

By Senator McKay

308-840-99

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 for severability;  
13 providing an effective date.  
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15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. Section 40.50, Florida Statutes, is created  
18 to read:

19 40.50 Jury duty and instructions in civil cases.--

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

26 (2) The court shall instruct that the jurors may take  
27 notes regarding the evidence and keep the notes for the  
28 purpose of refreshing their memory for use during recesses and  
29 deliberations. The court may provide materials suitable for  
30 this purpose. The confidentiality of the notes should be  
31 emphasized to the jurors. After the jury has rendered its

1 verdict, the notes shall be collected by the bailiff or clerk  
2 who shall promptly destroy them.

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

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

8 (b) Jurors' notes.

9 (c) Witnesses' names and either photographs or  
10 biographies or both.

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

13 (e) A glossary of technical terms.

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

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

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

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

30 (6) The court shall instruct the jury that any  
31 questions directed to witnesses or the court must be in

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

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

20 Section 2. Section 44.102, Florida Statutes, is  
21 amended to read:

22 44.102 Court-ordered mediation.--

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

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

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

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

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

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

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

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

8           6. The parties have agreed to binding arbitration.

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

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

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

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

1 inadmissible as evidence in any subsequent legal proceeding,  
2 unless all parties agree otherwise.

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

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

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

29 (b) Nonvolunteer mediators shall be compensated  
30 according to rules adopted by the Supreme Court. If a  
31 mediation program is funded pursuant to s. 44.108, a mediator

1 may be compensated by the county or by the parties. When a  
2 party has been declared indigent or insolvent, that party's  
3 pro rata share of a mediator's compensation shall be paid by  
4 the county at the rate set by administrative order of the  
5 chief judge of the circuit.

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

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

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

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

22 44.1051 Voluntary trial resolution.--

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

28 (2) If the parties have entered into an agreement that  
29 provides for a method for appointment of a member of The  
30 Florida Bar in good standing for more than 5 years to act as  
31

1 trial resolution judge, the court shall proceed with the  
2 appointment as prescribed.

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

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

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

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

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

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

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

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

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

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

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

30           57.105 Attorney's fee; sanctions for raising unfounded  
31 claims or defenses; damages for delay of litigation.--

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

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

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

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

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

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

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

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

25           Section 5. Subsections (3), (5), and (7) of section  
26 768.79, Florida Statutes, are amended to read:

27           768.79 Offer of judgment and demand for judgment.--

28           (3) The offer shall be served upon the party to whom  
29 it is made, but it shall not be filed unless it is accepted or  
30 unless filing is necessary to enforce the provisions of this  
31 section. In any case involving multiple party plaintiffs or

1 multiple party defendants, an offer shall specify its  
2 applicability to each party and may specify any conditions  
3 thereof. Each individual party may thereafter accept or reject  
4 the offer as the offer applies to such party.

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

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

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

22 1. The then apparent merit or lack of merit in the  
23 claim.

24 2. The number and nature of offers made by the  
25 parties.

26 3. The closeness of questions of fact and law at  
27 issue.

28 4. Whether the person making the offer had  
29 unreasonably refused to furnish information necessary to  
30 evaluate the reasonableness of such offer.

31

1           5. Whether the suit was in the nature of a test case  
2 presenting questions of far-reaching importance affecting  
3 nonparties.

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

7           Section 6. Section 57.071, Florida Statutes, is  
8 amended to read:

9           57.071 Costs; what taxable.--

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

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

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

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

20          (2) Expert witness fees shall not be awarded as  
21 taxable costs unless:

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

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

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

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

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

22           (3) The court shall determine the number of  
23 depositions required.

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

25           (5) The case must be tried within 30 days after the  
26 60-day discovery cut-off.

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

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

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

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

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

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

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

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

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

19           Section 8. Section 768.77, Florida Statutes, is  
20 amended to read:

21           768.77 Itemized verdict.--

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

27           (1)~~(a)~~ Amounts intended to compensate the claimant for  
28 economic losses;

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

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

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

14           Section 9. Paragraph (a) of subsection (1) of section  
15 768.78, Florida Statutes, is amended to read:

16           768.78 Alternative methods of payment of damage  
17 awards.--

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

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

28           2. Subject to the provisions of this subsection, the  
29 court shall, at the request of either party, unless the court  
30 determines that manifest injustice would result to any party,  
31 enter a judgment ordering future economic damages, as itemized

1 pursuant to s. 768.77(1)~~(a)~~, in excess of \$250,000 to be paid  
2 in whole or in part by periodic payments rather than by a  
3 lump-sum payment.

4 Section 10. Section 47.025, Florida Statutes, is  
5 created to read:

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

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

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

4           768.81 Comparative fault.--

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

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

23           (b) In order to allocate any or all fault to a  
24 nonparty and include the named or unnamed nonparty on the  
25 verdict form for purposes of apportioning damages, a defendant  
26 must prove at trial, by a preponderance of the evidence, any  
27 or all fault of the nonparty in causing the plaintiff's  
28 injuries.

