

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; repealing s. 768.81(5),  
31 F.S.; relating to the applicability of joint

1 and several liability to actions in which the  
2 total amount of damages does not exceed a  
3 specified amount; requiring the Department of  
4 Insurance to contract with an actuarial firm to  
5 conduct an actuarial analysis of expected  
6 reductions in judgments and related costs  
7 resulting from litigation reforms; specifying  
8 the basis and due date for the actuarial  
9 report; providing for a review of rate filings  
10 by certain types of insurers after a specified  
11 date; providing that such provisions do not  
12 limit the refund of excessive profits by  
13 certain insurers; creating s. 768.1256, F.S.;  
14 providing a government rules defense with  
15 respect to certain products liability actions;  
16 providing for rebuttable presumptions;  
17 providing an exception; amending s. 400.023,  
18 F.S., relating to actions brought on behalf of  
19 nursing home residents; providing that a party  
20 to any such action may not recover attorney's  
21 fees unless parties submit to mediation;  
22 specifying requirements for such mediation;  
23 providing for application; providing a standard  
24 for any award of punitive damages; increasing  
25 minimum financial responsibility requirements  
26 for physicians and osteopathic physicians and  
27 eliminating an alternative method of satisfying  
28 financial responsibility requirements for  
29 physicians and osteopathic physicians with  
30 hospital staff privileges; providing for  
31 severability; providing an effective date.

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

2

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

5 40.50 Jury duty and instructions in civil cases.--

6 (1) In any civil action immediately after the jury is  
7 sworn, the court shall instruct the jury concerning its  
8 duties, its conduct, the order of proceedings, the procedure  
9 for submitting written questions of witnesses, and the  
10 elementary legal principles that will govern the proceeding as  
11 provided in this section.

12 (2) The court shall instruct that the jurors may take  
13 notes regarding the evidence and keep the notes for the  
14 purpose of refreshing their memory for use during recesses and  
15 deliberations. The court may provide materials suitable for  
16 this purpose. The confidentiality of the notes should be  
17 emphasized to the jurors. After the jury has rendered its  
18 verdict, the notes shall be collected by the bailiff or clerk  
19 who shall promptly destroy them.

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

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

25 (b) Jurors' notes.

26 (c) Witnesses' names and either photographs or  
27 biographies or both.

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

30 (e) A glossary of technical terms.

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

1  
2 In its discretion, the court may authorize documents and  
3 exhibits in evidence to be included in notebooks for use by  
4 the jurors during trial to aid them in performing their  
5 duties. The preliminary jury instructions should be removed,  
6 discarded, and replaced by the final jury instructions before  
7 the latter are read to the jury by the court.

8 (4) The court shall permit jurors to have access to  
9 their notes and, in appropriate cases, notebooks during  
10 recesses and deliberations.

11 (5) The court shall permit jurors to submit to the  
12 court written questions directed to witnesses or to the court.  
13 Opportunity shall be given to counsel to object to such  
14 questions out of the presence of the jury. The court may, as  
15 appropriate, limit the submission of questions to witnesses.

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

31

1           (7) The court has discretion to give final  
2 instructions to the jury before closing arguments of counsel  
3 instead of after, in order to enhance jurors' ability to apply  
4 the applicable law to the facts. In that event, the court may  
5 wish to withhold giving the necessary procedural and  
6 housekeeping instructions until after closing arguments.

7           Section 2. Section 44.102, Florida Statutes, is  
8 amended to read:

9           44.102 Court-ordered mediation.--

10           (1) Court-ordered mediation shall be conducted  
11 according to rules of practice and procedure adopted by the  
12 Supreme Court.

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

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

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

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

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

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

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

25           6. The parties have agreed to binding arbitration.

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

29           (c)(b) In circuits in which a family mediation program  
30 has been established and upon a court finding of a dispute,  
31 shall refer to mediation all or part of custody, visitation,

1 or other parental responsibility issues as defined in s.  
2 61.13. Upon motion or request of a party, a court shall not  
3 refer any case to mediation if it finds there has been a  
4 history of domestic violence that would compromise the  
5 mediation process.

