

By the Committee on Judiciary and Senators Laurent and Webster

308-1640A-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 consider whether the proposal was

1 reasonably rejected; amending s. 57.071, F.S.;  
2 providing criteria under which expert witness  
3 fees may be awarded as taxable costs; providing  
4 for expedited trials; amending s. 768.77, F.S.;  
5 deleting a requirement to itemize future  
6 damages on verdict forms; amending s. 768.78,  
7 F.S.; providing for proposals for structured  
8 settlements; requiring structured-settlement  
9 discussion in settlement negotiations;  
10 requiring assignment of liability for payment  
11 to a third-party assignee selected by the  
12 plaintiff; granting the plaintiff the right to  
13 select a settlement broker; providing for  
14 findings in orders approving or adopting a  
15 settlement; conforming provisions relating to  
16 alternative methods of payment of damage awards  
17 to changes made by the act; correcting a  
18 cross-reference; creating s. 47.025, F.S.;  
19 providing that certain venue provisions in a  
20 contract for improvement to real property are  
21 void; specifying appropriate venue for actions  
22 against resident contractors, subcontractors,  
23 sub-subcontractors, and materialmen; requiring  
24 the clerk of court to report certain  
25 information on negligence cases to the Office  
26 of the State Courts Administrator; amending s.  
27 768.81, F.S.; providing for the apportionment  
28 of damages on the basis of joint and several  
29 liability when a party's fault exceeds a  
30 certain percentage; providing for the  
31 allocation of fault to a nonparty; requiring

1           that such fault must be proved by a  
2           preponderance of the evidence; providing for a  
3           judgment based on joint and several liability  
4           for certain actions arising out of medical  
5           malpractice; repealing s. 768.81(5), F.S.,  
6           relating to the applicability of joint and  
7           several liability to actions in which the total  
8           amount of damages does not exceed a specified  
9           amount; requiring the Department of Insurance  
10          to contract with an actuarial firm to conduct  
11          an actuarial analysis of expected reductions in  
12          judgments and related costs resulting from  
13          litigation reforms; specifying the basis and  
14          due date for the actuarial report; providing  
15          for a review of rate filings by certain types  
16          of insurers after a specified date; providing  
17          that such provisions do not limit the refund of  
18          excessive profits by certain insurers;  
19          providing for severability; providing an  
20          effective date.

21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

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

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

40.50 Jury duty and instructions in civil cases.--  
(1) In any civil action immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses, and the

1 elementary legal principles that will govern the proceeding as  
2 provided in this section.

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

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

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

16 (b) Jurors' notes.

17 (c) Witnesses' names and either photographs or  
18 biographies or both.

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

21 (e) A glossary of technical terms.

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

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

30  
31

1       (4) The court shall permit jurors to have access to  
2 their notes and, in appropriate cases, notebooks during  
3 recesses and deliberations.

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

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

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

30       Section 2. Section 44.102, Florida Statutes, is  
31 amended to read:

1           44.102 Court-ordered mediation.--  
2           (1) Court-ordered mediation shall be conducted  
3 according to rules of practice and procedure adopted by the  
4 Supreme Court.  
5           (2) A court, under rules adopted by the Supreme Court:  
6           (a) Must refer to mediation any filed civil action for  
7 monetary damages, unless:  
8           1. The action is a landlord and tenant dispute that  
9 does not include a claim for personal injury.  
10           2. The action is filed for the purpose of collecting a  
11 debt.  
12           3. The action is a claim of medical malpractice.  
13           4. The action is governed by the Florida Small Claims  
14 Rules.  
15           5. The court determines that the action is proper for  
16 referral to nonbinding arbitration under this chapter.  
17           6. The parties have agreed to binding arbitration.  
18           ~~(b)(a)~~ May refer to mediation all or any part of a  
19 filed civil action for which mediation is not required under  
20 this section.  
21           ~~(c)(b)~~ In circuits in which a family mediation program  
22 has been established and upon a court finding of a dispute,  
23 shall refer to mediation all or part of custody, visitation,  
24 or other parental responsibility issues as defined in s.  
25 61.13. Upon motion or request of a party, a court shall not  
26 refer any case to mediation if it finds there has been a  
27 history of domestic violence that would compromise the  
28 mediation process.  
29           ~~(d)(c)~~ In circuits in which a dependency or in need of  
30 services mediation program has been established, may refer to  
31 mediation all or any portion of a matter relating to

