

By Senator McKay

26-1470-99

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

1 reasonable under the circumstances known at the
2 time the offer was made; amending s. 57.071,
3 F.S.; providing criteria under which expert
4 witness fees may be awarded as taxable costs;
5 providing for expedited trials; amending s.
6 768.77, F.S.; deleting a requirement to itemize
7 future damages on verdict forms; amending s.
8 768.78, F.S.; conforming provisions relating to
9 alternative methods of payment of damage awards
10 to changes made by the act; correcting a
11 cross-reference; creating s. 47.025, F.S.;
12 providing that certain venue provisions in a
13 contract for improvement to real property are
14 void; specifying appropriate venue for actions
15 against resident contractors, subcontractors,
16 and sub-subcontractors; requiring the clerk of
17 court to report certain information on
18 negligence cases to the Office of the State
19 Courts Administrator; amending s. 768.81, F.S.;
20 providing for the apportionment of damages on
21 the basis of joint and several liability when a
22 party's fault exceeds a certain percentage;
23 providing for the allocation of fault to a
24 nonparty; requiring that such fault must be
25 proved by a preponderance of the evidence;
26 repealing s. 768.81(5), F.S., relating to the
27 applicability of joint and several liability to
28 actions in which the total amount of damages
29 does not exceed a specified amount; requiring
30 the Department of Insurance to contract with an
31 actuarial firm to conduct an actuarial analysis

1 of expected reductions in judgments and related
2 costs resulting from litigation reforms;
3 specifying the basis and due date for the
4 actuarial report; providing for a review of
5 rate filings by certain types of insurers after
6 a specified date; providing that such
7 provisions do not limit the refund of excessive
8 profits by certain insurers; amending s.
9 324.021, F.S.; providing a limitation on the
10 liability for bodily injury, property, and
11 economic damages for certain lessors and owners
12 of motor vehicles; providing for applicability;
13 creating s. 768.096, F.S.; providing an
14 employer with a presumption against negligent
15 hiring under specified conditions in an action
16 for civil damages resulting from an intentional
17 tort committed by an employee; amending s.
18 768.095, F.S.; revising the conditions under
19 which an employer is immune from civil
20 liability for disclosing information regarding
21 an employee to a prospective employer; creating
22 s. 768.071, F.S.; providing limitations on
23 premises liability for a person or organization
24 owning or controlling an interest in a business
25 premises; providing for a presumption against
26 liability; providing conditions for the
27 presumption; amending s. 768.075, F.S.;
28 modifying the conditions under which a person
29 or organization owning or controlling an
30 interest in real property is liable for a
31 trespasser's injury or death; providing

1 definitions; providing for the avoidance of
2 liability to discovered and undiscovered
3 trespassers under described circumstances;
4 providing immunity from certain liability
5 arising out of the attempt to commit or the
6 commission of a felony; creating s. 768.36,
7 F.S.; prohibiting a plaintiff from recovering
8 damages if plaintiff is more than a specified
9 percentage at fault due to the influence of
10 alcoholic beverages or drugs; creating s.
11 768.725, F.S.; providing evidentiary standards
12 for an award of punitive damages; amending s.
13 768.72, F.S.; revising provisions with respect
14 to claims for punitive damages in civil
15 actions; requiring clear and convincing
16 evidence of gross negligence or intentional
17 misconduct to support the recovery of such
18 damages; providing definitions; providing
19 criteria for the imposition of punitive damages
20 with respect to employers, principals,
21 corporations, or other legal entities for the
22 conduct of an employee or agent; providing for
23 the application of the section; amending s.
24 768.73, F.S.; revising provisions with respect
25 to limitations on punitive damages; providing
26 monetary limitations; providing an exception
27 with respect to intentional misconduct;
28 providing for the effect of certain previous
29 punitive damages awards; specifying the basis
30 for calculating attorney's fees on judgments
31 for punitive damages; providing for the

1 application of the section; creating s.
2 768.735, F.S.; providing that ss.
3 768.72(2)-(4), 768.725, and 768.73, F.S.,
4 relating to punitive damages, are inapplicable
5 to specified causes of action; limiting the
6 amount of punitive damages that may be awarded
7 to a claimant in certain civil actions
8 involving abuse or arising under ch. 400, F.S.;
9 creating s. 768.736, F.S.; providing that ss.
10 768.725 and 768.73, F.S., relating to punitive
11 damages, do not apply to intoxicated
12 defendants; providing requirements for a
13 contract for contingency fees in an action for
14 personal injury, property damages, or death due
15 to injury; providing notice requirements;
16 limiting the amount of contingency fees
17 following an offer of early settlement;
18 providing certain exceptions; providing for
19 severability; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 40.50, Florida Statutes, is created
24 to read:

25 40.50 Jury duty and instructions in civil cases.--
26 (1) In any civil action immediately after the jury is
27 sworn, the court shall instruct the jury concerning its
28 duties, its conduct, the order of proceedings, the procedure
29 for submitting written questions of witnesses, and the
30 elementary legal principles that will govern the proceeding as
31 provided in this section.

1 (2) The court shall instruct that the jurors may take
2 notes regarding the evidence and keep the notes for the
3 purpose of refreshing their memory for use during recesses and
4 deliberations. The court may provide materials suitable for
5 this purpose. The confidentiality of the notes should be
6 emphasized to the jurors. After the jury has rendered its
7 verdict, the notes shall be collected by the bailiff or clerk
8 who shall promptly destroy them.

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

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

14 (b) Jurors' notes.

15 (c) Witnesses' names and either photographs or
16 biographies or both.

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

19 (e) A glossary of technical terms.

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

21
22 In its discretion, the court may authorize documents and
23 exhibits in evidence to be included in notebooks for use by
24 the jurors during trial to aid them in performing their
25 duties. The preliminary jury instructions should be removed,
26 discarded, and replaced by the final jury instructions before
27 the latter are read to the jury by the court.