6 (d)~~(e)~~ In circuits in which a dependency or in need of  
7 services mediation program has been established, may refer to  
8 mediation all or any portion of a matter relating to  
9 dependency or to a child in need of services or a family in  
10 need of services.

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

20 (4) There shall be no privilege and no restriction on  
21 any disclosure of communications made confidential in  
22 subsection (3) in relation to disciplinary proceedings filed  
23 against mediators pursuant to s. 44.106 and court rules, to  
24 the extent the communication is used for the purposes of such  
25 proceedings. In such cases, the disclosure of an otherwise  
26 privileged communication shall be used only for the internal  
27 use of the body conducting the investigation. Prior to the  
28 release of any disciplinary files to the public, all  
29 references to otherwise privileged communications shall be  
30 deleted from the record. When an otherwise confidential  
31 communication is used in a mediator disciplinary proceeding,

1 such communication shall be inadmissible as evidence in any  
2 subsequent legal proceeding. "Subsequent legal proceeding"  
3 means any legal proceeding between the parties to the  
4 mediation which follows the court-ordered mediation.

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

9 (a) Whenever possible, qualified individuals who have  
10 volunteered their time to serve as mediators shall be  
11 appointed. If a mediation program is funded pursuant to s.  
12 44.108, volunteer mediators shall be entitled to reimbursement  
13 pursuant to s. 112.061 for all actual expenses necessitated by  
14 service as a mediator.

15 (b) Nonvolunteer mediators shall be compensated  
16 according to rules adopted by the Supreme Court. If a  
17 mediation program is funded pursuant to s. 44.108, a mediator  
18 may be compensated by the county or by the parties. When a  
19 party has been declared indigent or insolvent, that party's  
20 pro rata share of a mediator's compensation shall be paid by  
21 the county at the rate set by administrative order of the  
22 chief judge of the circuit.

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

- 28 1. An impasse has been declared by the mediator; or
- 29 2. The mediator has reported to the court that no  
30 agreement was reached.

31



1 (b) Sections 45.061 and 768.79 notwithstanding, an  
2 offer of settlement or an offer or demand for judgment may be  
3 made at any time after an impasse has been declared by the  
4 mediator, or the mediator has reported that no agreement was  
5 reached. An offer is deemed rejected as of commencement of  
6 trial.

7 Section 3. Section 44.1051, Florida Statutes, is  
8 created to read:

9 44.1051 Voluntary trial resolution.--

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

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

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

22 (4) Within 10 days after the submission of the request  
23 for binding voluntary trial resolution, the court shall  
24 provide for the appointment of the trial resolution judge.  
25 Once appointed, the trial resolution judge shall notify the  
26 parties of the time and place for the hearing.

27 (5) Application for voluntary trial resolution shall  
28 be filed and fees paid to the clerk of the court as if for  
29 complaints initiating civil actions. The clerk of the court  
30 shall handle and account for these matters in all respects as  
31 if they were civil actions except that the clerk of the court

1 shall keep separate the records of the applications for  
2 voluntary binding trial resolution from all other civil  
3 actions.

4 (6) Filing of the application for binding voluntary  
5 trial resolution will toll the running of the applicable  
6 statutes of limitation.

7 (7) The appointed trial resolution judge shall have  
8 such power to administer oaths or affirmations and to conduct  
9 the proceedings as the rules of court provide. At the request  
10 of any party, the trial resolution judge shall issue subpoenas  
11 for the attendance of witnesses and for the production of  
12 books, records, documents, and other evidence and may apply to  
13 the court for orders compelling attendance and production.  
14 Subpoenas shall be served and shall be enforceable as provided  
15 by law.

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

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

21 (10) Any party may enforce a final decision rendered  
22 in a voluntary trial by filing a petition for final judgment  
23 in the circuit court in the circuit in which the voluntary  
24 trial took place. Upon entry of final judgment by the circuit  
25 court an appeal may be taken to the appropriate appellate  
26 court. The "harmless error doctrine" shall apply in all  
27 appeals. No further review shall be permitted unless a  
28 constitutional issue is raised. Factual findings determined in  
29 the voluntary trial shall not be subject to appeal.

