

Bill No. CS for SB 264

Amendment No.     

|    | <u>Senate</u>   | CHAMBER ACTION | <u>House</u> |
|----|---|----------------|--------------|
| 1  |   | .              |              |
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| 11 | Senator Grant moved the following amendment:                        |                |              |
| 12 |   |                |              |
| 13 | <b>Senate Amendment (with title amendment)</b>                      |                |              |
| 14 | Delete everything after the enacting clause                         |                |              |
| 15 |   |                |              |
| 16 | and insert:   |                |              |
| 17 | Section 1. Section 40.50, Florida Statutes, is created              |                |              |
| 18 | to read:  |                |              |
| 19 | <u>40.50 Jury duty and instructions in civil cases.--</u>           |                |              |
| 20 | <u>(1) In any civil action immediately after the jury is</u>        |                |              |
| 21 | <u>sworn, the court shall instruct the jury concerning its</u>      |                |              |
| 22 | <u>duties, its conduct, the order of proceedings, the procedure</u> |                |              |
| 23 | <u>for submitting written questions of witnesses, and the legal</u> |                |              |
| 24 | <u>issues involved in the proceeding.</u>                           |                |              |
| 25 | <u>(2) In any civil action which the court determines is</u>        |                |              |
| 26 | <u>likely to exceed 5 days, the court shall instruct that the</u>   |                |              |
| 27 | <u>jurors may take notes regarding the evidence and keep the</u>    |                |              |
| 28 | <u>notes to refresh their memory and to use during recesses and</u> |                |              |
| 29 | <u>deliberations. The court may provide materials suitable for</u>  |                |              |
| 30 | <u>this purpose. The court should emphasize the confidentiality</u> |                |              |
| 31 | <u>of the notes. After the jury has rendered its verdict, any</u>   |                |              |

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

3 (3) The court shall permit jurors to submit to the  
4 court written questions directed to witnesses or to the court.  
5 The court shall give counsel an opportunity to object to such  
6 questions outside the presence of the jury. The court may, as  
7 appropriate, limit the submission of questions to witnesses.

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

23 (5) The court may give final instructions to the jury  
24 before closing arguments of counsel to enhance jurors' ability  
25 to apply the law to the facts. In that event, the court may  
26 withhold giving the necessary procedural and housekeeping  
27 instructions until after closing arguments.

28 Section 2. Subsection (2) of section 44.102, Florida  
29 Statutes, is amended to read:

30 44.102 Court-ordered mediation.--

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

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1           (a) Must, upon request of one party, refer to  
2 mediation any filed civil action for monetary damages,  
3 provided the requesting party is willing and able to pay the  
4 costs of the mediation or the costs can be equitably divided  
5 between the parties, unless:

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

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

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

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

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

15           6. The parties have agreed to binding arbitration.

16           7. The parties have agreed to an expedited trial  
17 pursuant to section 7 of this act.

18           8. The parties have agreed to voluntary trial  
19 resolution pursuant to s. 44.104.

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

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

31           (d)(c) In circuits in which a dependency or in need of

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1 services mediation program has been established, may refer to  
2 mediation all or any portion of a matter relating to  
3 dependency or to a child in need of services or a family in  
4 need of services.

5 Section 3. Section 44.104, Florida Statutes, is  
6 amended to read:

7 44.104 Voluntary binding arbitration and voluntary  
8 trial resolution.--

9 (1) Two or more opposing parties who are involved in a  
10 civil dispute may agree in writing to submit the controversy  
11 to voluntary binding arbitration, or voluntary trial  
12 resolution, in lieu of litigation of the issues involved,  
13 prior to or after a lawsuit has been filed, provided no  
14 constitutional issue is involved.

15 (2) If the parties have entered into an agreement  
16 which provides in voluntary binding arbitration for a method  
17 for appointing the appointment of one or more arbitrators, or  
18 which provides in voluntary trial resolution a method for  
19 appointing a member of the Florida Bar in good standing for  
20 more than 5 years to act as trial resolution judge, the court  
21 shall proceed with the appointment as prescribed, ~~except that.~~  
22 However, in voluntary binding arbitration at least one of the  
23 arbitrators, who shall serve as the chief arbitrator, shall  
24 meet the qualifications and training requirements adopted  
25 pursuant to s. 44.106. In the absence of an agreement, or if  
26 the agreement method fails or for any reason cannot be  
27 followed, the court, on application of a party, shall appoint  
28 one or more qualified arbitrators, or the trial resolution  
29 judge, as the case requires.

30 (3) The arbitrators or trial resolution judge shall be  
31 compensated by the parties according to their agreement, ~~but~~

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1 ~~not at an amount less than \$75 per day.~~

2 (4) Within 10 days after ~~of~~ the submission of the  
3 request for binding arbitration, or voluntary trial  
4 resolution, the court shall provide for the appointment of the  
5 arbitrator or arbitrators, or trial resolution judge, as the  
6 case requires. Once appointed, the arbitrators or trial  
7 resolution judge shall notify the parties of the time and  
8 place for the hearing.

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

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

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

31 (8) A voluntary binding arbitration ~~The~~ hearing shall

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1 be conducted by all of the arbitrators, but a majority may  
2 determine any question and render a final decision. A trial  
3 resolution judge shall conduct a voluntary trial resolution  
4 hearing. The trial resolution judge may determine any  
5 question and render a final decision.

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

8 (10) An appeal of a voluntary binding arbitration  
9 decision shall be taken to the circuit court and shall be  
10 limited to review on the record and not de novo, of:

11 (a) Any alleged failure of the arbitrators to comply  
12 with the applicable rules of procedure or evidence.

13 (b) Any alleged partiality or misconduct by an  
14 arbitrator prejudicing the rights of any party.

15 (c) Whether the decision reaches a result contrary to  
16 the Constitution of the United States or of the State of  
17 Florida.