28 (4) The court shall permit jurors to have access to
29 their notes and, in appropriate cases, notebooks during
30 recesses and deliberations.

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1 (5) The court shall permit jurors to submit to the
2 court written questions directed to witnesses or to the court.
3 Opportunity shall be given to counsel to object to such
4 questions out of the presence of the jury. The court may, as
5 appropriate, limit the submission of questions to witnesses.

6 (6) The court shall instruct the jury that any
7 questions directed to witnesses or the court must be in
8 writing, unsigned, and given to the bailiff. If the court
9 determines that the juror's question calls for admissible
10 evidence, the question may be asked by court or counsel in the
11 court's discretion. Such question may be answered by
12 stipulation or other appropriate means, including, but not
13 limited to, additional testimony upon such terms and
14 limitations as the court prescribes. If the court determines
15 that the juror's question calls for inadmissible evidence, the
16 question shall not be read or answered. If a juror's question
17 is rejected, the jury should be told that trial rules do not
18 permit some questions to be asked and that the jurors should
19 not attach any significance to the failure of having their
20 question asked.

21 (7) The court has discretion to give final
22 instructions to the jury before closing arguments of counsel
23 instead of after, in order to enhance jurors' ability to apply
24 the applicable law to the facts. In that event, the court may
25 wish to withhold giving the necessary procedural and
26 housekeeping instructions until after closing arguments.

27 Section 2. Section 44.102, Florida Statutes, is
28 amended to read:

29 44.102 Court-ordered mediation.--
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1 (1) Court-ordered mediation shall be conducted
2 according to rules of practice and procedure adopted by the
3 Supreme Court.

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

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

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

9 2. The action is filed for the purpose of collecting a
10 debt.

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

12 4. The action is governed by the Florida Small Claims
13 Rules.

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

16 6. The parties have agreed to binding arbitration.

17 ~~(b)(a)~~ May refer to mediation all or any part of a
18 filed civil action for which mediation is not required under
19 this section.

20 ~~(c)(b)~~ In circuits in which a family mediation program
21 has been established and upon a court finding of a dispute,
22 shall refer to mediation all or part of custody, visitation,
23 or other parental responsibility issues as defined in s.
24 61.13. Upon motion or request of a party, a court shall not
25 refer any case to mediation if it finds there has been a
26 history of domestic violence that would compromise the
27 mediation process.

28 ~~(d)(c)~~ In circuits in which a dependency or in need of
29 services mediation program has been established, may refer to
30 mediation all or any portion of a matter relating to
31

1 dependency or to a child in need of services or a family in
2 need of services.

3 (3) Each party involved in a court-ordered mediation
4 proceeding has a privilege to refuse to disclose, and to
5 prevent any person present at the proceeding from disclosing,
6 communications made during such proceeding. All oral or
7 written communications in a mediation proceeding, other than
8 an executed settlement agreement, shall be exempt from the
9 requirements of chapter 119 and shall be confidential and
10 inadmissible as evidence in any subsequent legal proceeding,
11 unless all parties agree otherwise.

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

28 (5) The chief judge of each judicial circuit shall
29 maintain a list of mediators who have been certified by the
30 Supreme Court and who have registered for appointment in that
31 circuit.

1 (a) Whenever possible, qualified individuals who have
2 volunteered their time to serve as mediators shall be
3 appointed. If a mediation program is funded pursuant to s.
4 44.108, volunteer mediators shall be entitled to reimbursement
5 pursuant to s. 112.061 for all actual expenses necessitated by
6 service as a mediator.

7 (b) Nonvolunteer mediators shall be compensated
8 according to rules adopted by the Supreme Court. If a
9 mediation program is funded pursuant to s. 44.108, a mediator
10 may be compensated by the county or by the parties. When a
11 party has been declared indigent or insolvent, that party's
12 pro rata share of a mediator's compensation shall be paid by
13 the county at the rate set by administrative order of the
14 chief judge of the circuit.

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

- 20 1. An impasse has been declared by the mediator; or
- 21 2. The mediator has reported to the court that no
22 agreement was reached.

23 (b) Sections 45.061 and 768.79 notwithstanding, an
24 offer of settlement or an offer or demand for judgment may be
25 made at any time after an impasse has been declared by the
26 mediator, or the mediator has reported that no agreement was
27 reached. An offer is deemed rejected as of commencement of
28 trial.

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

31 44.1051 Voluntary trial resolution.--

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

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

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

13 (4) Within 10 days after the submission of the request
14 for binding voluntary trial resolution, the court shall
15 provide for the appointment of the trial resolution judge.
16 Once appointed, the trial resolution judge shall notify the
17 parties of the time and place for the hearing.

18 (5) Application for voluntary trial resolution shall
19 be filed and fees paid to the clerk of the court as if for
20 complaints initiating civil actions. The clerk of the court
21 shall handle and account for these matters in all respects as
22 if they were civil actions except that the clerk of the court
23 shall keep separate the records of the applications for
24 voluntary binding trial resolution from all other civil
25 actions.

26 (6) Filing of the application for binding voluntary
27 trial resolution will toll the running of the applicable
28 statutes of limitation.

29 (7) The appointed trial resolution judge shall have
30 such power to administer oaths or affirmations and to conduct
31 the proceedings as the rules of court provide. At the request

1 of any party, the trial resolution judge shall issue subpoenas
2 for the attendance of witnesses and for the production of
3 books, records, documents, and other evidence and may apply to
4 the court for orders compelling attendance and production.
5 Subpoenas shall be served and shall be enforceable as provided
6 by law.

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

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

12 (10) Any party may enforce a final decision rendered
13 in a voluntary trial by filing a petition for final judgment
14 in the circuit court in the circuit in which the voluntary
15 trial took place. Upon entry of final judgment by the circuit
16 court an appeal may be taken to the appropriate appellate
17 court. The "harmless error doctrine" shall apply in all
18 appeals. No further review shall be permitted unless a
19 constitutional issue is raised. Factual findings determined in
20 the voluntary trial shall not be subject to appeal.

