

Bill No. HB 775, 2nd Eng.

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senators Latvala, Laurent, Lee and Webster moved the following		
12	amendment:		
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14	<b>Senate Amendment (with title amendment)</b>		
15	Delete everything after the enacting clause		
16			
17	and insert:		
18	Section 1. Paragraph (b) of subsection (9) of section		
19	324.021, Florida Statutes, is amended, and paragraph (c) is		
20	added to that subsection, to read:		
21	324.021 Definitions; minimum insurance required.--The		
22	following words and phrases when used in this chapter shall,		
23	for the purpose of this chapter, have the meanings		
24	respectively ascribed to them in this section, except in those		
25	instances where the context clearly indicates a different		
26	meaning:		
27	(9) OWNER; OWNER/LESSOR.--		
28	(b) Owner/lessor.--Notwithstanding any other provision		
29	of the Florida Statutes or existing case law:7		
30	<u>1.</u> The lessor, under an agreement to lease a motor		
31	vehicle for 1 year or longer which requires the lessee to		

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1 obtain insurance acceptable to the lessor which contains  
2 limits not less than \$100,000/\$300,000 bodily injury liability  
3 and \$50,000 property damage liability or not less than  
4 \$500,000 combined property damage liability and bodily injury  
5 liability, shall not be deemed the owner of said motor vehicle  
6 for the purpose of determining financial responsibility for  
7 the operation of said motor vehicle or for the acts of the  
8 operator in connection therewith; further, this subparagraph  
9 ~~paragraph~~ shall be applicable so long as the insurance meeting  
10 these requirements is in effect. The insurance meeting such  
11 requirements may be obtained by the lessor or lessee,  
12 provided, if such insurance is obtained by the lessor, the  
13 combined coverage for bodily injury liability and property  
14 damage liability shall contain limits of not less than \$1  
15 million and may be provided by a lessor's blanket policy.

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

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1 shall be construed to affect the liability of the lessor for  
2 its own negligence.

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

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

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1 and 3. do not apply to a motor vehicle that has a gross  
2 vehicle weight of greater than 26,000 pounds or any vehicle  
3 designed to transport 16 or more passengers including the  
4 driver. Furthermore, the limits on liability in subparagraphs  
5 (b)2. and 3. do not apply to a motor vehicle that is used in  
6 the transportation of materials found to be hazardous for the  
7 purposes of the Hazardous Materials Transportation Act, as  
8 amended (49 U.S.C. ss. 1801 et seq.), and that is required  
9 pursuant to such act to carry placards warning others of the  
10 hazardous cargo.

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

13 95.031 Computation of time.--Except as provided in  
14 subsection (2) and in s. 95.051 and elsewhere in these  
15 statutes, the time within which an action shall be begun under  
16 any statute of limitations runs from the time the cause of  
17 action accrues.

18 (2)(a) An action ~~Actions~~ for ~~products liability and~~  
19 ~~fraud~~ under s. 95.11(3) must be begun within the period  
20 prescribed in this chapter, with the period running from the  
21 time the facts giving rise to the cause of action were  
22 discovered or should have been discovered with the exercise of  
23 due diligence, instead of running from any date prescribed  
24 elsewhere in s. 95.11(3), but in any event an action for fraud  
25 under s. 95.11(3) must be begun within 12 years after the date  
26 of the commission of the alleged fraud, regardless of the date  
27 the fraud was or should have been discovered.

28 (b) An action for products liability under s. 95.11(3)  
29 must be begun within the period prescribed in this chapter,  
30 with the period running from the date that the facts giving  
31 rise to the cause of action were discovered, or should have

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1 been discovered with the exercise of due diligence, rather  
2 than running from any other date prescribed elsewhere in s.  
3 95.11(3), but in no event may an action for products liability  
4 under s. 95.11(3) be commenced unless the complaint is served  
5 and filed within 18 years after the date of delivery of the  
6 product to its first purchaser or lessee who was not engaged  
7 in the business of selling or leasing the product or of using  
8 the product as a component in the manufacture of another  
9 product, regardless of the date that the defect in the product  
10 was or should have been discovered. However, the 18-year  
11 limitation on filing an action for products liability does not  
12 apply if the manufacturer knew of a defect in the product and  
13 concealed or attempted to conceal this defect. In addition,  
14 the 18-year limitation does not apply if the claimant was  
15 exposed to or used a product capable of causing a latent  
16 disease and an injury caused by such exposure or use did not  
17 manifest itself until after the 18-year period. The provisions  
18 of this paragraph shall not apply to any aircraft which, at  
19 the time of the accident, was engaged in scheduled  
20 passenger-carrying operations.

