

CONFERENCE COMMITTEE AMENDMENT

Bill No. HB 775, 2nd Eng.

Amendment No. ____ (for drafter's use only)

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Conference Committee on HB 775 2nd Engrossed offered the following:

Conference Committee Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

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

40.50 Jury duty and instructions in civil cases.--

(1) In any civil action immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses, and the legal issues involved in the proceeding.

(2) In any civil action which the court determines is likely to exceed 5 days, the court shall instruct that the jurors may take notes regarding the evidence and keep the notes to refresh their memory and to use during recesses and deliberations. The court may provide materials suitable for this purpose. The court should emphasize the confidentiality

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1 of the notes. After the jury has rendered its verdict, any
2 notes shall be collected by the bailiff or clerk who shall
3 promptly destroy them.

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

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

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

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

31 44.102 Court-ordered mediation.--

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1 (2) A court, under rules adopted by the Supreme Court:
2 (a) Must, upon request of one party, refer to
3 mediation any filed civil action for monetary damages,
4 provided the requesting party is willing and able to pay the
5 costs of the mediation or the costs can be equitably divided
6 between the parties, unless:
7 1. The action is a landlord and tenant dispute that
8 does not include a claim for personal injury.
9 2. The action is filed for the purpose of collecting a
10 debt.
11 3. The action is a claim of medical malpractice.
12 4. The action is governed by the Florida Small Claims
13 Rules.
14 5. The court determines that the action is proper for
15 referral to nonbinding arbitration under this chapter.
16 6. The parties have agreed to binding arbitration.
17 7. The parties have agreed to an expedited trial
18 pursuant to section 6 of this act.
19 8. The parties have agreed to voluntary trial
20 resolution pursuant to s. 44.104.
21 (b)(a) May refer to mediation all or any part of a
22 filed civil action for which mediation is not required under
23 this section.
24 (c)(b) In circuits in which a family mediation program
25 has been established and upon a court finding of a dispute,
26 shall refer to mediation all or part of custody, visitation,
27 or other parental responsibility issues as defined in s.
28 61.13. Upon motion or request of a party, a court shall not
29 refer any case to mediation if it finds there has been a
30 history of domestic violence that would compromise the
31 mediation process.

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1 ~~(d)(c)~~ In circuits in which a dependency or in need of
2 services mediation program has been established, may refer to
3 mediation all or any portion of a matter relating to
4 dependency or to a child in need of services or a family in
5 need of services.

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

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

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

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

31 (3) The arbitrators or trial resolution judge shall be

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1 compensated by the parties according to their agreement, ~~but~~
2 ~~not at an amount less than \$75 per day.~~

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

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

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

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

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

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

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

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

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

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

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

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

29 (13)~~(11)~~ If no appeal is taken within the time
30 provided by rules promulgated by the Supreme Court, then the
31 decision shall be referred to the presiding judge in the case,

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

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

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

20 57.105 Attorney's fee; sanctions for raising
21 unsupported claims or defenses; damages for delay of
22 litigation.--

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

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

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

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

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

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

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1 obtaining the order, which may include attorney's fees, and
2 other loss resulting from the improper delay.

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

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

15 Section 5. Section 57.071, Florida Statutes, is
16 amended to read:

17 57.071 Costs; what taxable.--

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

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

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

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

28 (2) Expert witness fees may not be awarded as taxable
29 costs unless the party retaining the expert witness furnishes
30 each opposing party with a written report signed by the expert
31 witness which summarizes the expert witness's opinions and the

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1 factual basis of the opinions, including documentary evidence
2 and the authorities relied upon in reaching the opinions. Such
3 report shall be filed at least 5 days prior to the deposition
4 of the expert or at least 20 days prior to discovery cutoff,
5 whichever is sooner, or as otherwise determined by the court.
6 This subsection does not apply to any action proceeding under
7 the Florida Family Law Rules of Procedure.

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

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

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

23 (3) The court shall determine the number of
24 depositions required.

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

26 (5) The case may be tried within 30 days after the
27 60-day discovery cutoff, if such schedule would not impose an
28 undue burden on the court calendar.

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

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

31 (8) The plaintiff will have no more than 3 hours to

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1 present its case, including the opening, all testimony and
2 evidence, and the closing.