21 (11) If no appeal is taken within the time provided by
22 rules of the Supreme Court, the decision shall be referred to
23 the presiding court judge in the case, or, if one has not been
24 assigned, to the chief judge of the circuit for assignment to
25 a circuit judge, who shall enter such orders and judgments as
26 are required to carry out the terms of decision, which orders
27 shall be enforceable by the contempt powers of the court and
28 for which judgment executions shall issue on request of a
29 party.

30 (12) This section does not apply to any dispute
31 involving child custody, visitation, or child support, or to

1 any dispute that involves the rights of a person who is not a
2 party to the voluntary trial resolution.

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

5 57.105 Attorney's fee; sanctions for raising unfounded
6 claims or defenses; damages for delay of litigation.--

7 (1) Upon the court's initiative or motion of any
8 party, the court shall award a reasonable attorney's fee to be
9 paid to the prevailing party in equal amounts by the losing
10 party and the losing party's attorney on any claim or defense
11 at any time during a ~~in any~~ civil proceeding or action in
12 which the court finds that the losing party or the losing
13 party's attorney knew or should have known that a claim or
14 defense when initially presented to the court or at any time
15 before trial:

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

18 (b) Would not be supported by the application of
19 then-existing law to those material facts.~~there was a~~
20 ~~complete absence of a justiciable issue of either law or fact~~
21 ~~raised by the complaint or defense of the losing party;~~
22 ~~provided,~~

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

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

6 (3) At any time in any civil proceeding or action in
7 which the moving party proves by a preponderance of the
8 evidence that any action taken by the opposing party,
9 including, but not limited to, the filing of any pleading or
10 part thereof, the assertion of or response to any discovery
11 demand, the assertion of any claim or defense, or the response
12 to any request by any other party, was taken primarily for the
13 purpose of unreasonable delay, the court shall award damages
14 to the moving party for the time necessitated by the conduct
15 in question.

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

21 (5)(2) If a contract contains a provision allowing
22 attorney's fees to a party when he or she is required to take
23 any action to enforce the contract, the court may also allow
24 reasonable attorney's fees to the other party when that party
25 prevails in any action, whether as plaintiff or defendant,
26 with respect to the contract. This subsection applies to any
27 contract entered into on or after October 1, 1988.~~This act~~
28 ~~shall take effect October 1, 1988, and shall apply to~~
29 ~~contracts entered into on said date or thereafter.~~

30 Section 5. Subsections (3), (5), and (7) of section
31 768.79, Florida Statutes, are amended to read:

1 768.79 Offer of judgment and demand for judgment.--

2 (3) The offer shall be served upon the party to whom
3 it is made, but it shall not be filed unless it is accepted or
4 unless filing is necessary to enforce the provisions of this
5 section. In any case involving multiple party plaintiffs or
6 multiple party defendants, an offer shall specify its
7 applicability to each party and may specify any conditions
8 thereof. Each individual party may thereafter accept or reject
9 the offer as the offer applies to such party.

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

15 (7)(a) Prior to awarding costs and fees pursuant to
16 this section, the court shall determine whether the offer was
17 reasonable under the circumstances known at the time the offer
18 was made.If a party is entitled to costs and fees pursuant to
19 the provisions of this section, the court may, in its
20 discretion, determine that an offer was not made in good
21 faith. In such case, the court may disallow an award of costs
22 and attorney's fees.

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

- 27 1. The then apparent merit or lack of merit in the
28 claim.
29 2. The number and nature of offers made by the
30 parties.
31

1 3. The closeness of questions of fact and law at
2 issue.

3 4. Whether the person making the offer had
4 unreasonably refused to furnish information necessary to
5 evaluate the reasonableness of such offer.

6 5. Whether the suit was in the nature of a test case
7 presenting questions of far-reaching importance affecting
8 nonparties.

9 6. The amount of the additional delay cost and expense
10 that the person making the offer reasonably would be expected
11 to incur if the litigation should be prolonged.

12 Section 6. Section 57.071, Florida Statutes, is
13 amended to read:

14 57.071 Costs; what taxable.--

15 (1) If costs are awarded to any party, the following
16 shall also be allowed:

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

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

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

25 (2) Expert witness fees shall not be awarded as
26 taxable costs unless:

27 (a) The party retaining the expert witness files a
28 written notice with the court and with each opposing party
29 within 30 days after the entry of an order setting the trial
30 date, which notice shall specify the expertise and experience
31 of the expert, the rate of compensation of the expert witness,

1 the subject matters or issues on which the expert is expected
2 to render an opinion, and an estimate of the overall fees of
3 the expert witness, including the fee for trial testimony. If
4 the rate of compensation is hourly, the estimated overall fee
5 may be stated in terms of estimated hours; and

6 (b) The party retaining the expert witness furnishes
7 each opposing party with a written report signed by the expert
8 witness which summarizes the expert witness's opinions and the
9 factual basis of the opinions, including documentary evidence
10 and the authorities relied upon in reaching the opinions. Such
11 report shall be filed at least 10 days prior to discovery
12 cut-off, 45 days prior to the trial, or as otherwise
13 determined by the court.

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

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

24 (2) All interrogatories and requests for production
25 must be served within 10 days and all responses must be served
26 within 20 days after receipt.

27 (3) The court shall determine the number of
28 depositions required.

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

30 (5) The case must be tried within 30 days after the
31 60-day discovery cut-off.

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

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

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

6 (9) The defendant will have 3 hours to present its
7 case, including its opening, all of its testimony and
8 evidence, and its closing.

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

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

16 (12) At trial the parties may use excerpts from
17 depositions, including video depositions, regardless of where
18 the deponent lives or whether the deponent is available to
19 testify.

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

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

24 Section 8. Section 768.77, Florida Statutes, is
25 amended to read:

26 768.77 Itemized verdict.--

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

1 (1)(a) Amounts intended to compensate the claimant for
2 economic losses;

3 (2)(b) Amounts intended to compensate the claimant for
4 noneconomic losses; and

5 (3)(c) Amounts awarded to the claimant for punitive
6 damages, if applicable.