21 Section 3. Any action for products liability which  
22 would not have been barred under section 95.031(2), Florida  
23 Statutes, prior to the amendments to that section made by this  
24 act may be commenced before July 1, 2003, and, if it is not  
25 commenced by that date and is barred by the amendments to  
26 section 95.031(2), Florida Statutes, made by this act, it  
27 shall be barred.

28 Section 4. Section 40.50, Florida Statutes, is created  
29 to read:

30 40.50 Jury duty and instructions in civil cases.--

31 (1) In any civil action immediately after the jury is

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1 sworn, the court shall instruct the jury concerning its  
2 duties, its conduct, the order of proceedings, the procedure  
3 for submitting written questions of witnesses, and the  
4 elementary legal principles that will govern the proceeding as  
5 provided in this section.

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

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

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

19 (b) Jurors' notes.

20 (c) Witnesses' names and either photographs or  
21 biographies or both.

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

24 (e) A glossary of technical terms.

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

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

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1 the latter are read to the jury by the court.

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

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

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

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

31 Section 5. Section 44.102, Florida Statutes, is

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1 amended to read:

2 44.102 Court-ordered mediation.--

3 (1) Court-ordered mediation shall be conducted  
4 according to rules of practice and procedure adopted by the  
5 Supreme Court.

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

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

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

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

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

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

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

18 6. The parties have agreed to binding arbitration.

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

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

30 (d)(e) In circuits in which a dependency or in need of  
31 services mediation program has been established, may refer to



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1 mediation all or any portion of a matter relating to  
2 dependency or to a child in need of services or a family in  
3 need of services.

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

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

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

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1 circuit.

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

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

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

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

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

30 Section 6. Section 44.1051, Florida Statutes, is  
31 created to read:

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1           44.1051 Voluntary trial resolution.--

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

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

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

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

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

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

30           (7) The appointed trial resolution judge shall have  
31 such power to administer oaths or affirmations and to conduct

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

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

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

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

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

31 (12) This section does not apply to any dispute

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1 involving child custody, visitation, or child support, or to  
2 any dispute that involves the rights of a person who is not a  
3 party to the voluntary trial resolution.

4 Section 7. Section 57.105, Florida Statutes, is  
5 amended to read:

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

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

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

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

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

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1 interest.

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

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

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

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

31 Section 8. Subsections (3), (5), and (7) of section

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1 768.79, Florida Statutes, are amended to read:

2 768.79 Offer of judgment and demand for judgment.--

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

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

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

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

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

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

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

31 4. Whether the proposal was reasonably rejected.

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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 9. 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



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

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

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

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

29 (3) The court shall determine the number of  
30 depositions required.

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

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1           (5) The case must be tried within 30 days after the  
2 60-day discovery cut-off.

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

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

5           (8) The plaintiff will have 3 hours to present its  
6 case, including its opening, all of its testimony and  
7 evidence, and its closing.

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

11           (10) The jury will be given "plain language" jury  
12 instructions at the beginning of the trial as well as a "plain  
13 language" jury verdict form. The jury instructions and verdict  
14 form must be agreed to by the parties.

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

18           (12) At trial the parties may use excerpts from  
19 depositions, including video depositions, regardless of where  
20 the deponent lives or whether the deponent is available to  
21 testify.

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

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

26           Section 11. Section 768.77, Florida Statutes, is  
27 amended to read:

28           768.77 Itemized verdict.--

29           ~~(1)~~ In any action to which this part applies in which  
30 the trier of fact determines that liability exists on the part  
31 of the defendant, the trier of fact shall, as a part of the

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1 verdict, itemize the amounts to be awarded to the claimant  
2 into the following categories of damages:

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

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

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

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

20 Section 12. Present subsection (1) of section 768.78,  
21 Florida Statutes, is amended and redesignated as subsection  
22 (2), present subsection (2) is redesignated as subsection (3),  
23 and a new subsection (1) is added to that section to read:

24 768.78 Alternative methods of payment of damage  
25 awards.--

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

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1 is obligated to provide such payments, and the following  
2 apply:

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

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

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

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

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

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

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

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

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1 payment of damages is provided in this section:

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

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

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

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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:

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- 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           (g) Nothing in this subsection shall preclude any  
31 other method of payment of awards, if such method is consented

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1 to by the parties.