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

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

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

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

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

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

23 Section 7. Section 768.77, Florida Statutes, is
24 amended to read:

25 768.77 Itemized verdict.--

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

31 (1)~~(a)~~ Amounts intended to compensate the claimant for

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1 economic losses;

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

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

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

17 Section 8. Paragraph (a) of subsection (1) of section
18 768.78, Florida Statutes, is amended to read:

19 768.78 Alternative methods of payment of damage
20 awards.--

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

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

31 2. Subject to the provisions of this subsection, the

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

7 Section 9. Section 47.025, Florida Statutes, is
8 created to read:

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

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

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1 identifying those damages that are to be paid jointly and
2 severally and by which defendants; and the amount of any
3 punitive damages to be paid by each defendant.

4 Section 11. Effective July 1, 1999, subsection (2) of
5 section 95.031, Florida Statutes, is amended to read:

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

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

21 (b) An action for products liability under s. 95.11(3)
22 must be begun within the period prescribed in this chapter,
23 with the period running from the date that the facts giving
24 rise to the cause of action were discovered, or should have
25 been discovered with the exercise of due diligence, rather
26 than running from any other date prescribed elsewhere in s.
27 95.11(3), except as provided within this subsection. Under no
28 circumstances may a claimant commence an action for products
29 liability, including a wrongful death action or any other
30 claim arising from personal injury or property damage caused
31 by a product, to recover for harm allegedly caused by a

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1 product with an expected useful life of 10 years or less, if
2 the harm was caused by exposure to or use of the product more
3 than 12 years after delivery of the product to its first
4 purchaser or lessee who was not engaged in the business of
5 selling or leasing the product or of using the product as a
6 component in the manufacture of another product. All products,
7 except those included within subparagraph 1. or subparagraph
8 2., are conclusively presumed to have an expected useful life
9 of 10 years or less.

10 1. Aircraft used in commercial or contract carrying of
11 passengers or freight, vessels of more than 100 gross tons,
12 railroad equipment used in commercial or contract carrying of
13 passengers or freight, and improvements to real property,
14 including elevators and escalators, are not subject to the
15 statute of repose provided within this subsection.

16 2. Any product not listed in subparagraph 1., which
17 the manufacturer specifically warranted, through express
18 representation or labeling, as having an expected useful life
19 exceeding 10 years, has an expected useful life commensurate
20 with the time period indicated by the warranty or label. Under
21 such circumstances, no action for products liability may be
22 brought after the expected useful life of the product, or more
23 than 12 years after delivery of the product to its first
24 purchaser or lessee who was not engaged in the business of
25 selling or leasing the product or of using the product as a
26 component in the manufacture of another product, whichever is
27 later.

28 3. With regard to those products listed in
29 subparagraph 1., except for escalators, elevators, and
30 improvements to real property, no action for products
31 liability may be brought more than 20 years after delivery of

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1 the product to its first purchaser or lessor who was not
2 engaged in the business of selling or leasing the product or
3 of using the product as a component in the manufacture of
4 another product. However, if the manufacturer specifically
5 warranted, through express representation or labeling, that
6 the product has an expected useful life exceeding 20 years,
7 the repose period shall be the time period warranted in
8 representations or label.

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

14 (d) The repose period prescribed within paragraph (b)
15 is tolled for any period during which the manufacturer through
16 its officers, directors, partners, or managing agents had
17 actual knowledge that the product was defective in the manner
18 alleged by the claimant and took affirmative steps to conceal
19 the defect. Any claim of concealment under this section shall
20 be made with specificity and must be based upon substantial
21 factual and legal support. Maintaining the confidentiality of
22 trade secrets does not constitute concealment under this
23 section.

24 Section 12. (1) The amendments to section 95.031(2),
25 Florida Statutes, made by this act shall apply to any action
26 commenced on or after the effective date of that section,
27 regardless of when the cause of action accrued, except that
28 any action for products liability which would not have been
29 barred under section 95.031(2), Florida Statutes, prior to the
30 amendments to that section made by this act may be commenced
31 before July 1, 2003, and, if it is not commenced by that date

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1 and is barred by the amendments to section 95.031(2), Florida
2 Statutes, made by this act, it shall be barred.

3 (2) This section shall take effect July 1, 1999.