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

18 Section 9. Paragraph (a) of subsection (1) of section
19 768.78, Florida Statutes, is amended to read:

20 768.78 Alternative methods of payment of damage
21 awards.--

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

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

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

8 Section 10. Section 47.025, Florida Statutes, is
9 created to read:

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

22 Section 11. Through the state's uniform case reporting
23 system, the clerk of court shall report to the Office of the
24 State Courts Administrator information from each settlement or
25 jury verdict and final judgment in negligence cases as defined
26 in section 768.81(4), Florida Statutes, as the President of
27 the Senate and the Speaker of the House of Representatives
28 deem necessary from time to time. The information shall
29 include, but need not be limited to: the name of each
30 plaintiff and defendant; the verdict; the percentage of fault
31 of each; the amount of economic damages and noneconomic

1 damages awarded to each plaintiff, identifying those damages
2 that are to be paid jointly and severally and by which
3 defendants; and the amount of any punitive damages to be paid
4 by each defendant.

5 Section 12. Subsection (3) of section 768.81, Florida
6 Statutes, is amended, and subsection (5) of that section is
7 repealed, to read:

8 768.81 Comparative fault.--

9 (3) APPORTIONMENT OF DAMAGES.--In cases to which this
10 section applies, the court shall enter judgment against each
11 party liable on the basis of such party's percentage of fault
12 and not on the basis of the doctrine of joint and several
13 liability; provided that with respect to any party whose
14 percentage of fault equals or exceeds that of a particular
15 claimant and whose fault exceeds 33 percent, the court shall
16 enter judgment with respect to economic damages against that
17 party on the basis of the doctrine of joint and several
18 liability.

19 (a) In order to allocate any or all fault to a
20 nonparty, a defendant must affirmatively plead the fault of a
21 nonparty and, absent a showing of good cause, identify the
22 nonparty, if known, or describe the nonparty as specifically
23 as practicable, either by motion or in the initial responsive
24 pleading when defenses are first presented, subject to
25 amendment any time before trial in accordance with the Florida
26 Rules of Civil Procedure.

27 (b) In order to allocate any or all fault to a
28 nonparty and include the named or unnamed nonparty on the
29 verdict form for purposes of apportioning damages, a defendant
30 must prove at trial, by a preponderance of the evidence, any
31

1 or all fault of the nonparty in causing the plaintiff's
2 injuries.

3 ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~
4 ~~LIABILITY.--Notwithstanding the provisions of this section,~~
5 ~~the doctrine of joint and several liability applies to all~~
6 ~~actions in which the total amount of damages does not exceed~~
7 ~~\$25,000.~~

8 Section 13. (1) The Department of Insurance shall,
9 after issuing a request for proposals, contract with a
10 national independent actuarial firm to conduct an actuarial
11 analysis, consistent with generally accepted actuarial
12 practices, of the expected reduction in liability judgments,
13 settlements, and related costs resulting from the provisions
14 of this act. The analysis must be based on credible loss-cost
15 data derived from the settlement or adjudication of liability
16 claims, other than liability claims insured under private
17 passenger automobile insurance or personal lines residential
18 property insurance, accruing after October 1, 1999. The
19 analysis must include an estimate of the percentage decrease
20 in such judgments, settlements, and costs by type of coverage
21 affected by this act, including the time period when such
22 savings or reductions are expected.

23 (2) The report must be completed and submitted to the
24 Department of Insurance by March 1, 2001.

25 (3) After March 1, 2001, the Department of Insurance
26 shall review the filed rates of insurers and underwriting
27 profits and losses for Florida liability insurance businesses
28 and shall require any prospective rate modifications that the
29 department deems necessary, consistent with the applicable
30 rating law, in order to cause the rates of any specific
31 insurer to comply with the applicable rating law. The

1 department shall require each liability insurer's first rate
2 filing after March 1, 2001, other than rate filings for
3 private passenger automobile insurance or personal lines
4 residential property insurance, to include specific data on
5 the impact of this act on the insurer's liability judgments,
6 settlements, and costs for the purpose of enabling the
7 department and the Legislature to accurately monitor and
8 evaluate the effects of this act.

9 (4) The report under subsection (1) is admissible in
10 any proceedings relating to a liability insurance rate filing
11 if the actuary who prepared the report is made available by
12 the department to testify regarding the report's preparation
13 and validity. Each party shall otherwise bear its own cost of
14 any such proceeding.

15 (5) This section does not limit the authority of the
16 department to order an insurer to refund excessive profits, as
17 provided in sections 627.066 and 627.215, Florida Statutes.

18 Section 14. Effective July 1, 1999, paragraph (b) of
19 subsection (9) of section 324.021, Florida Statutes, is
20 amended, and paragraph (c) is added to that subsection, to
21 read:

22 324.021 Definitions; minimum insurance required.--The
23 following words and phrases when used in this chapter shall,
24 for the purpose of this chapter, have the meanings
25 respectively ascribed to them in this section, except in those
26 instances where the context clearly indicates a different
27 meaning:

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

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

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 15. Section 768.096, Florida Statutes, is
5 created to read:

6 768.096 Employer presumption against negligent
7 hiring.--

8 (1) In a civil action for the death of, or injury or
9 damage to, a third person caused by the intentional tort of an
10 employee, such employee's employer is presumed not to have
11 been negligent in hiring such employee if, before hiring the
12 employee, the employer conducted a background investigation of
13 the prospective employee and the investigation did not reveal
14 any information that reasonably demonstrated the unsuitability
15 of the prospective employee for the particular work to be
16 performed or for the employment in general. A background
17 investigation under this section must include:

18 (a) Obtaining a criminal background investigation on
19 the prospective employee under subsection (2);

20 (b) Making a reasonable effort to contact references
21 and former employers of the prospective employee concerning
22 the suitability of the prospective employee for employment;

23 (c) Requiring the prospective employee to complete a
24 job application form that includes questions concerning
25 whether he or she has ever been convicted of a crime,
26 including details concerning the type of crime, the date of
27 conviction and the penalty imposed, and whether the
28 prospective employee has ever been a defendant in a civil
29 action for intentional tort, including the nature of the
30 intentional tort and the disposition of the action;

31

1 (d) Obtaining, with written authorization from the
2 prospective employee, a check of the driver's license record
3 of the prospective employee if such a check is relevant to the
4 work the employee will be performing and if the record can
5 reasonably be obtained; and

6 (e) Interviewing the prospective employee.

