

By Senators Laurent and Webster

308-591A-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; providing for
9 severability; providing an effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Section 40.50, Florida Statutes, is created
14 to read:

15 40.50 Jury duty and instructions in civil cases.--

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

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

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

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

6 (b) Jurors' notes.

7 (c) Witnesses' names and either photographs or
8 biographies or both.

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

11 (e) A glossary of technical terms.

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

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

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

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

28 (6) The court shall instruct the jury that any
29 questions directed to witnesses or the court must be in
30 writing, unsigned, and given to the bailiff. If the court
31 determines that the juror's question calls for admissible

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

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

18 Section 2. Section 44.102, Florida Statutes, is
19 amended to read:

20 44.102 Court-ordered mediation.--

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

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

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

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

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

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

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

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

5 6. The parties have agreed to binding arbitration.

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

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

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

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

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

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

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

27 (b) Nonvolunteer mediators shall be compensated
28 according to rules adopted by the Supreme Court. If a
29 mediation program is funded pursuant to s. 44.108, a mediator
30 may be compensated by the county or by the parties. When a
31 party has been declared indigent or insolvent, that party's

1 pro rata share of a mediator's compensation shall be paid by
2 the county at the rate set by administrative order of the
3 chief judge of the circuit.

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

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

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

18 Section 3. Section 44.1051, Florida Statutes, is
19 created to read:

20 44.1051 Voluntary trial resolution.--

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

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

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

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

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

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

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

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

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

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

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

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

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

27 57.105 Attorney's fee; sanctions for raising unfounded
28 claims or defenses; damages for delay of litigation.--

29 (1) Upon the court's initiative or motion of any
30 party, the court shall award a reasonable attorney's fee to be
31 paid to the prevailing party in equal amounts by the losing

1 party and the losing party's attorney on any claim or defense
2 at any time during a ~~in any~~ civil proceeding or action in
3 which the court finds that ~~the losing party or the losing~~
4 party's attorney knew or should have known that a claim or
5 defense when initially presented to the court or at any time
6 before trial:

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

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

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

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

28 (3) At any time in any civil proceeding or action in
29 which the moving party proves by a preponderance of the
30 evidence that any action taken by the opposing party,
31 including, but not limited to, the filing of any pleading or

1 part thereof, the assertion of or response to any discovery
2 demand, the assertion of any claim or defense, or the response
3 to any request by any other party, was taken primarily for the
4 purpose of unreasonable delay, the court shall award damages
5 to the moving party for the time necessitated by the conduct
6 in question.

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

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

21 Section 5. Subsections (3), (5), and (7) of section
22 768.79, Florida Statutes, are amended to read:

23 768.79 Offer of judgment and demand for judgment.--

24 (3) The offer shall be served upon the party to whom
25 it is made, but it shall not be filed unless it is accepted or
26 unless filing is necessary to enforce the provisions of this
27 section. In any case involving multiple party plaintiffs or
28 multiple party defendants, an offer shall specify its
29 applicability to each party and may specify any conditions
30 thereof. Each individual party may thereafter accept or reject
31 the offer as the offer applies to such party.

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

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

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

18 1. The then apparent merit or lack of merit in the
19 claim.

20 2. The number and nature of offers made by the
21 parties.

22 3. The closeness of questions of fact and law at
23 issue.

24 4. Whether the person making the offer had
25 unreasonably refused to furnish information necessary to
26 evaluate the reasonableness of such offer.

27 5. Whether the suit was in the nature of a test case
28 presenting questions of far-reaching importance affecting
29 nonparties.

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

4 Section 6. Section 57.071, Florida Statutes, is
5 amended to read:

6 57.071 Costs; what taxable.--

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

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

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

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

17 (2) Expert witness fees shall not be awarded as
18 taxable costs unless:

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

29 (b) The party retaining the expert witness furnishes
30 each opposing party with a written report signed by the expert
31 witness which summarizes the expert witness's opinions and the

1 factual basis of the opinions, including documentary evidence
2 and the authorities relied upon in reaching the opinions. Such
3 report shall be filed at least 10 days prior to discovery
4 cut-off, 45 days prior to the trial, or as otherwise
5 determined by the court.

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

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

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

19 (3) The court shall determine the number of
20 depositions required.

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

22 (5) The case must be tried within 30 days after the
23 60-day discovery cut-off.

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

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

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

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

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

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

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

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

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

16 Section 8. Section 768.77, Florida Statutes, is
17 amended to read:

18 768.77 Itemized verdict.--

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

24 (1)~~(a)~~ Amounts intended to compensate the claimant for
25 economic losses;

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

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

30 ~~(2) Each category of damages, other than punitive~~
31 ~~damages, shall be further itemized into amounts intended to~~

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

10 Section 9. Paragraph (a) of subsection (1) of section
11 768.78, Florida Statutes, is amended to read:

12 768.78 Alternative methods of payment of damage
13 awards.--

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

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

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

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1 Section 10. Section 47.025, Florida Statutes, is
2 created to read:

3 47.025 Actions against contractors.--Any venue
4 provision in a contract for improvement to real property which
5 requires a legal action against a resident contractor,
6 subcontractor, or sub-subcontractor, as defined in part I of
7 chapter 713, to be brought outside this state is void as a
8 matter of public policy if enforcement would be unreasonable
9 and unjust. To the extent that the venue provision in the
10 contract is void under this section, any legal action arising
11 out of that contract shall be brought only in this state in
12 the county where the defendant resides, where the cause of
13 action accrued, or where the property in litigation is
14 located, unless the parties agree to the contrary.

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

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

1 768.81 Comparative fault.--

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

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

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

26 ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~
27 ~~LIABILITY.--Notwithstanding the provisions of this section,~~
28 ~~the doctrine of joint and several liability applies to all~~
29 ~~actions in which the total amount of damages does not exceed~~
30 ~~\$25,000.~~

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

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

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

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1 department and the Legislature to accurately monitor and
2 evaluate the effects of this act.

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

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

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

18 Section 15. This act shall take effect October 1,
19 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. (See bill for details.)