4 Section 13. Section 90.407, Florida Statutes, is
5 amended to read:

6 90.407 Subsequent remedial measures.--Evidence of
7 measures taken after an injury or harm caused by an event,
8 which measures if taken before the event it occurred would
9 have made injury or harm the event less likely to occur, is
10 not admissible to prove negligence, the existence of a product
11 defect, or culpable conduct in connection with the event. This
12 rule does not require the exclusion of evidence of subsequent
13 remedial measures when offered for another purpose, such as
14 proving ownership, control, or the feasibility of
15 precautionary measures, if controverted, or impeachment.

16 Section 14. Section 768.1257, Florida Statutes, is
17 created to read:

18 768.1257 State-of-the-art defense for products
19 liability.--In an action based upon defective design, brought
20 against the manufacturer of a product, the finder of fact
21 shall consider the state of the art of scientific and
22 technical knowledge and other circumstances that existed at
23 the time of manufacture, not at the time of loss or injury.

24 Section 15. Section 768.1256, Florida Statutes, is
25 created to read:

26 768.1256 Government rules defense.--

27 (1) In a product liability action brought against a
28 manufacturer or seller for harm allegedly caused by a product,
29 there is a rebuttable presumption that the product is not
30 defective or unreasonably dangerous and the manufacturer or
31 seller is not liable if, at the time the specific unit of the

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1 product was sold or delivered to the initial purchaser or
2 user, the aspect of the product that allegedly caused the
3 harm:

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

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

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

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

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

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

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

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

28 Section 16. Section 768.096, Florida Statutes, is
29 created to read:

30 768.096 Employer presumption against negligent
31 hiring.--

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1 (1) In a civil action for the death of, or injury or
2 damage to, a third person caused by the intentional tort of an
3 employee, such employee's employer is presumed not to have
4 been negligent in hiring such employee if, before hiring the
5 employee, the employer conducted a background investigation of
6 the prospective employee and the investigation did not reveal
7 any information that reasonably demonstrated the unsuitability
8 of the prospective employee for the particular work to be
9 performed or for the employment in general. A background
10 investigation under this section must include:

11 (a) Obtaining a criminal background investigation on
12 the prospective employee under subsection (2);

13 (b) Making a reasonable effort to contact references
14 and former employers of the prospective employee concerning
15 the suitability of the prospective employee for employment;

16 (c) Requiring the prospective employee to complete a
17 job application form that includes questions concerning
18 whether he or she has ever been convicted of a crime,
19 including details concerning the type of crime, the date of
20 conviction and the penalty imposed, and whether the
21 prospective employee has ever been a defendant in a civil
22 action for intentional tort, including the nature of the
23 intentional tort and the disposition of the action;

24 (d) Obtaining, with written authorization from the
25 prospective employee, a check of the driver's license record
26 of the prospective employee if such a check is relevant to the
27 work the employee will be performing and if the record can
28 reasonably be obtained; or

29 (e) Interviewing the prospective employee.

30 (2) To satisfy the criminal-background-investigation
31 requirement of this section, an employer must request and

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1 obtain from the Department of Law Enforcement a check of the
2 information as reported and reflected in the Florida Crime
3 Information Center system as of the date of the request.

4 (3) The election by an employer not to conduct the
5 investigation specified in subsection (1) does not raise any
6 presumption that the employer failed to use reasonable care in
7 hiring an employee.

8 Section 17. Section 768.095, Florida Statutes, is
9 amended to read:

10 768.095 Employer immunity from liability; disclosure
11 of information regarding former or current employees.--An
12 employer who discloses information about a former or current
13 employee ~~employee's job performance~~ to a prospective employer
14 of the former or current employee upon request of the
15 prospective employer or of the former or current employee is
16 ~~presumed to be acting in good faith and, unless lack of good~~
17 ~~faith is shown by clear and convincing evidence, is immune~~
18 from civil liability for such disclosure or its consequences
19 unless it is shown by clear and convincing evidence. ~~For~~
20 ~~purposes of this section, the presumption of good faith is~~
21 ~~rebutted upon a showing that the information disclosed by the~~
22 former or current employer was knowingly false ~~or deliberately~~
23 ~~misleading, was rendered with malicious purpose, or violated~~
24 any civil right of the former or current employee protected
25 under chapter 760.

26 Section 18. Section 768.0705, Florida Statutes, is
27 created to read:

28 768.0705 Limitation on premises liability.--The owner
29 or operator of a convenience business that substantially
30 implements the applicable security measures listed in ss.
31 812.173 and 812.174 shall gain a presumption against liability

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1 in connection with criminal acts that occur on the premises
2 and that are committed by third parties who are not employees
3 or agents of the owner or operator of the convenience
4 business.