7 (2) To satisfy the criminal-background-investigation
8 requirement of this section, an employer must request and
9 obtain from the Department of Law Enforcement a check of the
10 information as reported and reflected in the Florida Crime
11 Information Center system as of the date of the request.

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

16 Section 16. Section 768.095, Florida Statutes, is
17 amended to read:

18 768.095 Employer immunity from liability; disclosure
19 of information regarding former or current employees.--An
20 employer who discloses information about a former or current
21 employee ~~employee's job performance~~ to a prospective employer
22 of the former or current employee upon request of the
23 prospective employer or of the former or current employee is
24 ~~presumed to be acting in good faith and, unless lack of good~~
25 ~~faith is shown by clear and convincing evidence, is immune~~
26 from civil liability for such disclosure or its consequences
27 ~~unless it is shown by clear and convincing evidence. For~~
28 ~~purposes of this section, the presumption of good faith is~~
29 ~~rebutted upon a showing that the information disclosed by the~~
30 former or current employer was knowingly false ~~or deliberately~~
31 ~~misleading, was rendered with malicious purpose, or violated~~

1 any civil right of the former or current employee protected
2 under chapter 760.

3 Section 17. Section 768.071, Florida Statutes, is
4 created to read:

5 768.071 Limitation on premises liability.--

6 (1) A person or organization owning or controlling an
7 interest in a business premises is not liable for civil
8 damages sustained by invitees, guests, or other members of the
9 public which are caused by criminal acts that occur on the
10 premises and which are committed by third parties who are not
11 employees or agents of such person or organization, if the
12 person or organization owning or controlling the interest in a
13 business premises maintains a reasonably safe premises in
14 light of the foreseeability of the occurrence of the
15 particular criminal act.

16 (2) A person or organization owning or controlling an
17 interest in a business premises, other than a convenience
18 store, who substantially complies with at least six of the
19 requirements specified in paragraphs (a)-(i) is presumed to
20 have fulfilled any duty to provide adequate security for
21 invitees, guests, and other members of the public against
22 criminal acts that occur in common areas, in parking areas, or
23 on portions of the premises not occupied by buildings or
24 structures and that are committed by third parties who are not
25 employees or agents of the person or organization owning or
26 controlling the interest in a business premises.

27 (a) Signs must be prominently posted in the parking
28 area and other public-access points on the premises indicating
29 the hours of normal business operations and the general
30 security measures provided.

31

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

7 (c) Crime prevention training, with a curriculum
8 approved by the local law enforcement agency or the Department
9 of Legal Affairs, must be provided to all nonmanagement
10 on-site employees. Persons employed at the business premises
11 before October 1, 1999, must receive training by October 1,
12 2000, and persons employed at the business premises on or
13 after October 1, 1999, must receive training within 120 days
14 after hiring. A person is not liable for ordinary negligence
15 due to implementing the approved curriculum as long as the
16 training was actually provided. The state or the local law
17 enforcement agency may not be held liable for the contents of
18 the approved curriculum.

19 (d) Security cameras must be installed and maintained,
20 and must be monitored or recorded, covering public entrances
21 and exits to buildings and at least half the parking lot.
22 Cameras must operate during business hours and for at least 30
23 minutes after closing.

24 (e) An emergency call box, or an alarm system linked
25 to a law enforcement agency, a private security agency, or a
26 security guard or other agent on the premises, must be
27 maintained and available within 150 feet of any location in
28 the parking lot or other public place on the premises.

29 (f) A licensed security guard or law enforcement
30 officer is on duty at the time of the criminal occurrence and
31 is either monitoring surveillance cameras or patrolling the

1 premises with such frequency that the parking area and common
2 areas are observed by the guard at not more than 15-minute
3 intervals.

4 (g) Perimeter fencing must be installed and maintained
5 which surrounds parking areas and structures and directs
6 pedestrian entry onto the premises.

7 (h) Landscaping must be maintained that does not
8 substantially obstruct the view of security personnel or
9 cameras, and landscaping adjacent to areas frequented by the
10 public must be maintained in a manner that provides no hiding
11 place sufficient to conceal an adult person.

12 (i) A public address system must be installed and
13 maintained that is capable of reaching portions of the
14 premises regularly frequented by the public.

15 (3) The owner or operator of a convenience store
16 business premises which substantially implements the
17 applicable security measures listed in ss. 812.173 and 812.174
18 is presumed not to be liable for criminal acts that occur on
19 the premises and which are committed by third parties who are
20 not employees or agents of the owner or operator of the
21 convenience store business premises.

22 (4) Failure to implement a sufficient number of the
23 measures listed in subsection (2) or ss. 812.173 and 812.174
24 does not create a presumption of liability and no inference
25 may be drawn from such failure or from the substance of
26 measures listed within this section.

27 Section 18. Section 768.075, Florida Statutes, is
28 amended to read:

29 768.075 Immunity from liability for injury to
30 trespassers on real property.--

31

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

26 (2) A person or organization owning or controlling an
27 interest in real property, or an agent of such person or
28 organization, is not liable for any civil damages for the
29 death of or injury or damage to any discovered or undiscovered
30 trespasser, except as provided in paragraphs (3)(a), (b), and
31

1 (c), and regardless of whether the trespasser was intoxicated
2 or otherwise impaired.