2 Section 13. Section 47.025, Florida Statutes, is  
3 created to read:

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

16 Section 14. Through the state's uniform case reporting  
17 system, the clerk of court shall report to the Office of the  
18 State Courts Administrator information from each settlement or  
19 jury verdict and final judgment in negligence cases as defined  
20 in section 768.81(4), Florida Statutes, as the President of  
21 the Senate and the Speaker of the House of Representatives  
22 deem necessary from time to time. The information shall  
23 include, but need not be limited to: the name of each  
24 plaintiff and defendant; the verdict; the percentage of fault  
25 of each; the amount of economic damages and noneconomic  
26 damages awarded to each plaintiff, identifying those damages  
27 that are to be paid jointly and severally and by which  
28 defendants; and the amount of any punitive damages to be paid  
29 by each defendant.

30 Section 15. Subsection (3) of section 768.81, Florida  
31 Statutes, is amended, and subsection (5) of that section is



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1 repealed, to read:

2           768.81 Comparative fault.--

3           (3) APPORTIONMENT OF DAMAGES.--In cases to which this  
4 section applies, the court shall enter judgment against each  
5 party liable on the basis of such party's percentage of fault  
6 and not on the basis of the doctrine of joint and several  
7 liability; provided that with respect to any party whose  
8 percentage of fault equals or exceeds that of a particular  
9 claimant and whose fault exceeds 25 percent, the court shall  
10 enter judgment with respect to economic damages against that  
11 party on the basis of the doctrine of joint and several  
12 liability.

13           ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~  
14 ~~LIABILITY.--Notwithstanding the provisions of this section,~~  
15 ~~the doctrine of joint and several liability applies to all~~  
16 ~~actions in which the total amount of damages does not exceed~~  
17 ~~\$25,000.~~

18           Section 16. (1) The Department of Insurance shall,  
19 after issuing a request for proposals, contract with a  
20 national independent actuarial firm to conduct an actuarial  
21 analysis, consistent with generally accepted actuarial  
22 practices, of the expected reduction in liability judgments,  
23 settlements, and related costs resulting from the provisions  
24 of this act. The analysis must be based on credible loss-cost  
25 data derived from the settlement or adjudication of liability  
26 claims, other than liability claims insured under private  
27 passenger automobile insurance or personal lines residential  
28 property insurance, accruing after October 1, 1999. The  
29 analysis must include an estimate of the percentage decrease  
30 in such judgments, settlements, and costs by type of coverage  
31 affected by this act, including the time period when such

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1 savings or reductions are expected.

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

4 (3) After March 1, 2001, the Department of Insurance  
5 shall review the filed rates of insurers and underwriting  
6 profits and losses for Florida liability insurance businesses  
7 and shall require any prospective rate modifications that the  
8 department deems necessary, consistent with the applicable  
9 rating law, in order to cause the rates of any specific  
10 insurer to comply with the applicable rating law. However, the  
11 provisions of section 627.062(2)(g), Florida Statutes, which  
12 prohibit the department from disapproving as excessive any  
13 rate for which it has given final approval, or which has been  
14 deemed approved for a period of 1 year after the effective  
15 date of the filing, does not apply to this subsection. The  
16 department shall require each liability insurer's first rate  
17 filing after March 1, 2001, other than rate filings for  
18 private passenger automobile insurance or personal lines  
19 residential property insurance, to include specific data on  
20 the impact of this act on the insurer's liability judgments,  
21 settlements, and costs for the purpose of enabling the  
22 department and the Legislature to accurately monitor and  
23 evaluate the effects of this act.

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

30 (5) This section does not limit the authority of the  
31 department to order an insurer to refund excessive profits, as

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1 provided in sections 627.066 and 627.215, Florida Statutes.

2       Section 17. Subsections (6), (7), and (8) are added to  
3 section 400.023, Florida Statutes, to read:

4       400.023 Civil enforcement.--

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

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

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

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

19       b. Set a date for mediation.

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

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

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

31       a. Each party shall ensure that all persons necessary

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

3 b. Each party shall mediate in good faith.

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

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

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

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

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

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

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1 the resident.

2           Section 18. Effective October 1, 1999, the minimum per  
3 claim financial responsibility required under sections  
4 458.320(2)(b) and (c) and 459.0085(2)(b) and (c), Florida  
5 Statutes, shall be increased from \$250,000 to \$500,000 and the  
6 minimum aggregate requirement specified in said sections shall  
7 be increased from \$750,000 to \$1,000,000; provided, further  
8 that the provisions of sections 458.320(5)(g) and  
9 459.0085(5)(g), Florida Statutes, respectively, shall not  
10 apply to any physician or osteopathic physician with hospital  
11 staff privileges.