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

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

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

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

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

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

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

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

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

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

31 44.1051 Voluntary trial resolution.--



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           (7)(a) If a party is entitled to costs and fees  
16 pursuant to the provisions of this section, the court may, in  
17 its discretion, determine that an offer was not made in good  
18 faith. In such case, the court may disallow an award of costs  
19 and attorney's fees.

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

24           1. The then apparent merit or lack of merit in the  
25 claim.

26           2. The number and nature of offers made by the  
27 parties.

28           3. The closeness of questions of fact and law at  
29 issue.

30           4. Whether the proposal was reasonably rejected.

31

1           ~~5.4.~~ Whether the person making the offer had  
2 unreasonably refused to furnish information necessary to  
3 evaluate the reasonableness of such offer.

4           ~~6.5.~~ Whether the suit was in the nature of a test case  
5 presenting questions of far-reaching importance affecting  
6 nonparties.

7           ~~7.6.~~ The amount of the additional delay cost and  
8 expense that the person making the offer reasonably would be  
9 expected to incur if the litigation should be prolonged.

10           Section 6. Section 57.071, Florida Statutes, is  
11 amended to read:

12           57.071 Costs; what taxable.--

13           ~~(1)~~ If costs are awarded to any party, the following  
14 shall also be allowed:

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

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

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

23           ~~(2)~~ Expert witness fees shall not be awarded as  
24 taxable costs unless:

25           (a) The party retaining the expert witness files a  
26 written notice with the court and with each opposing party  
27 within 30 days after the entry of an order setting the trial  
28 date, which notice shall specify the expertise and experience  
29 of the expert, the rate of compensation of the expert witness,  
30 the subject matters or issues on which the expert is expected  
31 to render an opinion, and an estimate of the overall fees of

1 the expert witness, including the fee for trial testimony. If  
2 the rate of compensation is hourly, the estimated overall fee  
3 may be stated in terms of estimated hours; and

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

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

20 (1) All discovery in the trial shall be completed  
21 within 60 days after the court enters an order adopting the  
22 joint expedited trial stipulation.

23 (2) All interrogatories and requests for production  
24 must be served within 10 days after the court enters an order  
25 adopting the joint expedited trial stipulation, and all  
26 responses must be served within 20 days after receipt.

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

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

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

- 1           (6) The trial must be limited to 1 day.
- 2           (7) The jury selection must be limited to 1 hour.
- 3           (8) The plaintiff will have 3 hours to present its  
4 case, including its opening, all of its testimony and  
5 evidence, and its closing.
- 6           (9) The defendant will have 3 hours to present its  
7 case, including its opening, all of its testimony and  
8 evidence, and its closing.
- 9           (10) The jury will be given "plain language" jury  
10 instructions at the beginning of the trial as well as a "plain  
11 language" jury verdict form. The jury instructions and verdict  
12 form must be agreed to by the parties.
- 13           (11) The parties will be permitted to introduce a  
14 written report of any expert and the expert's curriculum vitae  
15 instead of calling the expert to testify live at trial.
- 16           (12) At trial the parties may use excerpts from  
17 depositions, including video depositions, regardless of where  
18 the deponent lives or whether the deponent is available to  
19 testify.
- 20           (13) The Florida Evidence Code and the Florida Rules  
21 of Civil Procedure will apply.
- 22           (14) There will be no continuances of the trial absent  
23 extraordinary circumstances.
- 24           Section 8. Section 768.77, Florida Statutes, is  
25 amended to read:
- 26           768.77 Itemized verdict.--
- 27           ~~(1)~~ In any action to which this part applies in which  
28 the trier of fact determines that liability exists on the part  
29 of the defendant, the trier of fact shall, as a part of the  
30 verdict, itemize the amounts to be awarded to the claimant  
31 into the following categories of damages:



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

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

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

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

18           Section 9. Present subsection (1) of section 768.78,  
19 Florida Statutes, is amended and redesignated as subsection  
20 (2), present subsection (2) is redesignated as subsection (3),  
21 and a new subsection (1) is added to that section to read:

22           768.78 Alternative methods of payment of damage  
23 awards.--

24           (1) In both pre-judgment and post-judgment cases, the  
25 parties shall specifically discuss the option and advantages  
26 for the plaintiff of settlement through use of structured  
27 periodic payments. If, in connection with a settlement, the  
28 plaintiff chooses to receive payment in the form of periodic  
29 payments, the defendant or the defendant's liability carrier  
30 is obligated to provide such payments, and the following  
31 apply:

1        (a) To the extent that the liability for payment of  
2 damages to the plaintiff qualifies for assignment under  
3 Section 130, or any successor section, of the Internal Revenue  
4 Code, as amended from time to time, the defendant or the  
5 defendant's liability carrier shall assign the liability to  
6 make such periodic payments to a third party assignee selected  
7 by the plaintiff.

8        (b) Once a structured settlement is agreed to by the  
9 parties, the defendant or the defendant's liability carrier  
10 may not withdraw from the agreement because of the plaintiff's  
11 choice of third-party assignee.

12        (c) The plaintiff has the right to select a licensed  
13 structured-settlement broker to place the structured  
14 settlement.

15        (d) Any order approving or adopting a settlement to  
16 which this subsection applies must include a finding that the  
17 settlement complies with this subsection.

18        (e) This subsection does not apply to cases the  
19 settlement of which is under \$50,000.

20        (f) Nothing in this subsection creates an additional  
21 cause of action against the defendant or his attorneys.

22        (g) This subsection applies only to cases impacted by  
23 s. 104(a)(1), (2), and (3) of the Internal Revenue Code.

24        (2)(1)(a) In any action to which this part applies in  
25 which the court determines that ~~trier of fact makes~~ an award  
26 to compensate the claimant includes ~~for~~ future economic losses  
27 which exceed \$250,000, payment of amounts intended to  
28 compensate the claimant for these losses shall be made by one  
29 of the following means, unless an alternative method of  
30 payment of damages is provided in this section:

31

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

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

11           (b) In entering a judgment ordering the payment of  
12 such future damages by periodic payments, the court shall make  
13 a specific finding of the dollar amount of periodic payments  
14 which will compensate the judgment creditor for these future  
15 damages after offset for collateral sources. The total dollar  
16 amount of the periodic payments shall equal the dollar amount  
17 of all such future damages before any reduction to present  
18 value, less any attorney's fees payable from future damages in  
19 accordance with paragraph (f). The period of time over which  
20 the periodic payments shall be made is the period of years  
21 determined by the trier of fact in arriving at its itemized  
22 verdict and shall not be extended if the plaintiff lives  
23 beyond the determined period. If the claimant has been  
24 awarded damages to be discharged by periodic payments and the  
25 claimant dies prior to the termination of the period of years  
26 during which periodic payments are to be made, the remaining  
27 liability of the defendant, reduced to present value, shall be  
28 paid into the estate of the claimant in a lump sum. The court  
29 may order that the payments be equal or vary in amount,  
30 depending upon the need of the claimant.

31

1           (c) As a condition to authorizing periodic payments of  
2 future damages, the court shall require the defendant to post  
3 a bond or security or otherwise to assure full payment of  
4 these damages awarded by the judgment. A bond is not adequate  
5 unless it is written by a company authorized to do business in  
6 this state and is rated A+ by Best's. If the defendant is  
7 unable to adequately assure full payment of the damages, the  
8 court shall order that all damages be paid to the claimant in  
9 a lump sum pursuant to the verdict. No bond may be canceled  
10 or be subject to cancellation unless at least 60 days' advance  
11 written notice is filed with the court and the judgment  
12 creditor. Upon termination of periodic payments, the court  
13 shall order the return of the security, or so much as remains,  
14 to the judgment debtor.