5 Section 19. 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 that
7 proximately causes injury to the undiscovered trespasser, but
8 has no duty to warn of dangerous conditions. To avoid
9 liability to discovered trespassers, a person or organization
10 owning or controlling an interest in real property must
11 refrain from gross negligence or intentional misconduct that
12 proximately causes injury to the discovered trespasser, and
13 must warn the trespasser of dangerous conditions that are
14 known to the person or organization owning or controlling an
15 interest in real property but that are not readily observable
16 by others.

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

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

26 Section 20. Section 768.36, Florida Statutes, is
27 created to read:

28 768.36 Alcohol or drug defense.--

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

30 (a) "Alcoholic beverage" means distilled spirits and
31 any beverage that contains 0.5 percent or more alcohol by

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1 volume as determined in accordance with s. 561.01(4)(b).

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

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

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

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

22 Section 21. Section 768.725, Florida Statutes, is
23 created to read:

24 768.725 Punitive damages; burden of proof.--In all
25 civil actions, the plaintiff must establish at trial, by clear
26 and convincing evidence, its entitlement to an award of
27 punitive damages. The "greater weight of the evidence" burden
28 of proof applies to a determination of the amount of damages.

29 Section 22. Section 768.72, Florida Statutes, is
30 amended to read:

31 768.72 Pleading in civil actions; claim for punitive

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1 damages.--

2 (1) In any civil action, no claim for punitive damages
3 shall be permitted unless there is a reasonable showing by
4 evidence in the record or proffered by the claimant which
5 would provide a reasonable basis for recovery of such damages.
6 The claimant may move to amend her or his complaint to assert
7 a claim for punitive damages as allowed by the rules of civil
8 procedure. The rules of civil procedure shall be liberally
9 construed so as to allow the claimant discovery of evidence
10 which appears reasonably calculated to lead to admissible
11 evidence on the issue of punitive damages. No discovery of
12 financial worth shall proceed until after the pleading
13 concerning punitive damages is permitted.

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

19 (a) "Intentional misconduct" means that the defendant
20 had actual knowledge of the wrongfulness of the conduct and
21 the high probability that injury or damage to the claimant
22 would result and, despite that knowledge, intentionally
23 pursued that course of conduct, resulting in injury or damage.

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

28 (3) In the case of an employer, principal,
29 corporation, or other legal entity, punitive damages may be
30 imposed for the conduct of an employee or agent only if the
31 conduct of the employee or agent meets the criteria specified

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1 in subsection (2) and:

2 (a) The employer, principal, corporation, or other
3 legal entity actively and knowingly participated in such
4 conduct;

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

8 (c) The employer, principal, corporation, or other
9 legal entity engaged in conduct that constituted gross
10 negligence and that contributed to the loss, damages, or
11 injury suffered by the claimant.

12 (4) The provisions of this section shall be applied to
13 all causes of action arising after the effective date of this
14 act.

15 Section 23. Section 768.73, Florida Statutes, is
16 amended to read:

17 768.73 Punitive damages; limitation.--

18 (1)(a) Except as provided in paragraphs (b) and (c),
19 an award of punitive damages may not exceed the greater of:

20 1. Three times the amount of compensatory damages
21 awarded to each claimant entitled thereto, consistent with the
22 remaining provisions of this section; or

23 2. The sum of \$500,000.~~in any civil action based on~~
24 ~~negligence, strict liability, products liability, misconduct~~
25 ~~in commercial transactions, professional liability, or breach~~
26 ~~of warranty, and involving willful, wanton, or gross~~
27 ~~misconduct, the judgment for the total amount of punitive~~
28 ~~damages awarded to a claimant may not exceed three times the~~
29 ~~amount of compensatory damages awarded to each person entitled~~
30 ~~thereto by the trier of fact, except as provided in paragraph~~

31 ~~(b). However, this subsection does not apply to any class~~

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1 ~~action.~~

2 (b) Where the fact finder determines that the wrongful
3 conduct proven under this section was motivated solely by
4 unreasonable financial gain and determines that the
5 unreasonably dangerous nature of the conduct, together with
6 the high likelihood of injury resulting from the conduct, were
7 actually known by the managing agent, director, officer, or
8 other person responsible for making policy decisions on behalf
9 of the defendant, it may award an amount of punitive damages
10 not to exceed the greater of:

11 1. Four times the amount of compensatory damages
12 awarded to each claimant entitled thereto, consistent with the
13 remaining provisions of this section; or

14 2. The sum of \$2,000,000.~~If any award for punitive~~
15 ~~damages exceeds the limitation specified in paragraph (a), the~~
16 ~~award is presumed to be excessive and the defendant is~~
17 ~~entitled to remittitur of the amount in excess of the~~
18 ~~limitation unless the claimant demonstrates to the court by~~
19 ~~clear and convincing evidence that the award is not excessive~~
20 ~~in light of the facts and circumstances which were presented~~
21 ~~to the trier of fact.~~

22 (c) Where the fact finder determines that at the time
23 of injury the defendant had a specific intent to harm the
24 claimant and determines that the defendant's conduct did in
25 fact harm the claimant, there shall be no cap on punitive
26 damages.

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

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

13 (b) In subsequent civil actions involving the same act
14 or single course of conduct for which punitive damages have
15 already been awarded, if the court determines by clear and
16 convincing evidence that the amount of prior punitive damages
17 awarded was insufficient to punish that defendant's behavior,
18 the court may permit a jury to consider an award of subsequent
19 punitive damages. In permitting a jury to consider awarding
20 subsequent punitive damages, the court shall make specific
21 findings of fact in the record to support its conclusion. In
22 addition, the court may consider whether the defendant's act
23 or course of conduct has ceased. Any subsequent punitive
24 damage awards must be reduced by the amount of any earlier
25 punitive damage awards rendered in state or federal court.

26 (3) The claimant attorney's fees, if payable from the
27 judgment, are, to the extent that the fees are based on the
28 punitive damages, calculated based on the final judgment for
29 punitive damages. This subsection does not limit the payment
30 of attorney's fees based upon an award of damages other than
31 punitive damages.

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1 ~~(4)(2)~~ The jury may neither be instructed nor informed
2 as to the provisions of this section.

3 (5) The provisions of this section shall be applied to
4 all causes of action arising after the effective date of this
5 act.

6 Section 24. Section 768.735, Florida Statutes, is
7 created to read:

8 768.735 Punitive damages; exceptions; limitation.--

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

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

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

30 (c) This subsection is not intended to prohibit an
31 appropriate court from exercising its jurisdiction under s.

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1 768.74 in determining the reasonableness of an award of
2 punitive damages which is less than three times the amount of
3 compensatory damages.

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

6 Section 25. Section 768.736, Florida Statutes, is
7 created to read:

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

15 Section 26. Section 768.737, Florida statutes, is
16 created to read:

17 768.737 Punitive damages; application in
18 arbitration.--Where punitive damages are available as a remedy
19 in an arbitration proceeding, ss. 768.72, 768.725, and 768.73
20 apply. When an award of punitive damages is made in an
21 arbitration proceeding, the arbitrator who renders the award
22 must issue a written opinion setting forth the conduct which
23 gave rise to the award and how the arbitrator applied the
24 standards in s. 768.72 to such conduct.

25 Section 27. Subsections (3), (4), (5), and (6) of
26 section 768.81, Florida Statutes, are amended to read:

27 768.81 Comparative fault.--

28 (3) APPORTIONMENT OF DAMAGES.--In cases to which this
29 section applies, the court shall enter judgment against each
30 party liable on the basis of such party's percentage of fault
31 and not on the basis of the doctrine of joint and several

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1 liability, except as provided in paragraphs (a), (b), and (c):

2 (a) Where a plaintiff is found to be at fault, the
3 following shall apply:

4 1. Any defendant found 10 percent or less at fault
5 shall not be subject to joint and several liability.

6 2. For any defendant found more than 10 percent but
7 less than 25 percent at fault, joint and several liability
8 shall not apply to that portion of economic damages in excess
9 of \$200,000.

10 3. For any defendant found at least 25 percent but not
11 more than 50 percent at fault, joint and several liability
12 shall not apply to that portion of economic damages in excess
13 of \$500,000.

14 4. For any defendant found more than 50 percent at
15 fault, joint and several liability shall not apply to that
16 portion of economic damages in excess of \$1,000,000.