18 (11) Any party may enforce a final decision rendered  
19 in a voluntary trial by filing a petition for final judgment  
20 in the circuit court in the circuit in which the voluntary  
21 trial took place. Upon entry of final judgment by the circuit  
22 court, any party may appeal to the appropriate appellate  
23 court. Factual findings determined in the voluntary trial are  
24 not subject to appeal.

25 (12) The harmless error doctrine shall apply in all  
26 appeals. No further review shall be permitted unless a  
27 constitutional issue is raised.

28 (13)~~(11)~~ If no appeal is taken within the time  
29 provided by rules promulgated by the Supreme Court, then the  
30 decision shall be referred to the presiding judge in the case,  
31 or if one has not been assigned, then to the chief judge of

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1 the circuit for assignment to a circuit judge, who shall enter  
2 such orders and judgments as are required to carry out the  
3 terms of the decision, which orders shall be enforceable by  
4 the contempt powers of the court and for which judgments  
5 execution shall issue on request of a party.

6 (14)(12) This section shall not apply to any dispute  
7 involving child custody, visitation, or child support, or to  
8 any dispute which involves the rights of a third party not a  
9 party to the arbitration or voluntary trial resolution when  
10 the third party would be an indispensable party if the dispute  
11 were resolved in court or when the third party notifies the  
12 chief arbiter or the trial resolution judge that the third  
13 party would be a proper party if the dispute were resolved in  
14 court, that the third party intends to intervene in the action  
15 in court and that the third party does not agree to proceed  
16 under this section.

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

19 57.105 Attorney's fee; sanctions for raising unfounded  
20 claims or defenses; damages for delay of litigation.--

21 (1) Upon the court's initiative or motion of any  
22 party, the court shall award a reasonable attorney's fee to be  
23 paid to the prevailing party in equal amounts by the losing  
24 party and the losing party's attorney on any claim or defense  
25 at any time during a ~~in any~~ civil proceeding or action in  
26 which the court finds that the losing party or the losing  
27 party's attorney knew or should have known that a claim or  
28 defense when initially presented to the court or at any time  
29 before trial:

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

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1           (b) Would not be supported by the application of  
2 then-existing law to those material facts. ~~there was a~~  
3 ~~complete absence of a justiciable issue of either law or fact~~  
4 ~~raised by the complaint or defense of the losing party;~~  
5 ~~provided,~~

6  
7 However, ~~that~~ the losing party's attorney is not personally  
8 responsible if he or she has acted in good faith, based on the  
9 representations of his or her client as to the existence of  
10 those material facts. If the court awards attorney's fees to a  
11 claimant pursuant to this subsection ~~finds that there was a~~  
12 ~~complete absence of a justiciable issue of either law or fact~~  
13 ~~raised by the defense,~~ the court shall also award prejudgment  
14 interest.

15           (2) Paragraph (1)(b) does not apply if the court  
16 determines that the claim or defense was initially presented  
17 to the court as a good faith argument for the extension,  
18 modification, or reversal of existing law or the establishment  
19 of new law, as it applied to the material facts, with a  
20 reasonable expectation of success.

21           (3) At any time in any civil proceeding or action in  
22 which the moving party proves by a preponderance of the  
23 evidence that any action taken by the opposing party,  
24 including, but not limited to, the filing of any pleading or  
25 part thereof, the assertion of or response to any discovery  
26 demand, the assertion of any claim or defense, or the response  
27 to any request by any other party, was taken primarily for the  
28 purpose of unreasonable delay, the court shall award damages  
29 to the moving party for its reasonable expenses incurred in  
30 obtaining the order that may include attorney fees, and other  
31 loss resulting from the improper delay.



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1           (4) The provisions of this section are supplemental to  
2 other sanctions or remedies available under law or under court  
3 rules.

4           (5)(2) If a contract contains a provision allowing  
5 attorney's fees to a party when he or she is required to take  
6 any action to enforce the contract, the court may also allow  
7 reasonable attorney's fees to the other party when that party  
8 prevails in any action, whether as plaintiff or defendant,  
9 with respect to the contract. This subsection applies to any  
10 contract entered into on or after October 1, 1988.~~This act~~  
11 ~~shall take effect October 1, 1988, and shall apply to~~  
12 ~~contracts entered into on said date or thereafter.~~

13           Section 5. Section 57.071, Florida Statutes, is  
14 amended to read:

15           57.071 Costs; what taxable.--

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

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

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

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

26           (2) Expert witness fees may not be awarded as taxable  
27 costs unless the party retaining the expert witness furnishes  
28 each opposing party with a written report signed by the expert  
29 witness which summarizes the expert witness's opinions and the  
30 factual basis of the opinions, including documentary evidence  
31 and the authorities relied upon in reaching the opinions. Such

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1 report shall be filed at least 5 days prior to the deposition  
2 of the expert or at least 20 days prior to discovery cut-off,  
3 whichever is sooner, or as otherwise determined by the court.  
4 This subsection does not apply to any action proceeding under  
5 the Florida Family Law Rules of Procedure.

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

14 (1) All discovery shall be completed within 60 days  
15 after the court enters an order adopting the joint expedited  
16 trial stipulation.

17 (2) All interrogatories and requests for production  
18 must be served within 10 days after the court enters the order  
19 adopting the joint expedited trial stipulation and all  
20 responses must be served within 20 days after receipt.

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

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

24 (5) The case may be tried within 30 days after the  
25 60-day discovery cut-off, if such schedule would not impose an  
26 undue burden on the court calendar.

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 no more than 3 hours to  
30 present its case, including the opening, all testimony and  
31 evidence, and the closing.

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1           (9) The defendant will have no more than 3 hours to  
2 present its case, including the opening, all testimony and  
3 evidence, and the closing.

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

8           (11) The parties may introduce a verified written  
9 report of any expert and an affidavit of the expert's  
10 curriculum vitae instead of calling the expert to testify at  
11 trial.

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

16           (13) Except as otherwise provided in this section, the  
17 Florida Evidence Code and the Florida Rules of Civil Procedure  
18 apply.

19           (14) The court may refuse to grant continuances of the  
20 trial absent extraordinary circumstances.