29           ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~  
30 ~~LIABILITY.--Notwithstanding the provisions of this section,~~  
31 ~~the doctrine of joint and several liability applies to all~~

1 ~~actions in which the total amount of damages does not exceed~~  
2 ~~\$25,000.~~

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

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

20       (3) After March 1, 2001, the Department of Insurance  
21 shall review the filed rates of insurers and underwriting  
22 profits and losses for Florida liability insurance businesses  
23 and shall require any prospective rate modifications that the  
24 department deems necessary, consistent with the applicable  
25 rating law, in order to cause the rates of any specific  
26 insurer to comply with the applicable rating law. The  
27 department shall require each liability insurer's first rate  
28 filing after March 1, 2001, other than rate filings for  
29 private passenger automobile insurance or personal lines  
30 residential property insurance, to include specific data on  
31 the impact of this act on the insurer's liability judgments,

1 settlements, and costs for the purpose of enabling the  
2 department and the Legislature to accurately monitor and  
3 evaluate the effects of this act.

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

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

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

17 324.021 Definitions; minimum insurance required.--The  
18 following words and phrases when used in this chapter shall,  
19 for the purpose of this chapter, have the meanings  
20 respectively ascribed to them in this section, except in those  
21 instances where the context clearly indicates a different  
22 meaning:

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

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

26 1. The lessor, under an agreement to lease a motor  
27 vehicle for 1 year or longer which requires the lessee to  
28 obtain insurance acceptable to the lessor which contains  
29 limits not less than \$100,000/\$300,000 bodily injury liability  
30 and \$50,000 property damage liability or not less than  
31 \$500,000 combined property damage liability and bodily injury

1 liability, shall not be deemed the owner of said motor vehicle  
2 for the purpose of determining financial responsibility for  
3 the operation of said motor vehicle or for the acts of the  
4 operator in connection therewith; further, this subparagraph  
5 ~~paragraph~~ shall be applicable so long as the insurance meeting  
6 these requirements is in effect. The insurance meeting such  
7 requirements may be obtained by the lessor or lessee,  
8 provided, if such insurance is obtained by the lessor, the  
9 combined coverage for bodily injury liability and property  
10 damage liability shall contain limits of not less than \$1  
11 million and may be provided by a lessor's blanket policy.

12 2. The lessor, under an agreement to rent or lease a  
13 motor vehicle for a period of less than 1 year, shall be  
14 deemed the owner of the motor vehicle for the purpose of  
15 determining liability for the operation of the vehicle or the  
16 acts of the operator in connection therewith only up to  
17 \$100,000 per person and up to \$300,000 per incident for bodily  
18 injury and up to \$50,000 for property damage. If the lessee or  
19 the operator of the motor vehicle is uninsured or has any  
20 insurance with limits less than \$500,000 combined property  
21 damage and bodily injury liability, the lessor shall be liable  
22 for up to an additional \$500,000 in economic damages only  
23 arising out of the use of the motor vehicle. The additional  
24 specified liability of the lessor for economic damages shall  
25 be reduced by amounts actually recovered from the lessee, from  
26 the operator, and from any insurance or self insurance  
27 covering the lessee or operator. Nothing in this subparagraph  
28 shall be construed to affect the liability of the lessor for  
29 its own negligence.

30 3. The owner who is a natural person and loans a motor  
31 vehicle to any permissive user other than a relative residing

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

17 (c) Application.--The limits on liability in  
18 subparagraphs (b)2. and (b)3. do not apply to an owner of  
19 motor vehicles that are used for commercial activity in the  
20 owner's ordinary course of business, other than a rental  
21 company that rents or leases motor vehicles. For purposes of  
22 this paragraph, the term "rental company" includes only an  
23 entity that is engaged in the business of renting or leasing  
24 motor vehicles to the general public and that rents or leases  
25 a majority of its motor vehicles to persons with no direct or  
26 indirect affiliation with the rental company. The term also  
27 includes a motor vehicle dealer that provides temporary  
28 replacement vehicles to its customers for up to 10 days.

29 Section 15. Section 768.096, Florida Statutes, is  
30 created to read:  
31

1           768.096 Employer presumption against negligent  
2 hiring.--

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

13           (a) Obtaining a criminal background investigation on  
14 the prospective employee under subsection (2);

15           (b) Making a reasonable effort to contact references  
16 and former employers of the prospective employee concerning  
17 the suitability of the prospective employee for employment;

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

26           (d) Obtaining, with written authorization from the  
27 prospective employee, a check of the driver's license record  
28 of the prospective employee if such a check is relevant to the  
29 work the employee will be performing and if the record can  
30 reasonably be obtained; and

31           (e) Interviewing the prospective employee.