15           (d)1. In the event that the court finds that the  
16 judgment debtor has exhibited a continuing pattern of failing  
17 to timely make the required periodic payments, the court  
18 shall:

19           a. Order that all remaining amounts of the award be  
20 paid by lump sum within 30 days after entry of the order;

21           b. Order that, in addition to the required periodic  
22 payments, the judgment debtor pay the claimant all damages  
23 caused by the failure to timely make periodic payments,  
24 including court costs and attorney's fees; or

25           c. Enter other orders or sanctions as appropriate to  
26 protect the judgment creditor.

27           2. If it appears that the judgment debtor may be  
28 insolvent or that there is a substantial risk that the  
29 judgment debtor may not have the financial responsibility to  
30 pay all amounts due and owing the judgment creditor, the court  
31 may:

1           a. Order additional security;  
2           b. Order that the balance of payments due be placed in  
3 trust for the benefit of the claimant;  
4           c. Order that all remaining amounts of the award be  
5 paid by lump sum within 30 days after entry of the order; or  
6           d. Order such other protection as may be necessary to  
7 assure the payment of the remaining balance of the judgment.  
8           (e) The judgment providing for payment of future  
9 damages by periodic payments shall specify the recipient or  
10 recipients of the payments, the dollar amounts of the  
11 payments, the interval between payments, and the number of  
12 payments or the period of time over which payments shall be  
13 made. Periodic payments shall be subject to modification only  
14 as specified in this subsection.  
15           (f) Claimant's attorney's fee, if payable from the  
16 judgment, shall be based upon the total judgment, adding all  
17 amounts awarded for past and future damages. The attorney's  
18 fee shall be paid from past and future damages in the same  
19 proportion. If a claimant has agreed to pay her or his  
20 attorney's fees on a contingency fee basis, the claimant shall  
21 be responsible for paying the agreed percentage calculated  
22 solely on the basis of that portion of the award not subject  
23 to periodic payments. The remaining unpaid portion of the  
24 attorney's fees shall be paid in a lump sum by the defendant,  
25 who shall receive credit against future payments for this  
26 amount. However, the credit against each future payment is  
27 limited to an amount equal to the contingency fee percentage  
28 of each periodic payment. Any provision of this paragraph may  
29 be modified by the agreement of all interested parties.  
30  
31

1 (g) Nothing in this subsection shall preclude any  
2 other method of payment of awards, if such method is consented  
3 to by the parties.

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

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

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

1           Section 12. Subsections (3) and (6) of section 768.81,  
2 Florida Statutes, are amended, and subsection (5) of that  
3 section is repealed, to read:

4           768.81 Comparative fault.--

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

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

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

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

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

3 (6) Notwithstanding anything in law to the contrary,  
4 in an action for damages for personal injury or wrongful death  
5 arising out of medical malpractice, whether in contract or  
6 tort, when an apportionment of damages pursuant to this  
7 section is attributed to a teaching hospital as defined in s.  
8 408.07, the court shall enter judgment against the teaching  
9 hospital on the basis of such party's percentage of fault and  
10 not on the basis of the doctrine of joint and several  
11 liability. In all actions for damages for personal injury or  
12 wrongful death arising out of medical malpractice, whether in  
13 contract or tort, with respect to a party that is not a  
14 teaching hospital and whose percentage of fault equals or  
15 exceeds that of a particular claimant, the court shall enter  
16 judgment with respect to economic damages against that party  
17 on the basis of the doctrine of joint and several liability,  
18 regardless of that party's percentage of fault.