17
18 For any defendant under subparagraph 2., subparagraph 3., or
19 subparagraph 4., the amount of economic damages calculated
20 under joint and several liability shall be in addition to the
21 amount of economic and noneconomic damages already apportioned
22 to that defendant based on that defendant's percentage of
23 fault.

24 (b) Where a plaintiff is found to be without fault,
25 the following shall apply:

26 1. Any defendant found less than 10 percent at fault
27 shall not be subject to joint and several liability.

28 2. For any defendant found at least 10 percent but
29 less than 25 percent at fault, joint and several liability
30 shall not apply to that portion of economic damages in excess
31 of \$500,000.

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1 3. For any defendant found at least 25 percent but not
2 more than 50 percent at fault, joint and several liability
3 shall not apply to that portion of economic damages in excess
4 of \$1,000,000.

5 4. For any defendant found more than 50 percent at
6 fault, joint and several liability shall not apply to that
7 portion of economic damages in excess of \$2,000,000.

8
9 For any defendant under subparagraph 2., subparagraph 3., or
10 subparagraph 4., the amount of economic damages calculated
11 under joint and several liability shall be in addition to the
12 amount of economic and noneconomic damages already apportioned
13 to that defendant based on that defendant's percentage of
14 fault.

15 (c) With respect to any defendant whose percentage of
16 fault is less than the fault of a particular plaintiff, the
17 doctrine of joint and several liability shall not apply to any
18 damages imposed against the defendant. ~~provided that with~~
19 ~~respect to any party whose percentage of fault equals or~~
20 ~~exceeds that of a particular claimant, the court shall enter~~
21 ~~judgment with respect to economic damages against that party~~
22 ~~on the basis of the doctrine of joint and several liability.~~

23 (d) In order to allocate any or all fault to a
24 nonparty, a defendant must affirmatively plead the fault of a
25 nonparty and, absent a showing of good cause, identify the
26 nonparty, if known, or describe the nonparty as specifically
27 as practicable, either by motion or in the initial responsive
28 pleading when defenses are first presented, subject to
29 amendment any time before trial in accordance with the Florida
30 Rules of Civil Procedure.

31 (e) In order to allocate any or all fault to a

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1 nonparty and include the named or unnamed nonparty on the
2 verdict form for purposes of apportioning damages, a defendant
3 must prove at trial, by a preponderance of the evidence, the
4 fault of the nonparty in causing the plaintiff's injuries.

5 (4) APPLICABILITY.--

6 (a) This section applies to negligence cases. For
7 purposes of this section, "negligence cases" includes, but is
8 not limited to, civil actions for damages based upon theories
9 of negligence, strict liability, products liability,
10 professional malpractice whether couched in terms of contract
11 or tort, or breach of warranty and like theories. In
12 determining whether a case falls within the term "negligence
13 cases," the court shall look to the substance of the action
14 and not the conclusory terms used by the parties.

15 (b) This section does not apply to any action brought
16 by any person to recover actual economic damages resulting
17 from pollution, to any action based upon an intentional tort,
18 or to any cause of action as to which application of the
19 doctrine of joint and several liability is specifically
20 provided by chapter 403, chapter 498, chapter 517, chapter
21 542, or chapter 895.

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

27 (5)(6) Notwithstanding anything in law to the
28 contrary, in an action for damages for personal injury or
29 wrongful death arising out of medical malpractice, whether in
30 contract or tort, when an apportionment of damages pursuant to
31 this section is attributed to a teaching hospital as defined

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1 in s. 408.07, the court shall enter judgment against the
2 teaching hospital on the basis of such party's percentage of
3 fault and not on the basis of the doctrine of joint and
4 several liability.

5 Section 28. Effective July 1, 1999, paragraph (b) of
6 subsection (9) of section 324.021, Florida Statutes, is
7 amended, and paragraph (c) is added to that subsection, to
8 read:

9 324.021 Definitions; minimum insurance required.--The
10 following words and phrases when used in this chapter shall,
11 for the purpose of this chapter, have the meanings
12 respectively ascribed to them in this section, except in those
13 instances where the context clearly indicates a different
14 meaning:

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

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

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

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1 combined coverage for bodily injury liability and property
2 damage liability shall contain limits of not less than \$1
3 million and may be provided by a lessor's blanket policy.

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

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

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1 vehicle. The additional specified liability of the owner for
2 economic damages shall be reduced by amounts actually
3 recovered from the permissive user and from any insurance or
4 self-insurance covering the permissive user. Nothing in this
5 subparagraph shall be construed to affect the liability of the
6 owner for his or her own negligence.

