

141-482AX-99

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Cosgrove offered the following:

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

(2) The court shall instruct that the jurors may take
notes regarding the evidence and keep the notes for the
purpose of refreshing their memory for use during recesses and
deliberations. The court may provide materials suitable for
this purpose. The confidentiality of the notes should be
emphasized to the jurors. After the jury has rendered its

1 verdict, the notes shall be collected by the bailiff or clerk
2 who shall promptly destroy them.

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

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

8 (b) Jurors' notes.

9 (c) Witnesses' names and either photographs or
10 biographies or both.

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

13 (e) A glossary of technical terms.

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

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

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

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

30 (6) The court shall instruct the jury that any
31 questions directed to witnesses or the court must be in

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

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

20 Section 2. Section 44.102, Florida Statutes, is
21 amended to read:

22 44.102 Court-ordered mediation.--

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

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

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

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

31 2. The action is filed for the purpose of collecting a

1 debt.

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

3 4. The action is governed by the Florida Small Claims

4 Rules.

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

7 6. The parties have agreed to binding arbitration.

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

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

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

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

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1 unless all parties agree otherwise.

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

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

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

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

1 party has been declared indigent or insolvent, that party's
2 pro rata share of a mediator's compensation shall be paid by
3 the county at the rate set by administrative order of the
4 chief judge of the circuit.

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

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

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

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

21 44.1051 Voluntary trial resolution.--

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

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

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

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

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

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

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

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

31 (9) The Florida Evidence Code shall apply to all

1 proceedings under this section.

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

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

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

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

26 57.105 Attorney's fee; sanctions for raising unfounded
27 claims or defenses; damages for delay of litigation.--

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

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

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

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

13

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

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

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

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

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

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

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

22 768.79 Offer of judgment and demand for judgment.--

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

31 (5) An offer may be withdrawn in writing which is

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1 served before the date a written acceptance is filed. Once
2 withdrawn, an offer is void. A subsequent offer to a party
3 shall have the effect of voiding any previous offer to that
4 party.

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

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

14 1. The then apparent merit or lack of merit in the
15 claim.

16 2. The number and nature of offers made by the
17 parties.

18 3. The closeness of questions of fact and law at
19 issue.

20 4. Whether the proposal was reasonably rejected.

21 ~~5.4.~~ Whether the person making the offer had
22 unreasonably refused to furnish information necessary to
23 evaluate the reasonableness of such offer.

24 ~~6.5.~~ Whether the suit was in the nature of a test case
25 presenting questions of far-reaching importance affecting
26 nonparties.

27 ~~7.6.~~ The amount of the additional delay cost and
28 expense that the person making the offer reasonably would be
29 expected to incur if the litigation should be prolonged.

30 Section 6. Section 57.071, Florida Statutes, is
31 amended to read:

1 57.071 Costs; what taxable.--

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

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

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

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

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

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

24 (b) The party retaining the expert witness furnishes
25 each opposing party with a written report signed by the expert
26 witness which summarizes the expert witness's opinions and the
27 factual basis of the opinions, including documentary evidence
28 and the authorities relied upon in reaching the opinions. Such
29 report shall be filed at least 10 days prior to discovery
30 cut-off, 45 days prior to the trial, or as otherwise
31 determined by the court.

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

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

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

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

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

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

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

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

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

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

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

31 (10) The jury will be given "plain language" jury

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

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

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

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

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

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

17 768.77 Itemized verdict.--

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

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

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

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

29 ~~(2) Each category of damages, other than punitive~~
30 ~~damages, shall be further itemized into amounts intended to~~
31 ~~compensate for losses which have been incurred prior to the~~

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

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

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

15 (1) In both pre-judgment and post-judgment cases, the
16 parties shall specifically discuss the option and advantages
17 for the plaintiff of settlement through use of structured
18 periodic payments. If, in connection with a settlement, the
19 plaintiff chooses to receive payment in the form of periodic
20 payments, the defendant or the defendant's liability carrier
21 is obligated to provide such payments, and the following
22 apply:

23 (a) To the extent that the liability for payment of
24 damages to the plaintiff qualifies for assignment under
25 Section 130, or any successor section, of the Internal Revenue
26 Code, as amended from time to time, the defendant or the
27 defendant's liability carrier shall assign the liability to
28 make such periodic payments to a third party assignee selected
29 by the plaintiff.

30 (b) Once a structured settlement is agreed to by the
31 parties, the defendant or the defendant's liability carrier

1 may not withdraw from the agreement because of the plaintiff's
2 choice of third-party assignee.

3 (c) The plaintiff has the right to select a licensed
4 structured-settlement broker to place the structured
5 settlement.

6 (d) Any order approving or adopting a settlement to
7 which this subsection applies must include a finding that the
8 settlement complies with this subsection.

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

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

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

15 (2)(1)(a) In any action to which this part applies in
16 which the court determines that ~~trier of fact makes~~ an award
17 to compensate the claimant includes for future economic losses
18 which exceed \$250,000, payment of amounts intended to
19 compensate the claimant for these losses shall be made by one
20 of the following means, unless an alternative method of
21 payment of damages is provided in this section:

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

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

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

21 (c) As a condition to authorizing periodic payments of
22 future damages, the court shall require the defendant to post
23 a bond or security or otherwise to assure full payment of
24 these damages awarded by the judgment. A bond is not adequate
25 unless it is written by a company authorized to do business in
26 this state and is rated A+ by Best's. If the defendant is
27 unable to adequately assure full payment of the damages, the
28 court shall order that all damages be paid to the claimant in
29 a lump sum pursuant to the verdict. No bond may be canceled
30 or be subject to cancellation unless at least 60 days' advance
31 written notice is filed with the court and the judgment

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1 creditor. Upon termination of periodic payments, the court
2 shall order the return of the security, or so much as remains,
3 to the judgment debtor.