21           Section 7. Section 768.77, Florida Statutes, is  
22 amended to read:

23           768.77 Itemized verdict.--

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

29           (1)~~(a)~~ Amounts intended to compensate the claimant for  
30 economic losses;

31           (2)~~(b)~~ Amounts intended to compensate the claimant for

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1 noneconomic losses; and

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

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

15 Section 8. Paragraph (a) of subsection (1) is amended  
16 to read:

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

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

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

29 2. Subject to the provisions of this subsection, the  
30 court shall, at the request of either party, unless the court  
31 determines that manifest injustice would result to any party,

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1 enter a judgment ordering future economic damages, as itemized  
2 pursuant to s. 768.77(1)(a), in excess of \$250,000 to be paid  
3 in whole or in part by periodic payments rather than by a  
4 lump-sum payment.

5 Section 9. Section 47.025, Florida Statutes, is  
6 created to read:

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

19 Section 10. Through the state's uniform case reporting  
20 system, the clerk of court shall report to the Office of the  
21 State Courts Administrator, beginning in 2003, information  
22 from each settlement or jury verdict and final judgment in  
23 negligence cases as defined in section 768.81(4), Florida  
24 Statutes, as the President of the Senate and the Speaker of  
25 the House of Representatives deem necessary from time to time.  
26 The information shall include, but need not be limited  
27 to: the name of each plaintiff and defendant; the verdict;  
28 the percentage of fault of each; the amount of economic  
29 damages and noneconomic damages awarded to each plaintiff,  
30 identifying those damages that are to be paid jointly and  
31 severally and by which defendants; and the amount of any

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1 punitive damages to be paid by each defendant.

2 Section 11. Subsection (2) of section 95.031, Florida  
3 Statutes, is amended to read:

4 95.031 Computation of time.--Except as provided in  
5 subsection (2) and in s. 95.051 and elsewhere in these  
6 statutes, the time within which an action shall be begun under  
7 any statute of limitations runs from the time the cause of  
8 action accrues.

9 (2)(a) An action ~~Actions~~ for ~~products liability and~~  
10 fraud under s. 95.11(3) must be begun within the period  
11 prescribed in this chapter, with the period running from the  
12 time the facts giving rise to the cause of action were  
13 discovered or should have been discovered with the exercise of  
14 due diligence, instead of running from any date prescribed  
15 elsewhere in s. 95.11(3), but in any event an action for fraud  
16 under s. 95.11(3) must be begun within 12 years after the date  
17 of the commission of the alleged fraud, regardless of the date  
18 the fraud was or should have been discovered.

19 (b) An action for products liability under s. 95.11(3)  
20 must be begun within the period prescribed in this chapter,  
21 with the period running from the date that the facts giving  
22 rise to the cause of action were discovered, or should have  
23 been discovered with the exercise of due diligence, rather  
24 than running from any other date prescribed elsewhere in s.  
25 95.11(3), but in no event may an action for products liability  
26 under s. 95.11(3) be commenced unless the complaint is served  
27 and filed within 15 years after the date of delivery of the  
28 product to its first purchaser or lessee who was not engaged  
29 in the business of selling or leasing the product or of using  
30 the product as a component in the manufacture of another  
31 product, regardless of the date that the defect in the product

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1 was or should have been discovered. However, the 15-year  
2 limitation on filing an action for products liability does not  
3 apply if the manufacturer knew of a defect in the product and  
4 concealed or attempted to conceal this defect. The provisions  
5 of this paragraph shall not apply to any aircraft which, at  
6 the time of the accident, was engaged in scheduled  
7 passenger-carrying operations.

8 (c) The repose period prescribed within paragraph (b)  
9 does not apply if the claimant was exposed to or used the  
10 product within the repose period, but an injury caused by  
11 such exposure or use did not manifest itself until after  
12 expiration of the repose period.

13 Section 12. Any action for products liability which  
14 would not have been barred under section 95.031(2), Florida  
15 Statutes, prior to the amendments to that section made by this  
16 act may be commenced before July 1, 2003, and, if it is not  
17 commenced by that date and is barred by the amendments to  
18 section 95.031(2), Florida Statutes, made by this act, it  
19 shall be barred.

20 Section 13. Section 90.407 Florida Statutes, is  
21 amended to read:

22 90.407 Subsequent remedial measures.--Evidence of  
23 measures taken after an injury or harm caused by an event,  
24 which measures if taken before the event it occurred would  
25 have made ~~the event~~ injury or harm less likely to occur, is  
26 not admissible to prove negligence, the existence of a product  
27 defect, or culpable conduct in connection with the event. This  
28 rule does not require the exclusion of evidence of subsequent  
29 remedial measures when offered for another purpose, such as  
30 proving ownership, control, or the feasibility of  
31 precautionary measures, if controverted, or impeachment.

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1           Section 14. Section 768.1257 Florida Statutes, is  
2 created to read:

3           768.1257 State-of-the-art defense for products  
4 liability.--In an action based upon defective design, brought  
5 against the manufacturer of a product, the finder of fact  
6 shall consider the state of the art of scientific and  
7 technical knowledge and other circumstances that existed at  
8 the time of manufacture, not at the time of loss or injury.

9           Section 15. Section 768.1256, Florida Statutes, is  
10 created to read:

11           768.1256 Government rules defense.--

12           (1) In a product liability action brought against a  
13 manufacturer or seller for harm allegedly caused by a product,  
14 there is a rebuttable presumption that the product is not  
15 defective or unreasonably dangerous and the manufacturer or  
16 seller is not liable if, at the time the specific unit of the  
17 product was sold or delivered to the initial purchaser or  
18 user, the aspect of the product that allegedly caused the  
19 harm:

20           (a) Complied with federal or state codes, statutes,  
21 rules, regulations or standards relevant to the event causing  
22 the death or injury;

23           (b) The codes, statutes, rules, regulations or  
24 standards are designed to prevent the type of harm that  
25 allegedly occurred; and

26           (c) Compliance with the codes, statutes, rules,  
27 regulations or standards is required as a condition for  
28 selling or distributing the product.