12           Section 19. Section 768.1256, Florida Statutes, is  
13 created to read:

14           768.1256 Government rules defense.--

15           (1) In a product liability action brought against a  
16 manufacturer or seller for harm allegedly caused by a product,  
17 there is a rebuttable presumption pursuant to s. 90.302(1)  
18 that the product is not defective or unreasonably dangerous  
19 and the manufacturer or seller is not liable if, at the time  
20 the specific unit of the product was sold or delivered to the  
21 initial purchaser or user, the aspect of the product that  
22 allegedly caused the harm:

23           (a) Complied with federal or state codes, statutes,  
24 rules, regulations or standards relevant to the event causing  
25 the death or injury;

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

29           (c) Compliance with the codes, statutes, rules,  
30 regulations or standards is required as a condition for  
31 selling or distributing the product.

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

7           (a) Were relevant to the event causing the death or  
8 injury;

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

11           (c) Require compliance as a condition for selling or  
12 distributing the product.

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

16           Section 20. Section 768.096, Florida Statutes, is  
17 created to read:

18           768.096 Employer presumption against negligent  
19 hiring.--

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

30           (a) Obtaining a criminal background investigation on  
31 the prospective employee under subsection (2);

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1           (b) Making a reasonable effort to contact references  
 2 and former employers of the prospective employee concerning  
 3 the suitability of the prospective employee for employment;

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

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

17           (e) Interviewing the prospective employee.

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

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

27           Section 21. Section 768.095, Florida Statutes, is  
 28 amended to read:

29           768.095 Employer immunity from liability; disclosure  
 30 of information regarding former or current employees.--An  
 31 employer who discloses information about a former or current

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

14 Section 22. Section 768.071, Florida Statutes, is  
15 created to read:

16 768.071 Business premises liability; areas outside  
17 enclosed buildings.--Notwithstanding any other provision of  
18 law to the contrary, a person or organization owning or  
19 controlling an interest in a business premises shall be liable  
20 for civil damages for the death of, or injury or damage to, an  
21 invitee or guest caused by a criminal act committed by a  
22 person who is not an employee or agent of the business and  
23 occurring on part of the business premises that is not within  
24 an enclosed building only if the person or organization owning  
25 or controlling an interest in the business premises  
26 disregarded his or her duty to protect invitees or guests on  
27 the property. For purposes of this section a person or  
28 organization owning or controlling an interest in a business  
29 premises may be found to have disregarded his or her duty to  
30 protect invitees or guests only if the person or organization  
31 owning or controlling an interest in the business premises



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1 knew that a criminal act was likely to occur on the portions  
2 of the property that are not within an enclosed building and  
3 failed to take any corrective action which could have  
4 prevented the injury.

5 Section 23. Section 768.075, Florida Statutes, is  
6 amended to read:

7 768.075 Immunity from liability for injury to  
8 trespassers on real property.--

9 (1) A person or organization owning or controlling an  
10 interest in real property, or an agent of such person or  
11 organization, shall not be held liable for any civil damages  
12 for death of or injury or damage to a trespasser upon the  
13 property ~~resulting from or arising by reason of the~~  
14 ~~trespasser's commission of the offense of trespass as~~  
15 ~~described in s. 810.08 or s. 810.09,~~ when such trespasser was  
16 under the influence of alcoholic beverages with a  
17 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such  
18 trespasser was under the influence of any chemical substance  
19 set forth in s. 877.111, when such trespasser was illegally  
20 under the influence of any substance controlled under chapter  
21 893, or if the trespasser is affected by any of the aforesaid  
22 substances to the extent that her or his normal faculties are  
23 impaired. ~~For the purposes of this section, voluntary~~  
24 ~~intoxication or impediment of faculties by use of alcohol or~~  
25 ~~any of the aforementioned substances shall not excuse a party~~  
26 ~~bringing an action or on whose behalf an action is brought~~  
27 ~~from proving the elements of trespass.~~ However, the person or  
28 organization owning or controlling the interest in real  
29 property shall not be immune from liability if gross  
30 negligence or intentional ~~willful and wanton~~ misconduct on the  
31 part of such person or organization or agent thereof is a

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1 proximate cause of the death of or injury or damage to the  
2 trespasser.