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

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

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

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

28           Section 17. Section 768.071, Florida Statutes, is  
29 created to read:

30           768.071 Limitation on premises liability.--  
31

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

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

22       (a) Signs must be prominently posted in the parking  
23 area and other public-access points on the premises indicating  
24 the hours of normal business operations and the general  
25 security measures provided.

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

1           (c) Crime prevention training, with a curriculum  
2 approved by the local law enforcement agency or the Department  
3 of Legal Affairs, must be provided to all nonmanagement  
4 on-site employees. Persons employed at the business premises  
5 before October 1, 1999, must receive training by October 1,  
6 2000, and persons employed at the business premises on or  
7 after October 1, 1999, must receive training within 120 days  
8 after hiring. A person is not liable for ordinary negligence  
9 due to implementing the approved curriculum as long as the  
10 training was actually provided. The state or the local law  
11 enforcement agency may not be held liable for the contents of  
12 the approved curriculum.

13           (d) Security cameras must be installed and maintained,  
14 and must be monitored or recorded, covering public entrances  
15 and exits to buildings and at least half the parking lot.  
16 Cameras must operate during business hours and for at least 30  
17 minutes after closing.

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

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

29           (g) Perimeter fencing must be installed and maintained  
30 which surrounds parking areas and structures and directs  
31 pedestrian entry onto the premises.

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

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

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

16           (4) Failure to implement a sufficient number of the  
17 measures listed in subsection (2) or ss. 812.173 and 812.174  
18 does not create a presumption of liability and no inference  
19 may be drawn from such failure or from the substance of  
20 measures listed within this section.

21           Section 18. Section 768.075, Florida Statutes, is  
22 amended to read:

23           768.075 Immunity from liability for injury to  
24 trespassers on real property.--

25           (1) A person or organization owning or controlling an  
26 interest in real property, or an agent of such person or  
27 organization, shall not be held liable for any civil damages  
28 for death of or injury or damage to a trespasser upon the  
29 property ~~resulting from or arising by reason of the~~  
30 ~~trespasser's commission of the offense of trespass as~~  
31 ~~described in s. 810.08 or s. 810.09,~~ when such trespasser was

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

19 (2) A person or organization owning or controlling an  
20 interest in real property, or an agent of such person or  
21 organization, is not liable for any civil damages for the  
22 death of or injury or damage to any discovered or undiscovered  
23 trespasser, except as provided in paragraphs (3)(a), (b), and  
24 (c), and regardless of whether the trespasser was intoxicated  
25 or otherwise impaired.

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

27 1. "Invitation" means that the visitor entering the  
28 premises has an objectively reasonable belief that he or she  
29 has been invited or is otherwise welcome on that portion of  
30 the real property where injury occurs.

31

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

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

21           (b) To avoid liability to undiscovered trespassers, a  
22 person or organization owning or controlling an interest in  
23 real property must refrain from intentional misconduct, but  
24 has no duty to warn of dangerous conditions. To avoid  
25 liability to discovered trespassers, a person or organization  
26 owning or controlling an interest in real property must  
27 refrain from gross negligence or intentional misconduct, and  
28 must warn the trespasser of dangerous conditions that are  
29 known to the person or organization owning or controlling an  
30 interest in real property but that are not readily observable  
31 by others.

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

4           (4) A person or organization owning or controlling an  
5 interest in real property, or an agent of such person or  
6 organization, shall not be held liable for negligence that  
7 results in the death of, injury to, or damage to a person who  
8 is attempting to commit a felony or who is engaged in the  
9 commission of a felony on the property.

10           Section 19. Section 768.36, Florida Statutes, is  
11 created to read:

12           768.36 Alcohol or drug defense.--

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

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

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

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

30           (a) The plaintiff was under the influence of any  
31 alcoholic beverage or drug to the extent that the plaintiff's

1 normal faculties were impaired or the plaintiff had a blood or  
2 breath alcohol level of 0.08 percent or higher; and

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

6 Section 20. Section 768.725, Florida Statutes, is  
7 created to read:

8 768.725 Punitive damages; burden of proof.--In all  
9 civil actions the plaintiff must establish at trial by clear  
10 and convincing evidence its entitlement to an award of  
11 punitive damages. The "greater weight of the evidence" burden  
12 of proof applies to a determination of the amount of damages.

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

15 768.72 Pleading in civil actions; claim for punitive  
16 damages.--

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

29 (2) A defendant may be held liable for punitive  
30 damages only if the trier of fact, based on clear and  
31 convincing evidence, finds that the defendant was personally

1 guilty of intentional misconduct or gross negligence. As used  
2 in this section, the term:

3 (a) "Intentional misconduct" means that the defendant  
4 had actual knowledge of the wrongfulness of the conduct and  
5 the high probability that injury or damage to the claimant  
6 would result and, despite that knowledge, intentionally  
7 pursued that course of conduct, resulting in injury or damage.