29           (2) In a product liability action as described in  
30 subsection (1), there is a rebuttable presumption that the  
31 product is defective or unreasonably dangerous and the



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1 manufacturer or seller is liable if the manufacturer or seller  
2 did not comply with the federal or state codes, statutes,  
3 rules, regulations or standards which:

4 (a) Were relevant to the event causing the death or  
5 injury;

6 (b) Are designed to prevent the type of harm that  
7 allegedly occurred; and

8 (c) Require compliance as a condition for selling or  
9 distributing the product.

10 (3) This section does not apply to an action brought  
11 for harm allegedly caused by a drug that is ordered off the  
12 market or seized by the Federal Food and Drug Administration.

13 Section 16. Section 768.096, Florida Statutes, is  
14 created to read:

15 768.096 Employer presumption against negligent  
16 hiring.--

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

27 (a) Obtaining a criminal background investigation on  
28 the prospective employee under subsection (2); or

29 (b) Making a reasonable effort to contact references  
30 and former employers of the prospective employee concerning  
31 the suitability of the prospective employee for employment; or

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

9           (d) Obtaining, with written authorization from the  
10 prospective employee, a check of the driver's license record  
11 of the prospective employee if such a check is relevant to the  
12 work the employee will be performing and if the record can  
13 reasonably be obtained; or

14           (e) Interviewing the prospective employee.

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

20           (3) The election by an employer not to conduct the  
21 investigation specified in subsection (1) does not raise any  
22 presumption that the employer failed to use reasonable care in  
23 hiring an employee.

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

26           768.095 Employer immunity from liability; disclosure  
27 of information regarding former or current employees.--An  
28 employer who discloses information about a former or current  
29 employee ~~employee's job performance~~ to a prospective employer  
30 of the former or current employee upon request of the  
31 prospective employer or of the former or current employee is

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1 ~~presumed to be acting in good faith and, unless lack of good~~  
 2 ~~faith is shown by clear and convincing evidence, is immune~~  
 3 ~~from civil liability for such disclosure or its consequences~~  
 4 ~~unless it is shown by clear and convincing evidence. For~~  
 5 ~~purposes of this section, the presumption of good faith is~~  
 6 ~~rebutted upon a showing that the information disclosed by the~~  
 7 ~~former or current employer was knowingly false or deliberately~~  
 8 ~~misleading, was rendered with malicious purpose, or violated~~  
 9 ~~any civil right of the former or current employee protected~~  
 10 ~~under chapter 760.~~

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

13 768.0705 Limitation on premises liability.--

14 (1) The owner or operator of a convenience business  
 15 that substantially implements the applicable security measures  
 16 listed in ss. 812.173 and 812.174 shall gain a presumption  
 17 against liability in connection with criminal acts that occur  
 18 on the premises and that are committed by third parties who  
 19 are not employees or agents of the owner or operator of the  
 20 convenience business.

21 Section 19. 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

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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 2. "Discovered trespasser" means a person who enters

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

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

20 (b) To avoid liability to undiscovered trespassers, a  
21 person or organization owning or controlling an interest in  
22 real property must refrain from intentional misconduct that  
23 proximately causes injury to the undiscovered trespasser, 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 that  
28 proximately causes injury to the discovered trespasser, and  
29 must warn the trespasser of dangerous conditions that are  
30 known to the person or organization owning or controlling an  
31 interest in real property but that are not readily observable

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1 by others.

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

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

11 Section 20. Section 768.36, Florida Statutes, is  
12 created to read:

13 768.36 Alcohol or drug defense.--

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

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

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

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

31 (a) The plaintiff was under the influence of any

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1 alcoholic beverage or drug to the extent that the plaintiff's  
2 normal faculties were impaired or the plaintiff had a blood or  
3 breath alcohol level of 0.08 percent or higher; and

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

7 Section 21. Section 768.725, Florida Statutes, is  
8 created to read:

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

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

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

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

30 (2) A defendant may be held liable for punitive  
31 damages only if the trier of fact, based on clear and

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1 convincing evidence, finds that the defendant was personally  
2 guilty of intentional misconduct or gross negligence. As used  
3 in this section, the term:

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

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

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

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

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

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

28 (4) The provisions of this section are remedial in  
29 nature and must be applied to all civil actions pending on  
30 October 1, 1999, in which the trial or retrial of the action  
31 has not commenced.



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1           Section 23. Section 768.735, Florida Statutes, is  
2 created to read:

3           768.735 Punitive damages; exceptions; limitation.--

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

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

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

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

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

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1           Section 24. Section 768.736, Florida Statutes, is  
2 created to read:

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

10           Section 25. Section 768.737, Florida statutes, is  
11 created to read:

12           768.737 Punitive damages; application in  
13 arbitration.--

14           Where punitive damages are available as a remedy in an  
15 arbitration proceeding, sections 768.72, 768.725 and 768.73  
16 apply. When an award of punitive damages is made in an  
17 arbitration proceeding, the arbitrator who renders the award  
18 must issue a written opinion setting forth the conduct which  
19 gave rise to the award and how the arbitrator applied the  
20 standards in section 768.72 to such conduct.

21           Section 26. Subsections (3) and (5) of section 768.81,  
22 Florida Statutes, are amended to read:

23           768.81 Comparative fault.--

24           (3) APPORTIONMENT OF DAMAGES.--In cases to which this  
25 section applies, the court shall enter judgment against each  
26 party liable on the basis of such party's percentage of fault  
27 and not on the basis of the doctrine of joint and several  
28 liability; provided that with respect to any party whose  
29 percentage of fault equals or exceeds that of a particular  
30 claimant and whose fault exceeds 25 percent, the court shall  
31 enter judgment with respect to economic damages against that

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1 party on the basis of the doctrine of joint and several  
2 liability.