3 (2) A person or organization owning or controlling an  
4 interest in real property, or an agent of such person or  
5 organization, is not liable for any civil damages for the  
6 death of or injury or damage to any discovered or undiscovered  
7 trespasser, except as provided in paragraphs (3)(a), (b), and  
8 (c), and regardless of whether the trespasser was intoxicated  
9 or otherwise impaired.

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

11 1. "Invitation" means that the visitor entering the  
12 premises has an objectively reasonable belief that he or she  
13 has been invited or is otherwise welcome on that portion of  
14 the real property where injury occurs.

15 2. "Discovered trespasser" means a person who enters  
16 real property without invitation, either express or implied,  
17 and whose actual physical presence was detected, within 24  
18 hours preceding the accident, by the person or organization  
19 owning or controlling an interest in real property or to whose  
20 actual physical presence the person or organization owning or  
21 controlling an interest in real property was alerted by a  
22 reliable source within 24 hours preceding the accident. The  
23 status of a person who enters real property shall not be  
24 elevated to that of an invitee, unless the person or  
25 organization owning or controlling an interest in real  
26 property has issued an express invitation to enter the  
27 property or has manifested a clear intent to hold the property  
28 open to use by persons pursuing purposes such as those pursued  
29 by the person whose status is at issue.

30 3. "Undiscovered trespasser" means a person who enters  
31 property without invitation, either express or implied, and

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1 whose actual physical presence was not detected, within 24  
2 hours preceding the accident, by the person or organization  
3 owning or controlling an interest in real property.

4 (b) To avoid liability to undiscovered trespassers, a  
5 person or organization owning or controlling an interest in  
6 real property must refrain from intentional misconduct, but  
7 has no duty to warn of dangerous conditions. To avoid  
8 liability to discovered trespassers, a person or organization  
9 owning or controlling an interest in real property must  
10 refrain from gross negligence or intentional misconduct, and  
11 must warn the trespasser of dangerous conditions that are  
12 known to the person or organization owning or controlling an  
13 interest in real property but that are not readily observable  
14 by others.

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

18 (4) A person or organization owning or controlling an  
19 interest in real property, or an agent of such person or  
20 organization, shall not be held liable for negligence that  
21 results in the death of, injury to, or damage to a person who  
22 is attempting to commit a felony or who is engaged in the  
23 commission of a felony on the property.

24 Section 24. Section 768.36, Florida Statutes, is  
25 created to read:

26 768.36 Alcohol or drug defense.--

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

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

31 (b) "Drug" means any chemical substance set forth in

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1 s. 877.111 or any substance controlled under chapter 893. The  
2 term does not include any drug or medication obtained pursuant  
3 to a prescription as defined in s. 893.02 which was taken in  
4 accordance with the prescription, or any medication that is  
5 authorized under state or federal law for general distribution  
6 and use without a prescription in treating human diseases,  
7 ailments, or injuries and that was taken in the recommended  
8 dosage.

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

13 (a) The plaintiff was under the influence of any  
14 alcoholic beverage or drug to the extent that the plaintiff's  
15 normal faculties were impaired or the plaintiff had a blood or  
16 breath alcohol level of 0.08 percent or higher; and

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

20 Section 25. Section 768.098, Florida Statutes, is  
21 created to read:

22 768.098 Limitation of liability for employee  
23 leasing.--

24 (1) An employer in a joint employment relationship  
25 pursuant to s. 468.520 shall not be liable for the tortious  
26 actions of another employer in that relationship, or for the  
27 tortious actions of any jointly employed employee under that  
28 relationship, provided that:

29 (a) The employer seeking to avoid liability pursuant  
30 to this section did not authorize or direct the tortious  
31 action;

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

4           (c) The employer seeking to avoid liability pursuant  
5 to this section did not have actual control over the day to  
6 day job duties of the jointly employed employee who has  
7 committed a tortious act nor actual control over the portion  
8 of a job site at which or from which the tortious conduct  
9 arose or at which and from which a jointly employed employee  
10 worked, and that said control was assigned to the other  
11 employer under the contract;

12           (d) The employer seeking to avoid liability pursuant  
13 to this section is expressly absolved in the written contract  
14 forming the joint employment relationship of control over the  
15 day to day job duties of the jointly employed employee who has  
16 committed a tortious act, and of the portion of the job site  
17 at which or from which the tortious conduct arose or at which  
18 and from which the jointly employed employee worked, and that  
19 said control was assigned to the other employer under the  
20 contract; and

21           (e) Complaints, allegations or incidents of any  
22 tortious misconduct or workplace safety violations, regardless  
23 of the source, are required to be reported to the employer  
24 seeking to avoid liability pursuant to this section by all  
25 other joint employers under the written contract forming the  
26 joint employment relationship, and that the employer seeking  
27 to avoid liability pursuant to this section did not fail to  
28 take appropriate action as a result of receiving any such  
29 report related to a jointly employed employee who has  
30 committed a tortious act.