7 (c) Application.--

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

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

30 a. The lessee indicates in writing that the vehicle
31 will not be used to transport materials found to be hazardous

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1 for the purposes of the Hazardous Materials Transportation
2 Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et
3 seq.; or

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

8 Section 29. Section 768.098, Florida Statutes, is
9 created to read:

10 768.098 Limitation of liability for employee
11 leasing.--

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

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

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

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

31 (d) The employer seeking to avoid liability pursuant

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

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

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

26 (3) This section shall not alter any responsibilities
27 of the joint employer who has actual control over the
28 day-to-day job duties of the jointly employed employee and who
29 has actual control over the portion of a job site at which or
30 from which the employee is employed, which arises from s.
31 768.096.

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1 Section 30. Subsections (6), (7), and (8) are added to
2 section 400.023, Florida Statutes, to read:

3 400.023 Civil enforcement.--

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

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

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

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

18 b. Set a date for mediation.

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

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

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

30 a. Each party shall ensure that all persons necessary
31 for complete settlement authority are present at the

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1 mediation.

2 b. Each party shall mediate in good faith.

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

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

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

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

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

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

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1 Section 31. Section 400.429, Florida statutes, is
2 amended to read:

3 400.429 Civil actions to enforce rights.--

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

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

29 (a) Within 120 days after the filing of a responsive
30 pleading or defensive motion to a complaint brought under this
31 section and before trial, the parties or their designated

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1 representatives shall meet in mediation to discuss the issues
2 of liability and damages in accordance with this paragraph for
3 the purpose of an early resolution of the matter.

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

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

10 b. Set a date for mediation.

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

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

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

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

25 b. Each party shall mediate in good faith.

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

30 (b) If the parties do not settle the case pursuant to
31 mediation, the last offer of the defendant made at mediation

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

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

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

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

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

24 Section 32. Section 400.629, Florida Statutes, 1998
25 Supplement, is amended to read:

26 400.629 Civil actions to enforce rights.--

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

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

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

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

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

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

30 b. Set a date for mediation.

31 c. Prepare an order for the court that identifies the

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

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

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

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

14 b. Each party shall mediate in good faith.

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

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

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

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

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

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

13 Section 33. (1) The Office of Program Policy Analysis
14 and Government Accountability shall, after issuing a request
15 for proposals, contract with a national independent actuarial
16 firm to conduct an actuarial analysis, consistent with
17 generally accepted actuarial practices, of the expected
18 reduction in liability judgments, settlements, and related
19 costs resulting from the provisions of this act. The analysis
20 shall be based on credible loss cost data derived from
21 settlement or adjudication of liability claims accruing after
22 the effective date of this act. The analysis shall include an
23 estimate of the percentage decrease in such judgments,
24 settlements, and costs by type of coverage affected by this
25 act, including the time period when such savings or reductions
26 are expected.

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

30 Section 34. It is the intent of this act and the
31 Legislature to accord the utmost comity and respect to the

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

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1 sub-subcontractors, and materialmen; requiring
2 the clerk of courts to report certain
3 information on negligence cases to the Office
4 of the State Courts Administrator; amending s.
5 95.031, F.S.; imposing a 12-year statute of
6 repose on actions brought to recover for harm
7 caused by products with a specified expected
8 useful life; exempting certain categories of
9 products from the statute of repose; imposing
10 variable repose periods based on specific
11 warranties by the manufacturer; providing an
12 exception for certain injuries; providing for
13 tolling under particular circumstances;
14 specifying the date by which certain actions
15 must be brought or be otherwise barred by the
16 statute of repose; amending s. 90.407, F.S.;
17 providing limitations on the admissibility of
18 subsequent remedial measures; providing
19 exceptions; creating s. 768.1257, F.S.;
20 requiring the finder of fact, in certain
21 product defect actions, to consider
22 circumstances that existed at the time of
23 manufacture; creating s. 768.1256, F.S.;
24 providing a government rules defense with
25 respect to certain products liability actions;
26 providing for rebuttable presumptions;
27 providing an exception; creating s. 768.096,
28 F.S.; providing an employer with a presumption
29 against negligent hiring under specified
30 conditions in an action for civil damages
31 resulting from an intentional tort committed by

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1 an employee; amending s. 768.095, F.S.;

2 revising the conditions under which an employer

3 is immune from civil liability for disclosing

4 information regarding an employee to a

5 prospective employer; creating s. 768.0705,

6 F.S.; providing a presumption against liability

7 for criminal acts for convenience business

8 under specified conditions; amending s.

