooks during recesses, discussions, and  
18 deliberations.

19           (6) The court shall permit jurors to submit to the  
20 court written questions directed to witnesses or to the court.  
21 Opportunity shall be given to counsel to object to such  
22 questions out of the presence of the jury. The court may, as  
23 appropriate, limit the submission of questions to witnesses.

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

31

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

3           (4) Within 10 days of 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 affirmation and to conduct  
21 the proceedings as the rules of court shall provide. At the  
22 request of any party, the trial resolution judge shall issue  
23 subpoenas for the attendance of witnesses and for the  
24 production of books, records, documents, and other evidence  
25 and may apply to the court for orders compelling attendance  
26 and production. Subpoenas shall be served and shall be  
27 enforceable as provided 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 appeals.  
9 No further review shall be permitted unless a constitutional  
10 issue is raised. Factual findings determined in the voluntary  
11 trial shall not be subject to appeal.

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

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

25           Section 4. Section 57.071, Florida Statutes, is  
26 amended to read:

27           57.071 Costs; what taxable.--

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

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



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

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

7           (2) Expert witness fees shall not be awarded as  
8 taxable costs unless:

9           (a) The party retaining the expert witness files a  
10 written notice with the court and each opposing party within  
11 30 days of the retention of the expert witness, which notice  
12 shall provide the expertise and experience of the expert, the  
13 rate of compensation of the expert witness, the subject  
14 matters or issues on which the expert is expected to render an  
15 opinion, and an estimate of the overall fee of the expert  
16 witness, including trial testimony; and

17           (b) The party retaining the expert witness furnishes  
18 each opposing party with a written report signed by the expert  
19 witness which summarizes the expert witness's opinions, the  
20 factual basis of the opinions including documentary evidence,  
21 and the authorities relied upon in reaching the opinions, such  
22 report shall be filed at least 30 days prior to discovery  
23 cut-off, or 45 days prior to the trial, or as otherwise  
24 determined by the court.

25           Section 5. 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) The court shall award a reasonable attorney's fee  
30 to be paid to the prevailing party in equal amounts by the  
31 losing party and the losing party's attorney on any claim or

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

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

6 (b) That the application of then existing law to the  
7 facts the losing party or losing party's attorney knew or  
8 should have known would not support the claim or defense.

9 ~~there was a complete absence of a justiciable issue of either~~  
10 ~~law or fact raised by the complaint or defense of the losing~~  
11 ~~party.~~

12

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

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

27 (3) In any civil proceeding in which the moving party  
28 proves, by a preponderance of the evidence, that any action  
29 taken by the opposing party, including, but not limited to,  
30 the filing of any pleading or part thereof, the assertion of  
31 or response to any discovery demand, the assertion of any

1 claim or defense, or the response to any request by any other  
2 party, was taken primarily for the purpose of delay, the court  
3 shall award damages to the moving party for the time  
4 necessitated by the conduct in question. The absence of a  
5 justiciable basis for the action taken shall be prima facie  
6 evidence of such a purpose; but such a purpose may also be  
7 proved, in proper cases, notwithstanding an objective  
8 justiciable basis for the action taken.

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

17       Section 6. Subsection (4) is added to section 627.428,  
18 Florida Statutes, to read:

19       627.428 Attorney's fee.--

20       (4) This section shall not apply to any action in  
21 which a defendant tenders an offer of judgment pursuant to s.  
22 768.81, unless the judgment for actual damages rendered in  
23 favor of the plaintiff is in an amount greater than 25 percent  
24 above that offered by the defendant within 90 days after the  
25 date on which suit is filed. In that event the fee must be  
26 reasonable in light of the difference between the offer and  
27 the judgment.

28       Section 7. Section 768.77, Florida Statutes, is  
29 amended to read:

30       768.77 Itemized verdict.--

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

6           (1)~~(a)~~ Amounts intended to compensate the claimant for  
7 economic losses;

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

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

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

23           Section 8. Paragraph (a) of subsection (1) of section  
24 768.78, Florida Statutes, is amended to read:

25           768.78 Alternative methods of payment of damage  
26 awards.--

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

1 of the following means, unless an alternative method of  
2 payment of damages is provided in this section:

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

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

13 Section 9. Subsections (3), (5), and (7) of section  
14 768.79, Florida Statutes, are amended to read:

15 768.79 Offer of judgment and demand for judgment.--

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

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

30 (7)(a) Prior to awarding costs and fees pursuant to  
31 this section the court shall determine whether the offer was

1 reasonable under the circumstances known at the time the offer  
2 was made. If a party is entitled to costs and fees pursuant to  
3 the provisions of this section, the court may, in its  
4 discretion, determine that an offer was not made in good  
5 faith. In such case, the court may disallow an award of costs  
6 and attorney's fees.

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

11 1. The then apparent merit or lack of merit in the  
12 claim.

13 2. The number and nature of offers made by the  
14 parties.

15 3. The closeness of questions of fact and law at  
16 issue.

17 4. Whether the proposal was reasonably rejected.

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

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

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

27 Section 10. If any provision of this act or the  
28 application thereof to any person or circumstance is held  
29 invalid, the invalidity does not affect other provisions or  
30 applications of the act which can be given effect without the  
31

1 invalid provision or application, and to this end the  
2 provision of this act are declared severable.

3 Section 11. This act shall take effect October 1,  
4 1998.

5  
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7 COMMITTEE SUBSTITUTE FOR  
8 Senate Bill 942

9 The Committee Substitute for Senate Bill 942:

- 10 - Provides for expedited trials and time frames in which to  
11 conduct those trials;  
12 - Provides for instructions for juries;  
13 - Provides for discussion of evidence in certain  
14 circumstances and the taking of notes;  
15 - Provides for voluntary trial resolution;  
16 - Provides for the appointment of a trial resolution judge  
17 as well as for the method of compensating such judges;  
18 - Provides for criteria for determining when it shall be  
19 appropriate to tax costs of expert witnesses;  
20 - Provides for sanctions for raising unfounded defenses;  
21 - Revises language with respect to itemized verdicts;  
22 - Provides that offers of judgment may be voided by  
23 subsequent offers and a manner for applying the statute  
24 when there are multiple parties; and  
25 - Creates new criteria for court determination of whether a  
26 statute was reasonably rejected.  
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