31           (2) An employer seeking to avoid liability pursuant to

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1 this section shall not be presumed to have actual control over  
2 the day to day job duties of the jointly employed employee who  
3 has committed a tortious act, nor actual control over the  
4 portion of a job site at which or from which that employee  
5 worked, based solely upon the fact that the employee at issue  
6 is a leased employee.

7 (3) This section shall not alter any responsibilities  
8 of the joint employer who has actual control over the day to  
9 day job duties of the jointly employed employee and who has  
10 actual control over the portion of a job site at which or from  
11 which the employee is employed, which arises from s. 768.096.

12 Section 26. Section 768.725, Florida Statutes, is  
13 created to read:

14 768.725 Punitive damages; burden of proof.--In all  
15 civil actions the plaintiff must establish at trial by clear  
16 and convincing evidence its entitlement to an award of  
17 punitive damages. The "greater weight of the evidence" burden  
18 of proof applies to a determination of the amount of damages.

19 Section 27. Section 768.72, Florida Statutes, is  
20 amended to read:

21 768.72 Pleading in civil actions; claim for punitive  
22 damages.--

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

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1 evidence on the issue of punitive damages. No discovery of  
2 financial worth shall proceed until after the pleading  
3 concerning punitive damages is permitted.

4 (2) A defendant may be held liable for punitive  
5 damages only if the trier of fact, based on clear and  
6 convincing evidence, finds that the defendant was personally  
7 guilty of intentional misconduct or gross negligence. As used  
8 in this section, the term:

9 (a) "Intentional misconduct" means that the defendant  
10 had actual knowledge of the wrongfulness of the conduct and  
11 the high probability that injury or damage to the claimant  
12 would result and, despite that knowledge, intentionally  
13 pursued that course of conduct, resulting in injury or damage.

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

18 (3) In the case of an employer, principal,  
19 corporation, or other legal entity, punitive damages may be  
20 imposed for the conduct of an employee or agent only if the  
21 conduct of the employee or agent meets the criteria specified  
22 in subsection (2) and:

23 (a) The employer, principal, corporation, or other  
24 legal entity actively and knowingly participated in such  
25 conduct;

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

29 (c) The employer, principal, corporation, or other  
30 legal entity engaged in conduct that constituted gross  
31 negligence and that contributed to the loss, damages, or

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1 injury suffered by the claimant.

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

6 Section 28. Section 768.73, Florida Statutes, is  
7 amended to read:

8 768.73 Punitive damages; limitation.--

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

26 (b) An ~~if any~~ award for punitive damages may not  
27 exceed ~~exceeds~~ the limitations ~~limitation~~ specified in  
28 paragraph (a), ~~the award is presumed to be excessive and the~~  
29 ~~defendant is entitled to remittitur of the amount in excess of~~  
30 ~~the limitation unless the claimant demonstrates to the court~~  
31 by clear and convincing evidence that the defendant engaged in



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1 intentional misconduct or gross negligence and that the award  
2 is not excessive in light of the facts and circumstances which  
3 were presented to the trier of fact.

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

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

21 (b) In subsequent civil actions involving the same act  
22 or single course of conduct for which punitive damages have  
23 already been awarded, if the court determines by clear and  
24 convincing evidence that the amount of prior punitive damages  
25 awarded was insufficient to punish that defendant's behavior,  
26 the court may permit a jury to consider an award of subsequent  
27 punitive damages. In permitting a jury to consider awarding  
28 subsequent punitive damages, the court shall make specific  
29 findings of fact in the record to support its conclusion. In  
30 addition, the court may consider whether the defendant's act  
31 or course of conduct has ceased. Any subsequent punitive

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1 damage awards must be reduced by the amount of any earlier  
2 punitive damage awards rendered in state or federal court.

3 (3) The claimant attorney's fees, if payable from the  
4 judgment, are, to the extent that the fees are based on the  
5 punitive damages, calculated based on the final judgment for  
6 punitive damages. This subsection does not limit the payment  
7 of attorney's fees based upon an award of damages other than  
8 punitive damages.