9 768.075, F.S.; delineating the duty owed to

10 trespassers by a person or organization owning

11 or controlling an interest in real property;

12 providing definitions; providing for the

13 avoidance of liability to discovered and

14 undiscovered trespassers under described

15 circumstances; providing immunity from certain

16 liability arising out of the attempt to commit

17 or the commission of a felony; creating s.

18 768.36, F.S.; prohibiting a plaintiff from

19 recovering damages if plaintiff is more than a

20 specified percentage at fault due to the

21 influence of alcoholic beverages or drugs;

22 creating s. 768.725, F.S.; providing for

23 evidentiary standards for an award of punitive

24 damages; amending s. 768.72, F.S.; revising

25 provisions with respect to claims for punitive

26 damages in civil actions; requiring clear and

27 convincing evidence of gross negligence or

28 intentional misconduct to support the recovery

29 of such damages; providing definitions;

30 providing criteria for the imposition of

31 punitive damages with respect to employers,

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1 principals, corporations, or other legal
2 entities for the conduct of an employee or
3 agent; providing for the application of the
4 section; amending s. 768.73, F.S.; revising
5 provisions with respect to limitations on
6 punitive damages; providing monetary
7 limitations; providing for the effect of
8 certain previous punitive damages awards;
9 providing for the application of the section;
10 creating s. 768.735, F.S.; providing that ss.
11 768.72(2)-(4), 768.725, and 768.73, F.S.,
12 relating to punitive damages, are inapplicable
13 to specified causes of action; limiting the
14 amount of punitive damages that may be awarded
15 to a claimant in certain civil actions
16 involving abuse or arising under ch. 400, F.S.;
17 creating s. 768.736, F.S.; providing that ss.
18 768.725 and 768.73, F.S., relating to punitive
19 damages, do not apply to intoxicated
20 defendants; creating s. 768.737, F.S.;
21 providing for application of punitive damages
22 statutes to arbitration; amending s. 768.81,
23 F.S.; providing for the apportionment of
24 damages on the basis of joint and several
25 liability when a party's fault exceeds certain
26 percentages; limiting the applicability of
27 joint and several liability based on the amount
28 of damages; providing for the allocation of
29 fault to a nonparty; requiring that such fault
30 must be proved by a preponderance of the
31 evidence; amending s. 324.021, F.S.; providing

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1 the lessor of a motor vehicle under certain
2 rental agreements shall be deemed the owner of
3 the vehicle for the purpose of determining
4 liability for the operation of the vehicle
5 within certain limits; providing for the
6 liability of the owner of a motor vehicle who
7 loans the vehicle to certain users; creating s.
8 768.098, F.S.; limiting the liability of
9 employers in a joint employment relationship
10 under specific circumstances; providing
11 exceptions and limitations; amending s.
12 400.023, F.S., relating to actions brought on
13 behalf of nursing home residents; providing
14 that a party to any such action may not recover
15 attorney's fees unless parties submit to
16 mediation; specifying requirements for such
17 mediation; providing for application; providing
18 a standard for an award of punitive damages;
19 amending s. 400.429, F.S.; relating to actions
20 brought on behalf of assisted living care
21 facility residents; providing that a party to
22 any such action may not recover attorney's fees
23 unless parties submit to mediation; specifying
24 requirements for such mediation; providing for
25 application; providing a standard for an award
26 of punitive damages; amending s. 400.629, F.S.;
27 relating to actions brought on behalf of adult
28 family care home residents; providing that a
29 party to any such action may not recover
30 attorney's fees unless parties submit to
31 mediation; specifying requirements for such

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1 mediation; providing for application; providing
2 a standard for an award of punitive damages;
3 requiring the Office of Program Policy Analysis
4 and Government Accountability to contract with
5 an actuarial firm to conduct an actuarial
6 analysis of expected reductions in judgments
7 and related costs resulting from litigation
8 reforms; specifying the basis and due date for
9 the actuarial report; providing a declaration
10 of intent pertaining to the constitutional
11 prerogatives of the judiciary; providing for
12 severability; providing effective dates.

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