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

11 324.021 Definitions; minimum insurance required.--The  
12 following words and phrases when used in this chapter shall,  
13 for the purpose of this chapter, have the meanings  
14 respectively ascribed to them in this section, except in those  
15 instances where the context clearly indicates a different  
16 meaning:

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

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

20 1. The lessor, under an agreement to lease a motor  
21 vehicle for 1 year or longer which requires the lessee to  
22 obtain insurance acceptable to the lessor which contains  
23 limits not less than \$100,000/\$300,000 bodily injury liability  
24 and \$50,000 property damage liability or not less than  
25 \$500,000 combined property damage liability and bodily injury  
26 liability, shall not be deemed the owner of said motor vehicle  
27 for the purpose of determining financial responsibility for  
28 the operation of said motor vehicle or for the acts of the  
29 operator in connection therewith; further, this subparagraph  
30 ~~paragraph~~ shall be applicable so long as the insurance meeting  
31 these requirements is in effect. The insurance meeting such

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1 requirements may be obtained by the lessor or lessee,  
2 provided, if such insurance is obtained by the lessor, the  
3 combined coverage for bodily injury liability and property  
4 damage liability shall contain limits of not less than \$1  
5 million and may be provided by a lessor's blanket policy.

6       2. The lessor, under an agreement to rent or lease a  
7 motor vehicle for a period of less than 1 year, shall be  
8 deemed the owner of the motor vehicle for the purpose of  
9 determining liability for the operation of the vehicle or the  
10 acts of the operator in connection therewith only up to  
11 \$100,000 per person and up to \$300,000 per incident for bodily  
12 injury and up to \$50,000 for property damage. If the lessee or  
13 the operator of the motor vehicle is uninsured or has any  
14 insurance with limits less than \$500,000 combined property  
15 damage and bodily injury liability, the lessor shall be liable  
16 for up to an additional \$500,000 in economic damages only  
17 arising out of the use of the motor vehicle. The additional  
18 specified liability of the lessor for economic damages shall  
19 be reduced by amounts actually recovered from the lessee, from  
20 the operator, and from any insurance or self-insurance  
21 covering the lessee or operator. Nothing in this subparagraph  
22 shall be construed to affect the liability of the lessor for  
23 its own negligence.

24       3. The owner who is a natural person and loans a motor  
25 vehicle to any permissive user shall be liable for the  
26 operation of the vehicle or the acts of the operator in  
27 connection therewith only up to \$100,000 per person and up to  
28 \$300,000 per incident for bodily injury and up to \$50,000 for  
29 property damage. If the permissive user of the motor vehicle  
30 is uninsured or has any insurance with limits less than  
31 \$500,000 combined property damage and bodily injury liability,

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1 the owner shall be liable for up to an additional \$500,000 in  
2 economic damages only arising out of the use of the motor  
3 vehicle. The additional specified liability of the owner for  
4 economic damages shall be reduced by amounts actually  
5 recovered from the permissive user and from any insurance or  
6 self-insurance covering the permissive user. Nothing in this  
7 subparagraph shall be construed to affect the liability of the  
8 owner for his or her own negligence.

9 (c) Application.--

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

22 (2) Furthermore, with respect to commercial motor  
23 vehicles as defined in s. 627.732, the limits on liability in  
24 subparagraphs (b)2. and (b)3. do not apply if, at the time of  
25 the incident, the commercial motor vehicle is being used in  
26 the transportation of materials found to be hazardous for the  
27 purposes of the Hazardous Materials Transportation  
28 Authorization Act of 1994, as amended (49 U.S.C. ss. 5101 et  
29 seq.) and that is required pursuant to such act to carry  
30 placards warning others of the hazardous cargo, unless at the  
31 time of lease or rental either:

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1           a. the lessee indicates in writing that the vehicle  
2 will not be used to transport materials found to be hazardous  
3 for the purposes of the Hazardous Materials Transportation  
4 Authorization Act of 1994, as amended (49 U.S.C. ss. 5101 et  
5 seq.); or

6           b. the lessee or other operator of the commercial  
7 motor vehicle has in effect insurance with limits of at least  
8 \$5,000,000 combined property damage and bodily injury  
9 liability.

10           Section 28. Section 768.098, Florida Statutes, is  
11 created to read:

12           768.098 Limitation of liability for employee  
13 leasing.--

14           (1) An employer in a joint employment relationship  
15 pursuant to s. 468.520 shall not be liable for the tortious  
16 actions of another employer in that relationship, or for the  
17 tortious actions of any jointly employed employee under that  
18 relationship, provided that:

19           (a) The employer seeking to avoid liability pursuant  
20 to this section did not authorize or direct the tortious  
21 action;

22           (b) The employer seeking to avoid liability pursuant  
23 to this section did not have actual knowledge of the tortious  
24 conduct and fail to take appropriate action;

25           (c) The employer seeking to avoid liability pursuant  
26 to this section did not have actual control over the day to  
27 day job duties of the jointly employed employee who has  
28 committed a tortious act nor actual control over the portion  
29 of a job site at which or from which the tortious conduct  
30 arose or at which and from which a jointly employed employee  
31 worked, and that said control was assigned to the other

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1 employer under the contract;

2 (d) The employer seeking to avoid liability pursuant  
3 to this section is expressly absolved in the written contract  
4 forming the joint employment relationship of control over the  
5 day to day job duties of the jointly employed employee who has  
6 committed a tortious act, and of the portion of the job site  
7 at which or from which the tortious conduct arose or at which  
8 and from which the jointly employed employee worked, and that  
9 said control was assigned to the other employer under the  
10 contract; and

11 (e) Complaints, allegations or incidents of any  
12 tortious misconduct or workplace safety violations, regardless  
13 of the source, are required to be reported to the employer  
14 seeking to avoid liability pursuant to this section by all  
15 other joint employers under the written contract forming the  
16 joint employment relationship, and that the employer seeking  
17 to avoid liability pursuant to this section did not fail to  
18 take appropriate action as a result of receiving any such  
19 report related to a jointly employed employee who has  
20 committed a tortious act.