9 (4)(2) The jury may neither be instructed nor informed  
10 as to the provisions of this section.

11 (5) The provisions of this section are remedial in  
12 nature and must be applied to all civil actions pending on  
13 October 1, 1999, in which the trial or retrial of the action  
14 has not commenced.

15 Section 29. Section 768.735, Florida Statutes, is  
16 created to read:

17 768.735 Punitive damages; exceptions; limitation.--

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

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

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1           (b) If any award for punitive damages exceeds the  
2 limitation specified in paragraph (a), the award is presumed  
3 to be excessive and the defendant is entitled to remittitur of  
4 the amount in excess of the limitation unless the claimant  
5 demonstrates to the court by clear and convincing evidence  
6 that the award is not excessive in light of the facts and  
7 circumstances that were presented to the trier of fact.

8           (c) This subsection is not intended to prohibit an  
9 appropriate court from exercising its jurisdiction under s.  
10 768.74 in determining the reasonableness of an award of  
11 punitive damages which is less than three times the amount of  
12 compensatory damages.

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

15           Section 30. Section 768.736, Florida Statutes, is  
16 created to read:

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

24           Section 31. If any provision of this act or the  
25 application thereof to any person or circumstance is held  
26 invalid, the invalidity does not affect other provisions or  
27 applications of the act which can be given effect without the  
28 invalid provision or application, and to this end the  
29 provisions of this act are declared severable.

30           Section 32. This act shall take effect October 1,  
31 1999, except that this section and sections 1, 2, and 3 shall

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1 take effect July 1, 1999.

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

5 And the title is amended as follows:

6 Delete everything before the enacting clause

7

8 and insert:

9

A bill to be entitled

10 An act relating to civil actions; amending s.  
11 324.021, F.S.; providing a limitation on the  
12 liability for bodily injury, property, and  
13 economic damages for certain lessors and owners  
14 of motor vehicles; providing for applicability;  
15 amending s. 95.031; providing a statute of  
16 repose of 18 years; creating s. 40.50, F.S.;  
17 providing for instructions to juries after the  
18 jury is sworn in; providing for the taking of  
19 notes under certain circumstances; providing  
20 for notebooks; providing for written questions;  
21 providing for final instructions; amending s.  
22 44.102, F.S.; requiring that the court require  
23 mediation in certain actions for monetary  
24 damages; creating s. 44.1051, F.S.; providing  
25 for voluntary trial resolution; providing for  
26 the appointment of a trial resolution judge;  
27 providing for compensation; providing for fees;  
28 providing for the tolling of applicable  
29 statutes of limitation; providing for powers of  
30 trial resolution judges; providing for hearings  
31 and evidence; providing for appeal; providing

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1 for application; amending s. 57.105, F.S.;

2 revising conditions for award of attorney's

3 fees for presenting unsupported claims or

4 defenses; authorizing damage awards against a

5 party for unreasonable delay of litigation;

6 authorizing the court to impose additional

7 sanctions; amending s. 768.79, F.S.; providing

8 for the applicability of offers of judgment and

9 demand of judgment in cases involving multiple

10 plaintiffs; providing that subsequent offers

11 shall void previous offers; providing that

12 prior to awarding costs and fees the court

13 shall consider whether the proposal was

14 reasonably rejected; amending s. 57.071, F.S.;

15 providing criteria under which expert witness

16 fees may be awarded as taxable costs; providing

17 for expedited trials; amending s. 768.77, F.S.;

18 deleting a requirement to itemize future

19 damages on verdict forms; amending s. 768.78,

20 F.S.; providing for proposals for structured

21 settlements; requiring structured-settlement

22 discussion in settlement negotiations;

23 requiring assignment of liability for payment

24 to a third-party assignee selected by the

25 plaintiff; granting the plaintiff the right to

26 select a settlement broker; providing for

27 findings in orders approving or adopting a

28 settlement; conforming provisions relating to

29 alternative methods of payment of damage awards

30 to changes made by the act; correcting a

31 cross-reference; creating s. 47.025, F.S.;