30 (11) If no appeal is taken within the time provided by  
31 rules of the Supreme Court, the decision shall be referred to

1 the presiding court judge in the case, or, if one has not been  
2 assigned, to the chief judge of the circuit for assignment to  
3 a circuit judge, who shall enter such orders and judgments as  
4 are required to carry out the terms of decision, which orders  
5 shall be enforceable by the contempt powers of the court and  
6 for which judgment executions shall issue on request of a  
7 party.

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

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

14 57.105 Attorney's fee; sanctions for raising unfounded  
15 claims or defenses; damages for delay of litigation.--

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

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

27 (b) Would not be supported by the application of  
28 then-existing law to those material facts. ~~there was a~~  
29 complete absence of a justiciable issue of either law or fact  
30 raised by the complaint or defense of the losing party;  
31 provided,

1  
2 However, ~~that~~ the losing party's attorney is not personally  
3 responsible if he or she has acted in good faith, based on the  
4 representations of his or her client as to the existence of  
5 those material facts. If the court awards attorney's fees to a  
6 claimant pursuant to this subsection ~~finds that there was a~~  
7 ~~complete absence of a justiciable issue of either law or fact~~  
8 ~~raised by the defense~~, the court shall also award prejudgment  
9 interest.

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

15 (3) At any time in any civil proceeding or action in  
16 which the moving party proves by a preponderance of the  
17 evidence that any action taken by the opposing party,  
18 including, but not limited to, the filing of any pleading or  
19 part thereof, the assertion of or response to any discovery  
20 demand, the assertion of any claim or defense, or the response  
21 to any request by any other party, was taken primarily for the  
22 purpose of unreasonable delay, the court shall award damages  
23 to the moving party for the time necessitated by the conduct  
24 in question.

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

30 (5)~~(2)~~ If a contract contains a provision allowing  
31 attorney's fees to a party when he or she is required to take

1 any action to enforce the contract, the court may also allow  
2 reasonable attorney's fees to the other party when that party  
3 prevails in any action, whether as plaintiff or defendant,  
4 with respect to the contract. This subsection applies to any  
5 contract entered into on or after October 1, 1988.~~This act~~  
6 ~~shall take effect October 1, 1988, and shall apply to~~  
7 ~~contracts entered into on said date or thereafter.~~

8 Section 5. Subsections (3), (5), and (7) of section  
9 768.79, Florida Statutes, are amended to read:

10 768.79 Offer of judgment and demand for judgment.--

11 (3) The offer shall be served upon the party to whom  
12 it is made, but it shall not be filed unless it is accepted or  
13 unless filing is necessary to enforce the provisions of this  
14 section. In any case involving multiple party plaintiffs or  
15 multiple party defendants, an offer shall specify its  
16 applicability to each party and may specify any conditions  
17 thereof. Each individual party may thereafter accept or reject  
18 the offer as the offer applies to such party.

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

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

29 (b) When determining the entitlement to and  
30 reasonableness of an award of attorney's fees pursuant to this  
31

1 section, the court shall consider, along with all other  
2 relevant criteria, the following additional factors:

3 1. The then apparent merit or lack of merit in the  
4 claim.

5 2. The number and nature of offers made by the  
6 parties.

7 3. The closeness of questions of fact and law at  
8 issue.

9 4. Whether the proposal was reasonably rejected.

10 ~~5.4.~~ Whether the person making the offer had  
11 unreasonably refused to furnish information necessary to  
12 evaluate the reasonableness of such offer.

13 ~~6.5.~~ Whether the suit was in the nature of a test case  
14 presenting questions of far-reaching importance affecting  
15 nonparties.

16 ~~7.6.~~ The amount of the additional delay cost and  
17 expense that the person making the offer reasonably would be  
18 expected to incur if the litigation should be prolonged.

19 Section 6. Section 57.071, Florida Statutes, is  
20 amended to read:

21 57.071 Costs; what taxable.--

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

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

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

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

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

3           (a) The party retaining the expert witness files a  
4 written notice with the court and with each opposing party  
5 within 30 days after the entry of an order setting the trial  
6 date, which notice shall specify the expertise and experience  
7 of the expert, the rate of compensation of the expert witness,  
8 the subject matters or issues on which the expert is expected  
9 to render an opinion, and an estimate of the overall fees of  
10 the expert witness, including the fee for trial testimony. If  
11 the rate of compensation is hourly, the estimated overall fee  
12 may be stated in terms of estimated hours; and

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

21           (c) This section does not apply to any action  
22 proceeding under the Florida Family Law Rules of Procedure.