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

12 (3) In the case of an employer, principal,  
13 corporation, or other legal entity, punitive damages may be  
14 imposed for the conduct of an employee or agent only if the  
15 conduct of the employee or agent meets the criteria specified  
16 in subsection (2) and:

17 (a) The employer, principal, corporation, or other  
18 legal entity actively and knowingly participated in such  
19 conduct;

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

23 (c) The employer, principal, corporation, or other  
24 legal entity engaged in conduct that constituted gross  
25 negligence and that contributed to the loss, damages, or  
26 injury suffered by the claimant.

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

31

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

3           768.73 Punitive damages; limitation.--

4           (1)(a) In any civil action in which the judgment for  
5 compensatory damages is for \$50,000 or less, judgment for  
6 punitive damages awarded to a claimant may not exceed  
7 \$250,000, except as provided in paragraph (b). In any civil  
8 action in which the judgment for compensatory damages exceeds  
9 \$50,000, the judgment for punitive damages awarded to a  
10 claimant may not exceed three times the amount of compensatory  
11 damages or \$250,000, whichever is higher, except as provided  
12 in paragraph (b).~~based on negligence, strict liability,~~  
13 ~~products liability, misconduct in commercial transactions,~~  
14 ~~professional liability, or breach of warranty, and involving~~  
15 ~~willful, wanton, or gross misconduct, the judgment for the~~  
16 ~~total amount of punitive damages awarded to a claimant may not~~  
17 ~~exceed three times the amount of compensatory damages awarded~~  
18 ~~to each person entitled thereto by the trier of fact, except~~  
19 ~~as provided in paragraph (b). However, this subsection does~~  
20 ~~not apply to any class action.~~

21           (b) An ~~if any~~ award for punitive damages may not  
22 exceed ~~exceeds~~ the limitations ~~limitation~~ specified in  
23 paragraph (a), ~~the award is presumed to be excessive and the~~  
24 ~~defendant is entitled to remittitur of the amount in excess of~~  
25 ~~the limitation~~ unless the claimant demonstrates to the court  
26 by clear and convincing evidence that the defendant engaged in  
27 intentional misconduct and that the award is not excessive in  
28 light of the facts and circumstances which were presented to  
29 the trier of fact.

30           (c) This subsection is not intended to prohibit an  
31 appropriate court from exercising its jurisdiction under s.

1 768.74 in determining the reasonableness of an award of  
2 punitive damages that is less than three times the amount of  
3 compensatory damages.

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

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

28 (3) The claimant attorney's fees, if payable from the  
29 judgment, are, to the extent that the fees are based on the  
30 punitive damages, calculated based on the entire judgment for  
31 punitive damages. This subsection does not limit the payment

1 of attorney's fees based upon an award of damages other than  
2 punitive damages.

3 (4)(2) The jury may neither be instructed nor informed  
4 as to the provisions of this section.

5 (5) 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 23. Section 768.735, Florida Statutes, is  
10 created to read:

11 768.735 Punitive damages; exceptions; limitation.--

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

17 (2)(a) In any civil action based upon child abuse,  
18 abuse of the elderly, or abuse of the developmentally  
19 disabled, or actions arising under chapter 400 and involving  
20 the award of punitive damages, the judgment for the total  
21 amount of punitive damages awarded to a claimant may not  
22 exceed three times the amount of compensatory damages awarded  
23 to each person entitled thereto by the trier of fact, except  
24 as provided in paragraph (b). This subsection does not apply  
25 to any class action.

26 (b) If any award for punitive damages exceeds the  
27 limitation specified in paragraph (a), the award is presumed  
28 to be excessive and the defendant is entitled to remittitur of  
29 the amount in excess of the limitation unless the claimant  
30 demonstrates to the court by clear and convincing evidence

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1 that the award is not excessive in light of the facts and  
2 circumstances that were presented to the trier of fact.

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

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

10 Section 24. Section 768.736, Florida Statutes, is  
11 created to read:

12 768.736 Punitive damages; exceptions for  
13 intoxication.--Sections 768.725 and 768.73 do not apply to any  
14 defendant who, at the time of the act or omission for which  
15 punitive damages are sought, was under the influence of any  
16 alcoholic beverage or drug to the extent that the defendant's  
17 normal faculties were impaired, or who had a blood or breath  
18 alcohol level of 0.08 percent or higher.

19 Section 25. If any provision of this act or the  
20 application thereof to any person or circumstance is held  
21 invalid, the invalidity does not affect other provisions or  
22 applications of the act which can be given effect without the  
23 invalid provision or application, and to this end the  
24 provisions of this act are declared severable.

25 Section 26. Except as otherwise expressly provided in  
26 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.  
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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.  
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