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1 providing that certain venue provisions in a  
2 contract for improvement to real property are  
3 void; specifying appropriate venue for actions  
4 against resident contractors, subcontractors,  
5 sub-subcontractors, and materialmen; requiring  
6 the clerk of court to report certain  
7 information on negligence cases to the Office  
8 of the State Courts Administrator; amending s.  
9 768.81, F.S.; providing for the apportionment  
10 of damages on the basis of joint and several  
11 liability when a party's fault exceeds a  
12 certain percentage; repealing s. 768.81(5),  
13 F.S.; relating to the applicability of joint  
14 and several liability to actions in which the  
15 total amount of damages does not exceed a  
16 specified amount; requiring the Department of  
17 Insurance to contract with an actuarial firm to  
18 conduct an actuarial analysis of expected  
19 reductions in judgments and related costs  
20 resulting from litigation reforms; specifying  
21 the basis and due date for the actuarial  
22 report; providing for a review of rate filings  
23 by certain types of insurers after a specified  
24 date; providing that such provisions do not  
25 limit the refund of excessive profits by  
26 certain insurers; creating s. 768.1256, F.S.;  
27 providing a government rules defense with  
28 respect to certain products liability actions;  
29 providing for rebuttable presumptions;  
30 providing an exception; amending s. 400.023,  
31 F.S., relating to actions brought on behalf of

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1 nursing home residents; providing that a party  
2 to any such action may not recover attorney's  
3 fees unless parties submit to mediation;  
4 specifying requirements for such mediation;  
5 providing for application; providing a standard  
6 for any award of punitive damages; increasing  
7 minimum financial responsibility requirements  
8 for physicians and osteopathic physicians and  
9 eliminating an alternative method of satisfying  
10 financial responsibility requirements for  
11 physicians and osteopathic physicians with  
12 hospital staff privileges; creating s. 768.096,  
13 F.S.; providing an employer with a presumption  
14 against negligent hiring under specified  
15 conditions in an action for civil damages  
16 resulting from an intentional tort committed by  
17 an employee; amending s. 768.095, F.S. ;  
18 revising the conditions under which an employer  
19 is immune from civil liability for disclosing  
20 information regarding an employee to a  
21 prospective employer; creating s. 768.071,  
22 F.S.; providing limitations on premises  
23 liability for a person or organization owning  
24 or controlling an interest in a business  
25 premises; amending s. 768.075, F.S.; modifying  
26 the conditions under which a person or  
27 organization owning or controlling an interest  
28 in real property is liable for a trespasser's  
29 injury or death; providing definitions;  
30 providing for the avoidance of liability to  
31 discovered and undiscovered trespassers under

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1 described circumstances; providing immunity  
2 from certain liability arising out of the  
3 attempt to commit or the commission of a  
4 felony; creating s. 768.36, F.S.; prohibiting a  
5 plaintiff from recovering damages if plaintiff  
6 is more than a specified percentage at fault  
7 due to the influence of alcoholic beverages or  
8 drugs; creating s. 768.098, F.S.; providing a  
9 limitation of liability for employee leasing  
10 under specified conditions; creating s.  
11 768.725, F.S.; providing evidentiary standards  
12 for an award of punitive damages; amending s.  
13 768.72, F.S.; revising provisions with respect  
14 to claims for punitive damages in civil  
15 actions; requiring clear and convincing  
16 evidence of gross negligence or intentional  
17 misconduct to support the recovery of such  
18 damages; providing definitions; providing  
19 criteria for the imposition of punitive damages  
20 with respect to employers, principals,  
21 corporations, or other legal entities for the  
22 conduct of an employee or agent; providing for  
23 the application of the section; amending s.  
24 768.73, F.S.; revising provisions with respect  
25 to limitations on punitive damages; providing  
26 monetary limitations; providing an exception  
27 with respect to intentional misconduct;  
28 prohibiting the award of subsequent punitive  
29 damages against a defendant if punitive damages  
30 were previously awarded against the defendant  
31 for harm arising out of the same act or single



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1 course of conduct; providing an exception;  
2 specifying the basis for calculating attorney's  
3 fees on judgments for punitive damages;  
4 providing for the application of the section;  
5 creating s. 768.735, F.S.; providing that ss.  
6 768.72(2)-(4), 768.725, and 768.73, F.S.,  
7 relating to punitive damages, are inapplicable  
8 to specified causes of action; limiting the  
9 amount of punitive damages that may be awarded  
10 to a claimant in certain civil actions  
11 involving abuse or arising under ch. 400, F.S.;  
12 creating s. 768.736, F.S.; providing that ss.  
13 768.725 and 768.73, F.S., relating to punitive  
14 damages, do not apply to intoxicated  
15 defendants; providing for severability;  
16 providing effective dates.

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