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

31

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

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

8           (3) The court shall determine the number of  
9 depositions required.

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

11           (5) The case must be tried within 30 days after the  
12 60-day discovery cut-off.

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

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

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

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

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

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

28           (12) At trial the parties may use excerpts from  
29 depositions, including video depositions, regardless of where  
30 the deponent lives or whether the deponent is available to  
31 testify.



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

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

5           Section 8. Section 768.77, Florida Statutes, is  
6 amended to read:

7           768.77 Itemized verdict.--

8           ~~(1)~~ In any action to which this part applies in which  
9 the trier of fact determines that liability exists on the part  
10 of the defendant, the trier of fact shall, as a part of the  
11 verdict, itemize the amounts to be awarded to the claimant  
12 into the following categories of damages:

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

15           (2)(b) Amounts intended to compensate the claimant for  
16 noneconomic losses; and

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

19           ~~(2) Each category of damages, other than punitive~~  
20 ~~damages, shall be further itemized into amounts intended to~~  
21 ~~compensate for losses which have been incurred prior to the~~  
22 ~~verdict and into amounts intended to compensate for losses to~~  
23 ~~be incurred in the future. Future damages itemized under~~  
24 ~~paragraph (1)(a) shall be computed before and after reduction~~  
25 ~~to present value. Damages itemized under paragraph (1)(b) or~~  
26 ~~paragraph (1)(c) shall not be reduced to present value. In~~  
27 ~~itemizing amounts intended to compensate for future losses,~~  
28 ~~the trier of fact shall set forth the period of years over~~  
29 ~~which such amounts are intended to provide compensation.~~

30           Section 9. Present subsection (1) of section 768.78,  
31 Florida Statutes, is amended and redesignated as subsection

1 (2), present subsection (2) is redesignated as subsection (3),  
2 and a new subsection (1) is added to that section to read:

3 768.78 Alternative methods of payment of damage  
4 awards.--

5 (1) In both pre-judgment and post-judgment cases, the  
6 parties shall specifically discuss the option and advantages  
7 for the plaintiff of settlement through use of structured  
8 periodic payments. If, in connection with a settlement, the  
9 plaintiff chooses to receive payment in the form of periodic  
10 payments, the defendant or the defendant's liability carrier  
11 is obligated to provide such payments, and the following  
12 apply:

13 (a) To the extent that the liability for payment of  
14 damages to the plaintiff qualifies for assignment under  
15 Section 130, or any successor section, of the Internal Revenue  
16 Code, as amended from time to time, the defendant or the  
17 defendant's liability carrier shall assign the liability to  
18 make such periodic payments to a third party assignee selected  
19 by the plaintiff.

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

24 (c) The plaintiff has the right to select a licensed  
25 structured-settlement broker to place the structured  
26 settlement.

27 (d) Any order approving or adopting a settlement to  
28 which this subsection applies must include a finding that the  
29 settlement complies with this subsection.

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

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

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

5           ~~(2)(1)~~(a) In any action to which this part applies in  
6 which the court determines that ~~trier of fact makes~~ an award  
7 to compensate the claimant includes ~~for~~ future economic losses  
8 which exceed \$250,000, payment of amounts intended to  
9 compensate the claimant for these losses shall be made by one  
10 of the following means, unless an alternative method of  
11 payment of damages is provided in this section:

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

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

22           (b) In entering a judgment ordering the payment of  
23 such future damages by periodic payments, the court shall make  
24 a specific finding of the dollar amount of periodic payments  
25 which will compensate the judgment creditor for these future  
26 damages after offset for collateral sources. The total dollar  
27 amount of the periodic payments shall equal the dollar amount  
28 of all such future damages before any reduction to present  
29 value, less any attorney's fees payable from future damages in  
30 accordance with paragraph (f). The period of time over which  
31 the periodic payments shall be made is the period of years

1 determined by the trier of fact in arriving at its itemized  
2 verdict and shall not be extended if the plaintiff lives  
3 beyond the determined period. If the claimant has been  
4 awarded damages to be discharged by periodic payments and the  
5 claimant dies prior to the termination of the period of years  
6 during which periodic payments are to be made, the remaining  
7 liability of the defendant, reduced to present value, shall be  
8 paid into the estate of the claimant in a lump sum. The court  
9 may order that the payments be equal or vary in amount,  
10 depending upon the need of the claimant.