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

4 1. "Invitation" means that the visitor entering the
5 premises has an objectively reasonable belief that he or she
6 has been invited or is otherwise welcome on that portion of
7 the real property where injury occurs.

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

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

28 (b) To avoid liability to undiscovered trespassers, a
29 person or organization owning or controlling an interest in
30 real property must refrain from intentional misconduct, but
31 has no duty to warn of dangerous conditions. To avoid

1 liability to discovered trespassers, a person or organization
2 owning or controlling an interest in real property must
3 refrain from gross negligence or intentional misconduct, and
4 must warn the trespasser of dangerous conditions that are
5 known to the person or organization owning or controlling an
6 interest in real property but that are not readily observable
7 by others.

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

11 (4) A person or organization owning or controlling an
12 interest in real property, or an agent of such person or
13 organization, shall not be held liable for negligence that
14 results in the death of, injury to, or damage to a person who
15 is attempting to commit a felony or who is engaged in the
16 commission of a felony on the property.

17 Section 19. Section 768.36, Florida Statutes, is
18 created to read:

19 768.36 Alcohol or drug defense.--

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

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

24 (b) "Drug" means any chemical substance set forth in
25 s. 877.111 or any substance controlled under chapter 893. The
26 term does not include any drug or medication obtained pursuant
27 to a prescription as defined in s. 893.02 which was taken in
28 accordance with the prescription, or any medication that is
29 authorized under state or federal law for general distribution
30 and use without a prescription in treating human diseases,
31

1 ailments, or injuries and that was taken in the recommended
2 dosage.

3 (2) In any civil action, a plaintiff may not recover
4 any damages for loss or injury to his or her person or
5 property if the trier of fact finds that, at the time the
6 plaintiff was injured:

7 (a) The plaintiff was under the influence of any
8 alcoholic beverage or drug to the extent that the plaintiff's
9 normal faculties were impaired or the plaintiff had a blood or
10 breath alcohol level of 0.08 percent or higher; and

11 (b) As a result of the influence of such alcoholic
12 beverage or drug the plaintiff was more than 50 percent at
13 fault for his or her own harm.

14 Section 20. Section 768.725, Florida Statutes, is
15 created to read:

16 768.725 Punitive damages; burden of proof.--In all
17 civil actions the plaintiff must establish at trial by clear
18 and convincing evidence its entitlement to an award of
19 punitive damages. The "greater weight of the evidence" burden
20 of proof applies to a determination of the amount of damages.

21 Section 21. Section 768.72, Florida Statutes, is
22 amended to read:

23 768.72 Pleading in civil actions; claim for punitive
24 damages.--

25 (1) In any civil action, no claim for punitive damages
26 shall be permitted unless there is a reasonable showing by
27 evidence in the record or proffered by the claimant which
28 would provide a reasonable basis for recovery of such damages.
29 The claimant may move to amend her or his complaint to assert
30 a claim for punitive damages as allowed by the rules of civil
31 procedure. The rules of civil procedure shall be liberally

1 construed so as to allow the claimant discovery of evidence
2 which appears reasonably calculated to lead to admissible
3 evidence on the issue of punitive damages. No discovery of
4 financial worth shall proceed until after the pleading
5 concerning punitive damages is permitted.

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

11 (a) "Intentional misconduct" means that the defendant
12 had actual knowledge of the wrongfulness of the conduct and
13 the high probability that injury or damage to the claimant
14 would result and, despite that knowledge, intentionally
15 pursued that course of conduct, resulting in injury or damage.

16 (b) "Gross negligence" means that the defendant's
17 conduct was so reckless or wanting in care that it constituted
18 a conscious disregard or indifference to the life, safety, or
19 rights of persons exposed to such conduct.

20 (3) In the case of an employer, principal,
21 corporation, or other legal entity, punitive damages may be
22 imposed for the conduct of an employee or agent only if the
23 conduct of the employee or agent meets the criteria specified
24 in subsection (2) and:

25 (a) The employer, principal, corporation, or other
26 legal entity actively and knowingly participated in such
27 conduct;

28 (b) The officers, directors, or managers of the
29 employer, principal, corporation, or other legal entity
30 knowingly condoned, ratified, or consented to such conduct; or
31

1 (c) The employer, principal, corporation, or other
2 legal entity engaged in conduct that constituted gross
3 negligence and that contributed to the loss, damages, or
4 injury suffered by the claimant.

5 (4) The provisions of this section are remedial in
6 nature and must be applied to all civil actions pending on
7 October 1, 1998, in which the trial or retrial of the action
8 has not commenced.

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

11 768.73 Punitive damages; limitation.--

12 (1)(a) In any civil action in which the judgment for
13 compensatory damages is for \$50,000 or less, judgment for
14 punitive damages awarded to a claimant may not exceed
15 \$250,000, except as provided in paragraph (b). In any civil
16 action in which the judgment for compensatory damages exceeds
17 \$50,000, the judgment for punitive damages awarded to a
18 claimant may not exceed three times the amount of compensatory
19 damages or \$250,000, whichever is higher, except as provided
20 in paragraph (b).~~based on negligence, strict liability,~~
21 ~~products liability, misconduct in commercial transactions,~~
22 ~~professional liability, or breach of warranty, and involving~~
23 ~~willful, wanton, or gross misconduct, the judgment for the~~
24 ~~total amount of punitive damages awarded to a claimant may not~~
25 ~~exceed three times the amount of compensatory damages awarded~~
26 ~~to each person entitled thereto by the trier of fact, except~~
27 ~~as provided in paragraph (b). However, this subsection does~~
28 ~~not apply to any class action.~~

29 (b) ~~An~~ If any award for punitive damages may not
30 exceed ~~exceeds~~ the limitations ~~limitation~~ specified in
31 paragraph (a), ~~the award is presumed to be excessive and the~~

1 ~~defendant is entitled to remittitur of the amount in excess of~~
2 ~~the limitation~~ unless the claimant demonstrates to the court
3 by clear and convincing evidence that the defendant engaged in
4 intentional misconduct and that the award is not excessive in
5 light of the facts and circumstances which were presented to
6 the trier of fact.