21 (2) An employer seeking to avoid liability pursuant to  
22 this section shall not be presumed to have actual control over  
23 the day to day job duties of the jointly employed employee who  
24 has committed a tortious act, nor actual control over the  
25 portion of a job site at which or from which that employee  
26 worked, based solely upon the fact that the employee at issue  
27 is a leased employee.

28 (3) This section shall not alter any responsibilities  
29 of the joint employer who has actual control over the day to  
30 day job duties of the jointly employed employee and who has  
31 actual control over the portion of a job site at which or from

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1 which the employee is employed, which arises from s. 768.096.

2 Section 29. Subsections (6), (7), and (8) are added to  
3 section 400.023, Florida Statutes, to read:

4 400.023 Civil enforcement.--

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

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

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

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

19 b. Set a date for mediation.

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

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

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

29 3. The mediation shall be conducted in the following  
30 manner:

31 a. Each party shall ensure that all persons necessary



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1 for complete settlement authority are present at the  
2 mediation.

3 b. Each party shall mediate in good faith.

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

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

18 (c) This subsection applies only to claims for  
19 liability and damages and does not apply to actions for  
20 injunctive relief.

21 (d) This subsection applies to all causes of action  
22 that accrue on or after October 1, 1999.

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

28 (8) In addition to any other standards for punitive  
29 damages, any award of punitive damages must be reasonable in  
30 light of the actual harm suffered by the resident and the  
31 egregiousness of the conduct that caused the actual harm to

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1 the resident.

2 Section 30. Section 400.429, Florida statutes, is  
3 amended to read:

4 400.429 Civil actions to enforce rights.--

5 (1) Any person or resident whose rights as specified  
6 in this part are violated shall have a cause of action against  
7 any facility owner, administrator, or staff responsible for  
8 the violation. The action may be brought by the resident or  
9 his or her guardian, or by a person or organization acting on  
10 behalf of a resident with the consent of the resident or his  
11 or her guardian, or by the personal representative of the  
12 estate of a deceased resident when the cause of death resulted  
13 from a violation of the decedent's rights, to enforce such  
14 rights. The action may be brought in any court of competent  
15 jurisdiction to enforce such rights and to recover actual  
16 damages, and punitive damages when malicious, wanton, or  
17 willful disregard of the rights of others can be shown. Any  
18 plaintiff who prevails in any such action may be entitled to  
19 recover reasonable attorney's fees, costs of the action, and  
20 damages, unless the court finds that the plaintiff has acted  
21 in bad faith, with malicious purpose, and that there was a  
22 complete absence of a justiciable issue of either law or fact.  
23 A prevailing defendant may be entitled to recover reasonable  
24 attorney's fees pursuant to s. 57.105. The remedies provided  
25 in this section are in addition to and cumulative with other  
26 legal and administrative remedies available to a resident or  
27 to the agency.

28 (2) To recover attorney's fees under this section, the  
29 following conditions precedent must be met:

30 (a) Within 120 days after the filing of a responsive  
31 pleading or defensive motion to a complaint brought under this

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1 section and before trial, the parties or their designated  
 2 representatives shall meet in mediation to discuss the issues  
 3 of liability and damages in accordance with this paragraph for  
 4 the purpose of an early resolution of the matter.

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

7 a. Agree on a mediator. If the parties cannot agree on  
 8 a mediator, the defendant shall immediately notify the court,  
 9 which shall appoint a mediator within 10 days after such  
 10 notice.

11 b. Set a date for mediation.

12 c. Prepare an order for the court that identifies the  
 13 mediator, the scheduled date of the mediation, and other terms  
 14 of the mediation. Absent any disagreement between the parties,  
 15 the court may issue the order for the mediation submitted by  
 16 the parties without a hearing.

17 2. The mediation must be concluded within 120 days  
 18 after the filing of a responsive pleading or defensive motion.  
 19 The date may be extended only by agreement of all parties  
 20 subject to mediation under this subsection.

21 3. The mediation shall be conducted in the following  
 22 manner:

23 a. Each party shall ensure that all persons necessary  
 24 for complete settlement authority are present at the  
 25 mediation.

26 b. Each party shall mediate in good faith.

27 4. All aspects of the mediation which are not  
 28 specifically established by this subsection must be conducted  
 29 according to the rules of practice and procedure adopted by  
 30 the Supreme Court of this state.

31 (b) If the parties do not settle the case pursuant to

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1 mediation, the last offer of the defendant made at mediation  
2 shall be recorded by the mediator in a written report that  
3 states the amount of the offer, the date the offer was made in  
4 writing, and the date the offer was rejected. If the matter  
5 subsequently proceeds to trial under this section and the  
6 plaintiff prevails but is awarded an amount in damages,  
7 exclusive of attorney's fees, which is equal to or less than  
8 the last offer made by the defendant at mediation, the  
9 plaintiff is not entitled to recover any attorney's fees.

10 (c) This subsection applies only to claims for  
11 liability and damages and does not apply to actions for  
12 injunctive relief.

13 (d) This subsection applies to all causes of action  
14 that accrue on or after October 1, 1999.

15 (3) Discovery of financial information for the purpose  
16 of determining the value of punitive damages may not be had  
17 unless the plaintiff shows the court by proffer or evidence in  
18 the record that a reasonable basis exists to support a claim  
19 for punitive damages.

20 (4) In addition to any other standards for punitive  
21 damages, any award of punitive damages must be reasonable in  
22 light of the actual harm suffered by the resident and the  
23 egregiousness of the conduct that caused the actual harm to  
24 the resident.