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

25 (d)1. In the event that the court finds that the  
26 judgment debtor has exhibited a continuing pattern of failing  
27 to timely make the required periodic payments, the court  
28 shall:

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

31

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

5           c. Enter other orders or sanctions as appropriate to  
6 protect the judgment creditor.

7           2. If it appears that the judgment debtor may be  
8 insolvent or that there is a substantial risk that the  
9 judgment debtor may not have the financial responsibility to  
10 pay all amounts due and owing the judgment creditor, the court  
11 may:

12           a. Order additional security;

13           b. Order that the balance of payments due be placed in  
14 trust for the benefit of the claimant;

15           c. Order that all remaining amounts of the award be  
16 paid by lump sum within 30 days after entry of the order; or

17           d. Order such other protection as may be necessary to  
18 assure the payment of the remaining balance of the judgment.

19           (e) The judgment providing for payment of future  
20 damages by periodic payments shall specify the recipient or  
21 recipients of the payments, the dollar amounts of the  
22 payments, the interval between payments, and the number of  
23 payments or the period of time over which payments shall be  
24 made. Periodic payments shall be subject to modification only  
25 as specified in this subsection.

26           (f) Claimant's attorney's fee, if payable from the  
27 judgment, shall be based upon the total judgment, adding all  
28 amounts awarded for past and future damages. The attorney's  
29 fee shall be paid from past and future damages in the same  
30 proportion. If a claimant has agreed to pay her or his  
31 attorney's fees on a contingency fee basis, the claimant shall

1 be responsible for paying the agreed percentage calculated  
2 solely on the basis of that portion of the award not subject  
3 to periodic payments. The remaining unpaid portion of the  
4 attorney's fees shall be paid in a lump sum by the defendant,  
5 who shall receive credit against future payments for this  
6 amount. However, the credit against each future payment is  
7 limited to an amount equal to the contingency fee percentage  
8 of each periodic payment. Any provision of this paragraph may  
9 be modified by the agreement of all interested parties.

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

13 Section 10. Section 47.025, Florida Statutes, is  
14 created to read:

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

27 Section 11. Through the state's uniform case reporting  
28 system, the clerk of court shall report to the Office of the  
29 State Courts Administrator information from each settlement or  
30 jury verdict and final judgment in negligence cases as defined  
31 in section 768.81(4), Florida Statutes, as the President of

1 the Senate and the Speaker of the House of Representatives  
2 deem necessary from time to time. The information shall  
3 include, but need not be limited to: the name of each  
4 plaintiff and defendant; the verdict; the percentage of fault  
5 of each; the amount of economic damages and noneconomic  
6 damages awarded to each plaintiff, identifying those damages  
7 that are to be paid jointly and severally and by which  
8 defendants; and the amount of any punitive damages to be paid  
9 by each defendant.

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

13 768.81 Comparative fault.--

14 (3) APPORTIONMENT OF DAMAGES.--In cases to which this  
15 section applies, the court shall enter judgment against each  
16 party liable on the basis of such party's percentage of fault  
17 and not on the basis of the doctrine of joint and several  
18 liability; provided that with respect to any party whose  
19 percentage of fault equals or exceeds that of a particular  
20 claimant and whose fault exceeds 25 percent, the court shall  
21 enter judgment with respect to economic damages against that  
22 party on the basis of the doctrine of joint and several  
23 liability.

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

29 Section 13. (1) The Department of Insurance shall,  
30 after issuing a request for proposals, contract with a  
31 national independent actuarial firm to conduct an actuarial

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

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

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

30 (4) The report under subsection (1) is admissible in  
31 any proceedings relating to a liability insurance rate filing



1 if the actuary who prepared the report is made available by  
2 the department to testify regarding the report's preparation  
3 and validity. Each party shall otherwise bear its own cost of  
4 any such proceeding.