7 (c) This subsection is not intended to prohibit an
8 appropriate court from exercising its jurisdiction under s.
9 768.74 in determining the reasonableness of an award of
10 punitive damages that is less than three times the amount of
11 compensatory damages.

12 (2)(a) Except as provided in paragraph (b), punitive
13 damages may not be awarded against a defendant in a civil
14 action if that defendant establishes, before trial, that
15 punitive damages have previously been awarded against that
16 defendant in any state or federal court in any action alleging
17 harm from the same act or single course of conduct for which
18 the claimant seeks compensatory damages. For purposes of a
19 civil action, the term "the same act or single course of
20 conduct" includes acts resulting in the same manufacturing
21 defects, acts resulting in the same defects in design, or
22 failure to warn of the same hazards, with respect to similar
23 units of a product.

24 (b) In subsequent civil actions involving the same act
25 or single course of conduct for which punitive damages have
26 already been awarded, if the court determines by clear and
27 convincing evidence that the amount of prior punitive damages
28 awarded was insufficient to punish that defendant's behavior,
29 the court may award subsequent punitive damages. In awarding
30 subsequent punitive damages, the court shall make specific
31 findings of fact in the record to support its conclusion. In

1 addition, the court may consider whether the defendant's act
2 or course of conduct has ceased. Any subsequent punitive
3 damage awards must be reduced by the amount of any earlier
4 punitive damage awards rendered in state or federal court.

5 (3) The claimant attorney's fees, if payable from the
6 judgment, are, to the extent that the fees are based on the
7 punitive damages, calculated based on the entire judgment for
8 punitive damages. This subsection does not limit the payment
9 of attorney's fees based upon an award of damages other than
10 punitive damages.

11 (4)(2) The jury may neither be instructed nor informed
12 as to the provisions of this section.

13 (5) The provisions of this section are remedial in
14 nature and must be applied to all civil actions pending on
15 October 1, 1998, in which the trial or retrial of the action
16 has not commenced.

17 Section 23. Section 768.735, Florida Statutes, is
18 created to read:

19 768.735 Punitive damages; exceptions; limitation.--

20 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
21 apply to any civil action based upon child abuse, abuse of the
22 elderly, or abuse of the developmentally disabled or any civil
23 action arising under chapter 400. Such actions are governed by
24 applicable statutes and controlling judicial precedent.

25 (2)(a) In any civil action based upon child abuse,
26 abuse of the elderly, or abuse of the developmentally
27 disabled, or actions arising under chapter 400 and involving
28 the award of punitive damages, the judgment for the total
29 amount of punitive damages awarded to a claimant may not
30 exceed three times the amount of compensatory damages awarded
31 to each person entitled thereto by the trier of fact, except

1 as provided in paragraph (b). This subsection does not apply
2 to any class action.

3 (b) If any award for punitive damages exceeds the
4 limitation specified in paragraph (a), the award is presumed
5 to be excessive and the defendant is entitled to remittitur of
6 the amount in excess of the limitation unless the claimant
7 demonstrates to the court by clear and convincing evidence
8 that the award is not excessive in light of the facts and
9 circumstances that were presented to the trier of fact.

10 (c) This subsection is not intended to prohibit an
11 appropriate court from exercising its jurisdiction under s.
12 768.74 in determining the reasonableness of an award of
13 punitive damages which is less than three times the amount of
14 compensatory damages.

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

17 Section 24. Section 768.736, Florida Statutes, is
18 created to read:

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

26 Section 25. Contingency fee contracts; offers of early
27 settlement.--In order to be consistent with the public policy
28 of this state and to be enforceable, any contingency fee
29 contract for an attorney's services in an action or claim for
30 personal injury, property damages, or death or for loss of
31

1 services resulting from personal injuries must provide for or
2 incorporate the provisions of this section.

3 (1) Within 90 days following retention, the claimant's
4 attorney must send notice by certified mail to each allegedly
5 responsible party which contains:

6 (a) The name, address, age, marital status, and
7 occupation of the claimant, or of the injured or deceased
8 party if the claimant is operating in a representative
9 capacity;

10 (b) A brief description of how the injury occurred,
11 which must include the basis for claiming that the party to
12 whom the claim is addressed is at least partially responsible
13 for causing the injury or damages;

14 (c) The names and, if known, the addresses, telephone
15 numbers, and occupations of all known witnesses to the
16 incident causing the injury or damages;

17 (d) A description of the nature of the injury or
18 damages; the names and addresses of all physicians, other
19 health care providers, hospitals, clinics, or other medical
20 services entities that provided medical care to the claimant
21 or injured party, including the date and nature of the
22 services; and copies of photographs in the claimant's
23 possession or control which relate to any injuries and damages
24 sustained;

25 (e) Medical records involving the present injury, any
26 prior injury, or any preexisting medical condition that any
27 allegedly responsible party would be able to introduce into
28 evidence in a trial, or, in lieu thereof, executed releases
29 allowing the allegedly responsible party to obtain such
30 records directly from the claimant's physicians, health care
31

1 providers, and entities that have provided medical care for
2 any injury or preexisting condition identified; and

3 (f) A list of any medical expenses, lost wages, or
4 other special damages allegedly suffered as a consequence of
5 the personal injury, and any relevant documentation thereof,
6 including records of earnings if a claimant is self-employed,
7 and employer records of earnings if a claimant is employed,
8 or, in lieu thereof, executed releases allowing the
9 responsible party to obtain such documentation.

10 (2)(a) The notice to the claimant described in
11 subsection (1) must inform the allegedly responsible party of
12 the time limitations contained in paragraphs (2)(b), (c), and
13 (d), and give the allegedly responsible party, or its
14 insurers, 90 days following the receipt of the claimant's
15 notice to reply with a written response.