25 Section 31. Section 400.629, Florida Statutes, 1998  
26 Supplement, is amended to read:

27 400.629 Civil actions to enforce rights.--

28 (1) Any person or resident whose rights as specified  
29 in this part are violated has a cause of action against any  
30 adult family-care home, provider, or staff responsible for the  
31 violation. The action may be brought by the resident or the

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1 resident's guardian, or by a person or organization acting on  
2 behalf of a resident with the consent of the resident or the  
3 resident's guardian, to enforce the right. The action may be  
4 brought in any court of competent jurisdiction to enforce such  
5 rights and to recover actual damages, and punitive damages  
6 when malicious, wanton, or willful disregard of the rights of  
7 others can be shown. Any plaintiff who prevails in any such  
8 action is entitled to recover reasonable attorney's fees,  
9 costs of the action, and damages, unless the court finds that  
10 the plaintiff has acted in bad faith or with malicious purpose  
11 or that there was a complete absence of a justiciable issue of  
12 either law or fact. A prevailing defendant is entitled to  
13 recover reasonable attorney's fees pursuant to s. 57.105. The  
14 remedies provided in this section are in addition to other  
15 legal and administrative remedies available to a resident or  
16 to the agency.

17 (2) To recover attorney's fees under this section, the  
18 following conditions precedent must be met:

19 (a) Within 120 days after the filing of a responsive  
20 pleading or defensive motion to a complaint brought under this  
21 section and before trial, the parties or their designated  
22 representatives shall meet in mediation to discuss the issues  
23 of liability and damages in accordance with this paragraph for  
24 the purpose of an early resolution of the matter.

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

27 a. Agree on a mediator. If the parties cannot agree on  
28 a mediator, the defendant shall immediately notify the court,  
29 which shall appoint a mediator within 10 days after such  
30 notice.

31 b. Set a date for mediation.

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1           c. Prepare an order for the court that identifies the  
2 mediator, the scheduled date of the mediation, and other terms  
3 of the mediation. Absent any disagreement between the parties,  
4 the court may issue the order for the mediation submitted by  
5 the parties without a hearing.

6           2. The mediation must be concluded within 120 days  
7 after the filing of a responsive pleading or defensive motion.  
8 The date may be extended only by agreement of all parties  
9 subject to mediation under this subsection.

10           3. The mediation shall be conducted in the following  
11 manner:

12           a. Each party shall ensure that all persons necessary  
13 for complete settlement authority are present at the  
14 mediation.

15           b. Each party shall mediate in good faith.

16           4. All aspects of the mediation which are not  
17 specifically established by this subsection must be conducted  
18 according to the rules of practice and procedure adopted by  
19 the Supreme Court of this state.

20           (b) If the parties do not settle the case pursuant to  
21 mediation, the last offer of the defendant made at mediation  
22 shall be recorded by the mediator in a written report that  
23 states the amount of the offer, the date the offer was made in  
24 writing, and the date the offer was rejected. If the matter  
25 subsequently proceeds to trial under this section and the  
26 plaintiff prevails but is awarded an amount in damages,  
27 exclusive of attorney's fees, which is equal to or less than  
28 the last offer made by the defendant at mediation, the  
29 plaintiff is not entitled to recover any attorney's fees.

30           (c) This subsection applies only to claims for  
31 liability and damages and does not apply to actions for

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1 injunctive relief.

2 (d) This subsection applies to all causes of action  
3 that accrue on or after October 1, 1999.

4 (3) Discovery of financial information for the purpose  
5 of determining the value of punitive damages may not be had  
6 unless the plaintiff shows the court by proffer or evidence in  
7 the record that a reasonable basis exists to support a claim  
8 for punitive damages.

9 (4) In addition to any other standards for punitive  
10 damages, any award of punitive damages must be reasonable in  
11 light of the actual harm suffered by the resident and the  
12 egregiousness of the conduct that caused the actual harm to  
13 the resident.

14 Section 32. (1) The Office of Program Policy Analysis  
15 and Governmental Accountability shall, after issuing a request  
16 for proposals, contract with a national independent actuarial  
17 firm to conduct an actuarial analysis, consistent with  
18 generally accepted actuarial practices, of the expected  
19 reduction in liability judgments, settlements, and related  
20 costs resulting from the provisions of this act. The analysis  
21 shall be based on credible loss cost data derived from  
22 settlement or adjudication of liability claims accruing after  
23 the effective date of this act. The analysis shall include an  
24 estimate of the percentage decrease in such judgments,  
25 settlements, and costs by type of coverage affected by this  
26 act, including the time period when such savings or reductions  
27 are expected.

28 (2) The report shall be completed and submitted to the  
29 Office of Program Policy Analysis and governmental  
30 Accountability by March 1, 2007.

31 Section 33. It is the intent of this act and the

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1 Legislature to accord the utmost comity and respect to the  
 2 constitutional prerogatives of Florida's Judiciary, and  
 3 nothing in this act should be construed as any effort to  
 4 impinge upon those prerogatives. To that end, should any court  
 5 of competent jurisdiction enter a final judgment concluding or  
 6 declaring that any provision of this act improperly encroaches  
 7 upon the authority of the Florida Supreme Court to determine  
 8 the rules of practice and procedure in Florida courts, the  
 9 Legislature hereby declares its intent that any such provision  
 10 be construed as a request for rule change pursuant to Article  
 11 5, Section 2 of the Florida Constitution and not as a  
 12 mandatory legislative directive.

13           Section 34. If any provision of this act or the  
 14 application thereof to any person or circumstance is held  
 15 invalid, the invalidity does not affect other provisions or  
 16 applications of the act which can be given effect without the  
 17 invalid provision or application, and to this end the  
 18 provisions of this act are declared severable.

19           Section 35. This act shall take effect October 1,  
 20 1999, except that sections 13 and 30 shall take effect July 1,  
 21 1999.