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

8 Section 14. Subsections (6), (7), and (8) are added to  
9 section 400.023, Florida Statutes, to read:

10 400.023 Civil enforcement.--

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

13 (a) Within 120 days after the filing of a responsive  
14 pleading or defensive motion to a complaint brought under this  
15 section and before trial, the parties or their designated  
16 representatives shall meet in mediation to discuss the issues  
17 of liability and damages in accordance with this paragraph for  
18 the purpose of an early resolution of the matter.

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

21 a. Agree on a mediator. If the parties cannot agree on  
22 a mediator, the defendant shall immediately notify the court,  
23 which shall appoint a mediator within 10 days after such  
24 notice.

25 b. Set a date for mediation.

26 c. Prepare an order for the court that identifies the  
27 mediator, the scheduled date of the mediation, and other terms  
28 of the mediation. Absent any disagreement between the parties,  
29 the court may issue the order for the mediation submitted by  
30 the parties without a hearing.

31

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

5           3. The mediation shall be conducted in the following  
6 manner:

7           a. Each party shall ensure that all persons necessary  
8 for complete settlement authority are present at the  
9 mediation.

10           b. Each party shall mediate in good faith.

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

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

25           (c) This subsection applies only to claims for  
26 liability and damages and does not apply to actions for  
27 injunctive relief.

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

30           (7) Discovery of financial information for the purpose  
31 of determining the value of punitive damages may not be had

1 unless the plaintiff shows the court by proffer or evidence in  
2 the record that a reasonable basis exists to support a claim  
3 for punitive damages.

4 (8) In addition to any other standards for punitive  
5 damages, any award of punitive damages must be reasonable in  
6 light of the actual harm suffered by the resident and the  
7 egregiousness of the conduct that caused the actual harm to  
8 the resident.

9 Section 15. Effective October 1, 1999, the minimum per  
10 claim financial responsibility required under sections  
11 458.320(2)(b) and (c) and 459.0085(2)(b) and (c), Florida  
12 Statutes, shall be increased from \$250,000 to \$500,000 and the  
13 minimum aggregate requirement specified in said sections shall  
14 be increased from \$750,000 to \$1,000,000; provided, further  
15 that the provisions of sections 458.320(5)(g) and  
16 459.0085(5)(g), Florida Statutes, respectively, shall not  
17 apply to any physician or osteopathic physician with hospital  
18 staff privileges.

19 Section 16. If any provision of this act or the  
20 application thereof to any person or circumstance is held  
21 invalid, the invalidity does not affect other provisions or  
22 applications of the act which can be given effect without the  
23 invalid provision or application, and to this end the  
24 provisions of this act are declared severable.

25 Section 17. Section 768.1256, Florida Statutes, is  
26 created to read:

27 768.1256 Government rules defense.--

28 (1) In a product liability action brought against a  
29 manufacturer or seller for harm allegedly caused by a product,  
30 there is a rebuttable presumption pursuant to s. 90.302(1)  
31 that the product is not defective or unreasonably dangerous

1 and the manufacturer or seller is not liable if, at the time  
2 the specific unit of the product was sold or delivered to the  
3 initial purchaser or user, the aspect of the product that  
4 allegedly caused the harm:

5 (a) Complied with federal or state codes, statutes,  
6 rules, regulations or standards relevant to the event causing  
7 the death or injury;

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

11 (c) Compliance with the codes, statutes, rules,  
12 regulations or standards is required as a condition for  
13 selling or distributing the product.

14 (2) In a product liability action as described in  
15 subsection (1), there is a rebuttable presumption pursuant to  
16 s. 90.302(1) that the product is defective or unreasonably  
17 dangerous and the manufacturer or seller is liable if the  
18 manufacturer or seller did not comply with the federal or  
19 state codes, statutes, rules, regulations or standards which:

20 (a) Were relevant to the event causing the death or  
21 injury;

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

24 (c) Require compliance as a condition for selling or  
25 distributing the product.

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

29 Section 18. This act shall take effect October 1,  
30 1999.

31