16 (b) If the allegedly responsible party responds with
17 an early settlement offer, the claimant has 30 days following
18 the time the early settlement offer is received to accept the
19 early settlement offer.

20 (c) If, within 30 days after receipt of the claimant's
21 notice, the allegedly responsible party responds with a
22 request for a medical examination of the claimant, the
23 claimant shall be made available for the examination within 10
24 days after receipt of the request.

25 (d) If the allegedly responsible party does not
26 respond with an early settlement offer after 90 days,
27 subsections (3) and (4) do not apply.

28 (3)(a) When an allegedly responsible party responds to
29 the claimant's notice with an early settlement offer as
30 described in subsection (2), the following contingency fee
31 schedule shall be applied to the amount specified in an early

1 settlement offer if a contingency fee has been agreed to by
2 the claimant and the claimant's attorney:

3 1. Twenty-five percent of the first \$10,000;

4 2. Twenty percent of the next \$20,000;

5 3. Fifteen percent of the next \$20,000; and

6 4. Ten percent of any amount above \$50,000.

7 (b) Any agreement containing a contingency fee that
8 exceeds the percentages provided in paragraph (a) with respect
9 to an early settlement offer is contrary to public policy and
10 void.

11 (4) Subsection (3) does not prohibit any contract
12 whereby the claimant and the attorney agree to a reasonable
13 hourly rate instead of a contingency fee following acceptance
14 of an early settlement offer. If a reasonable hourly rate is
15 agreed to, such rate may only be based on the number of hours
16 spent preparing the claimant's notice and the number of hours
17 spent evaluating the early settlement offer.

18 (5) Subsections (3) and (4) do not apply to any
19 amounts eventually recovered in excess of the amount specified
20 in the early settlement offer.

21 (6) This section does not apply if the claimant and
22 the claimant's attorney agree to a contract based solely upon
23 a reasonable hourly rate, with no agreement to use a
24 contingency fee schedule, for the attorney's services before
25 and after the suit is filed.

26 (7) This section does not prohibit the recovery of
27 costs and expenses reasonably and necessarily incurred in
28 preparing the claimant's notice or in evaluating an early
29 settlement offer.

30 (8) This section does not apply when the claimant's
31 attorney is retained with less than 180 days remaining prior

1 to the running of the applicable statute of limitations for
2 the claimant's action.

3 Section 26. If any provision of this act or the
4 application thereof to any person or circumstance is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the act which can be given effect without the
7 invalid provision or application, and to this end the
8 provisions of this act are declared severable.

9 Section 27. Except as otherwise expressly provided in
10 this act, this act shall take effect October 1, 1999.

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SENATE SUMMARY

Revises various laws governing civil litigation. Provides that the court may allow members of a jury to take notes during trial and submit written questions to witnesses or the judge. Requires that the court, with certain exceptions, require mediation for any civil action for monetary damages. Provides for binding voluntary trial resolution of certain civil disputes. Revises requirements for the court in awarding attorney's fees when it finds that an attorney has raised an unfounded claim or defense. Requires that the court award damages if the moving party proves by a preponderance of the evidence that an action by the opposing party was taken for the purpose of unreasonable delay. Provides that expert witness fees may not be awarded unless the party that retains the witness gives prior notice and estimates the witness fee. Provides for the court to conduct an expedited trial upon the stipulation of the parties to a civil case. Provides certain venue restrictions with respect to an action against a contractor. Requires that the clerk of the court report information on negligence cases to the Office of the State Courts Administrator. Requires that the court apportion economic damages on the basis of joint and several liability if a party's fault exceeds 33 percent.

Provides that a lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, and an owner who is a natural person and loans a motor vehicle to any permissive user other than a relative residing in the same household are liable for the operation of the vehicle or the acts of the operator in connection therewith only up to the limits prescribed in the bill for bodily injury, property damage, and economic damage. Provides that the limits on liability do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business, other than a rental company that rents or leases motor vehicles. Defines the term "rental company."

Creates new law and amends existing statutes relating to the civil liability of property owners, business owners, and employers regarding employees and trespassers. Provides an employer with a presumption against negligent hiring of an employee under specified conditions in a civil action for damages resulting from an employee's intentional tort. Revises the conditions under which an employer is immune from civil liability for disclosing information about an employee to a prospective employer. Establishes limitations on the liability of owners of a business premises for damages of invitees, guests, or the public caused by the criminal acts of persons who are not employees or agents of the owner under specified conditions. Modifies the conditions under which owners of real property are liable for a trespasser's death or injury. Provides definitions. Prohibits a plaintiff under the influence of drugs or alcoholic beverages from

1 recovering damages under specified conditions.
2
3 Provides evidentiary standards for an award of punitive
4 damages in civil actions, and revises existing law
5 relating to claims for punitive damages in such actions.
6 Provides definitions. Provides criteria for awarding
7 damages against an employer, principal, corporation, or
8 other legal entity for conduct of its employee or agent.
9 Revises existing limitations on punitive damages, and
10 provides monetary limitations. Provides an exception from
11 the limitations if the defendant engaged in intentional
12 misconduct. Prohibits an award of punitive damages if
13 such damages have been previously awarded against the
14 defendant in a state or federal court in an action
15 alleging harm from the same act or single course of
16 conduct for which the plaintiff seeks compensatory
17 damages, and provides exceptions. Provides that ss.
18 768.72(2)-(4), 768.725, and 768.73, F.S., do not apply to
19 actions based on the abuse of children, the elderly, the
20 developmentally disabled, or actions arising under ch.
21 400, F.S. Provides that ss. 768.725 and 768.73, F.S., do
22 not apply to defendants who at the time of the act or
23 omission for which punitive damages are sought was under
24 the influence of alcoholic beverages or drugs.
25
26 Provides requirements for a contingency fee contract in
27 any action for personal injury, property damages, or
28 death due to injury. Requires that certain information be
29 provided to the allegedly responsible party. Limits the
30 percentage of contingency fees the claimant's attorney
31 may collect following an offer of early settlement.