22  
23

24 ===== T I T L E   A M E N D M E N T =====

25 And the title is amended as follows:

26           Delete everything before the enacting clause

27

28 and insert:

29           An act relating to civil actions; creating s. 40.50,  
 30 F.S.; providing for instructions to juries after the jury is  
 31 sworn in; providing for the taking of notes under certain



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1 circumstances; providing for written questions; providing for  
2 final instructions; amending s. 44.102, F.S.; requiring that  
3 the court require mediation in certain actions for monetary  
4 damages; amending s. 44.104, F.S.; providing for voluntary  
5 trial resolution upon the agreement of parties to a civil  
6 dispute; providing for the appointment and compensation of a  
7 trial resolution judge; providing guidelines for conducting a  
8 voluntary trial resolution; providing for enforcement and  
9 appeal; amending s. 57.105, F.S.; revising conditions for  
10 award of attorney's fees for presenting unsupported claims or  
11 defenses; authorizing damage awards against a party for  
12 unreasonable delay of litigation; authorizing the court to  
13 impose additional sanctions; amending s. 57.071, F.S.;  
14 providing criteria under which expert witness fees may be  
15 awarded as taxable costs; providing for expedited trials;  
16 amending s. 768.77, F.S.; deleting a requirement to itemize  
17 future damages on verdict forms; amending s. 768.78, F.S.;  
18 conforming provisions relating to alternative methods of  
19 payment of damage awards to changes made by the act;  
20 correcting a cross reference; creating s. 47.025, F.S.;  
21 providing that certain venue provisions in a contract for  
22 improvement to real property are void; specifying appropriate  
23 venue for actions against resident contractors,  
24 subcontractors, sub-subcontractors, and materialmen; requiring  
25 the clerk of courts to report certain information on  
26 negligence cases to the Office of the State Courts  
27 Administrator; amending s. 95.031, F.S.; imposing a 15-year  
28 statute of repose on actions brought to recover for harm  
29 caused by products; exempting certain categories of products  
30 from the statute of repose; providing an exception for certain  
31 injuries; providing for inapplicability under particular

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1 circumstances; specifying the date by which certain actions  
2 must be brought or be otherwise barred by the statute of  
3 repose; amending s. 90.407, F.S.; providing limitations on the  
4 admissibility of subsequent remedial measures; providing  
5 exceptions; creating s. 768.1257, F.S.; requiring the finder  
6 of fact, in certain product defect actions, to consider  
7 circumstances that existed at the time of manufacture;  
8 creating s. 768.1256, F.S.; providing a government rules  
9 defense with respect to certain products liability actions;  
10 providing for rebuttable presumptions; providing an exception;  
11 creating s. 768.096, F.S.; providing an employer with a  
12 presumption against negligent hiring under specified  
13 conditions in an action for civil damages resulting from an  
14 intentional tort committed by an employee; amending s.  
15 768.095, F.S.; revising the conditions under which an employer  
16 is immune from civil liability for disclosing information  
17 regarding an employee to a prospective employer; creating s.  
18 768.0705, F.S.; providing a presumption against liability for  
19 criminal acts for convenience business under specified  
20 conditions; amending s. 768.075, F.S.; delineating the duty  
21 owed to trespassers by a person or organization owning or  
22 controlling an interest in real property; providing  
23 definitions; providing for the avoidance of liability to  
24 discovered and undiscovered trespassers under described  
25 circumstances; providing immunity from certain liability  
26 arising out of the attempt to commit or the commission of a  
27 felony; creating s. 768.36, F.S.; prohibiting a plaintiff from  
28 recovering damages if plaintiff is more than a specified  
29 percentage at fault due to the influence of alcoholic  
30 beverages or drugs; creating s. 768.725, F.S.; providing for  
31 evidentiary standards for an award of punitive damages;

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1 amending s. 768.72, F.S.; revising provisions with respect to  
2 claims for punitive damages in civil actions; requiring clear  
3 and convincing evidence of gross negligence or intentional  
4 misconduct to support the recovery of such damages; providing  
5 definitions; providing criteria for the imposition of punitive  
6 damages with respect to employers, principals, corporations,  
7 or other legal entities for the conduct of an employee or  
8 agent; providing for the application of the section; creating  
9 s. 768.735, F.S.; providing that ss. 768.72(2)-(4), 768.725,  
10 and 768.73, F.S., relating to punitive damages, are  
11 inapplicable to specified causes of action; limiting the  
12 amount of punitive damages that may be awarded to a claimant  
13 in certain civil actions involving abuse or arising under ch.  
14 400, F.S.; creating s. 768.736, F.S.; providing that ss.  
15 768.725 and 768.73, F.S., relating to punitive damages, do not  
16 apply to intoxicated defendants; creating s. 768.737, F.S.;  
17 providing for application of punitive damages statutes to  
18 arbitration; amending s. 768.81, F.S.; providing for the  
19 apportionment of damages on the basis of joint and several  
20 liability when a party's fault exceeds a certain percentage;  
21 amending s. 324.021, F.S.; providing the lessor of a motor  
22 vehicle under certain rental agreements shall be deemed the  
23 owner of the vehicle for the purpose of determining liability  
24 for the operation of the vehicle within certain limits;  
25 providing for the liability of the owner of a motor vehicle  
26 who loans the vehicle to certain users; creating s. 768.098,  
27 F.S.; limiting the liability of employers in a joint  
28 employment relationship under specific circumstances;  
29 providing exceptions and limitations; amending s. 400.023,  
30 F.S., relating to actions brought on behalf of nursing home  
31 residents; providing that a party to any such action may not

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1 recover attorney's fees unless parties submit to mediation;  
2 specifying requirements for such mediation; providing for  
3 application; providing a standard for an award of punitive  
4 damages; amending s. 400.429, F.S.; relating to actions  
5 brought on behalf of assisted living care facility residents;  
6 providing that a party to any such action may not recover  
7 attorney's fees unless parties submit to mediation; specifying  
8 requirements for such mediation; providing for application;  
9 providing a standard for an award of punitive damages;  
10 amending s. 400.469, F.S.; relating to actions brought on  
11 behalf of adult family care home residents; providing that a  
12 party to any such action may not recover attorney's fees  
13 unless parties submit to mediation; specifying requirements  
14 for such mediation; providing for application; providing a  
15 standard for an award of punitive damages; requiring the  
16 Office of Program Policy Analysis and Governmental  
17 Accountability to contract with an actuarial firm to conduct  
18 an actuarial analysis of expected reductions in judgments and  
19 related costs resulting from litigation reforms; specifying  
20 the basis and due date for the actuarial report; providing a  
21 declaration of intent pertaining to the constitutional  
22 prerogatives of the judiciary; providing for severability;  
23 providing an effective date.

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