19 Section 13. (1) The Department of Insurance shall,  
20 after issuing a request for proposals, contract with a  
21 national independent actuarial firm to conduct an actuarial  
22 analysis, consistent with generally accepted actuarial  
23 practices, of the expected reduction in liability judgments,  
24 settlements, and related costs resulting from the provisions  
25 of this act. The analysis must be based on credible loss-cost  
26 data derived from the settlement or adjudication of liability  
27 claims, other than liability claims insured under private  
28 passenger automobile insurance or personal lines residential  
29 property insurance, accruing after October 1, 1999. The  
30 analysis must include an estimate of the percentage decrease  
31 in such judgments, settlements, and costs by type of coverage



1 affected by this act, including the time period when such  
2 savings or reductions are expected.

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

5 (3) After March 1, 2001, the Department of Insurance  
6 shall review the filed rates of insurers and underwriting  
7 profits and losses for Florida liability insurance businesses  
8 and shall require any prospective rate modifications that the  
9 department deems necessary, consistent with the applicable  
10 rating law, in order to cause the rates of any specific  
11 insurer to comply with the applicable rating law. The  
12 department shall require each liability insurer's first rate  
13 filing after March 1, 2001, other than rate filings for  
14 private passenger automobile insurance or personal lines  
15 residential property insurance, to include specific data on  
16 the impact of this act on the insurer's liability judgments,  
17 settlements, and costs for the purpose of enabling the  
18 department and the Legislature to accurately monitor and  
19 evaluate the effects of this act.

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

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

29 Section 14. If any provision of this act or the  
30 application thereof to any person or circumstance is held  
31 invalid, the invalidity does not affect other provisions or

1 applications of the act which can be given effect without the  
2 invalid provision or application, and to this end the  
3 provisions of this act are declared severable.

4           Section 15. This act shall take effect October 1,  
5 1999.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 SB 374

4 Revises subsection (7) of s. 768.79, F.S., to require the  
5 court to consider a list of criteria when determining the  
6 entitlement to an award of attorney's fees and costs under  
7 this section. In addition to determining whether an offer of  
8 judgment was made in good faith, the court must also consider  
9 whether the offer was reasonably rejected in determining the  
10 entitlement to an award of attorney's fees and costs.

11 Section 7, pertaining to expedited trials, is revised to  
12 contain a triggering event for discovery deadlines. All  
13 interrogatories and requests for production must be served  
14 within 10 days after the court enters an order adopting the  
15 joint expedited trial resolution. All discovery must be  
16 completed within 60 days after the order adopting the joint  
17 expedited trial resolution.

18 Amends s. 768.78, F.S., to create a provision requiring  
19 pre-judgment and post-judgment structured settlement  
20 discussions. If a plaintiff chooses to receive payment in the  
21 form of periodic payments, the defendant or its liability  
22 carrier is obligated to provide such payments. The plaintiff  
23 has the right to choose the third party assignee and the  
24 licensed structured settlement broker. The defendant or its  
25 liability carrier may not withdraw from the settlement  
26 agreement based upon the plaintiff's choice of the third party  
27 assignee. This subsection does not apply to cases with  
28 settlements under \$50,000 and it does not create a cause of  
29 action against the defendant or its liability carrier. This  
30 subsection applies only to cases impacted by s. 104(a)(1),  
31 (2), and (3) of the Internal Revenue Code.

Revises Section 10, which creates s. 47.025, F.S., pertaining  
to actions against contractors. Any venue provision in a  
contract for improvement to real property which requires legal  
action involving a resident contractor, subcontractor,  
sub-subcontractor or materialman, as defined in part 1 of  
chapter 713, to be brought outside this state is void as a  
matter of public policy. Any legal action arising out of the  
contract must be brought in accordance with state venue laws  
as expressed by the statute, unless, after the dispute arises,  
the parties stipulate to another venue.

Amends subsection (6) of s. 768.81, F.S., to provide for the  
application of joint and several liability in medical  
malpractice actions against any party that is not a teaching  
hospital. The court shall enter judgment with respect to  
economic damages against that party on the basis of joint and  
several liability regardless of that party's percentage of  
fault, as long as the party's percentage of fault equals or  
exceeds that of a particular claimant.