4 (d)1. In the event that the court finds that the
5 judgment debtor has exhibited a continuing pattern of failing
6 to timely make the required periodic payments, the court
7 shall:

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

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

14 c. Enter other orders or sanctions as appropriate to
15 protect the judgment creditor.

16 2. If it appears that the judgment debtor may be
17 insolvent or that there is a substantial risk that the
18 judgment debtor may not have the financial responsibility to
19 pay all amounts due and owing the judgment creditor, the court
20 may:

21 a. Order additional security;

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

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

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

28 (e) The judgment providing for payment of future
29 damages by periodic payments shall specify the recipient or
30 recipients of the payments, the dollar amounts of the
31 payments, the interval between payments, and the number of

1 payments or the period of time over which payments shall be
2 made. Periodic payments shall be subject to modification only
3 as specified in this subsection.

4 (f) Claimant's attorney's fee, if payable from the
5 judgment, shall be based upon the total judgment, adding all
6 amounts awarded for past and future damages. The attorney's
7 fee shall be paid from past and future damages in the same
8 proportion. If a claimant has agreed to pay her or his
9 attorney's fees on a contingency fee basis, the claimant shall
10 be responsible for paying the agreed percentage calculated
11 solely on the basis of that portion of the award not subject
12 to periodic payments. The remaining unpaid portion of the
13 attorney's fees shall be paid in a lump sum by the defendant,
14 who shall receive credit against future payments for this
15 amount. However, the credit against each future payment is
16 limited to an amount equal to the contingency fee percentage
17 of each periodic payment. Any provision of this paragraph may
18 be modified by the agreement of all interested parties.

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

22 Section 10. Section 47.025, Florida Statutes, is
23 created to read:

24 47.025 Actions against contractors.--Any venue
25 provision in a contract for improvement to real property which
26 requires legal action involving a resident contractor,
27 subcontractor, sub-subcontractor, or materialman, as defined
28 in part I of chapter 713, to be brought outside this state is
29 void as a matter of public policy. To the extent that the
30 venue provision in the contract is void under this section,
31 any legal action arising out of that contract shall be brought

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1 only in this state in the county where the defendant resides,
2 where the cause of action accrued, or where the property in
3 litigation is located, unless, after the dispute arises, the
4 parties stipulate to another venue.

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

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

22 768.81 Comparative fault.--

23 (3) APPORTIONMENT OF DAMAGES.--In cases to which this
24 section applies, the court shall enter judgment against each
25 party liable on the basis of such party's percentage of fault
26 and not on the basis of the doctrine of joint and several
27 liability; provided that with respect to any party whose
28 percentage of fault equals or exceeds that of a particular
29 claimant and whose fault exceeds 25 percent, the court shall
30 enter judgment with respect to economic damages against that
31 party on the basis of the doctrine of joint and several

1 liability.

2 ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~
3 ~~LIABILITY. Notwithstanding the provisions of this section,~~
4 ~~the doctrine of joint and several liability applies to all~~
5 ~~actions in which the total amount of damages does not exceed~~
6 ~~\$25,000.~~

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

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

24 (3) After March 1, 2001, the Department of Insurance
25 shall review the filed rates of insurers and underwriting
26 profits and losses for Florida liability insurance businesses
27 and shall require any prospective rate modifications that the
28 department deems necessary, consistent with the applicable
29 rating law, in order to cause the rates of any specific
30 insurer to comply with the applicable rating law. The
31 department shall require each liability insurer's first rate

1 filing after March 1, 2001, other than rate filings for
2 private passenger automobile insurance or personal lines
3 residential property insurance, to include specific data on
4 the impact of this act on the insurer's liability judgments,
5 settlements, and costs for the purpose of enabling the
6 department and the Legislature to accurately monitor and
7 evaluate the effects of this act.

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

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

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

19 400.023 Civil enforcement.--

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

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

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

30 a. Agree on a mediator. If the parties cannot agree on
31 a mediator, the defendant shall immediately notify the court,

1 which shall appoint a mediator within 10 days after such
2 notice.
3 b. Set a date for mediation.
4 c. Prepare an order for the court that identifies the
5 mediator, the scheduled date of the mediation, and other terms
6 of the mediation. Absent any disagreement between the parties,
7 the court may issue the order for the mediation submitted by
8 the parties without a hearing.
9 2. The mediation must be concluded within 120 days
10 after the filing of a responsive pleading or defensive motion.
11 The date may be extended only by agreement of all parties
12 subject to mediation under this subsection.
13 3. The mediation shall be conducted in the following
14 manner:
15 a. Each party shall ensure that all persons necessary
16 for complete settlement authority are present at the
17 mediation.
18 b. Each party shall mediate in good faith.
19 4. All aspects of the mediation which are not
20 specifically established by this subsection must be conducted
21 according to the rules of practice and procedure adopted by
22 the Supreme Court of this state.
23 (b) If the parties do not settle the case pursuant to
24 mediation, the last offer of the defendant made at mediation
25 shall be recorded by the mediator in a written report that
26 states the amount of the offer, the date the offer was made in
27 writing, and the date the offer was rejected. If the matter
28 subsequently proceeds to trial under this section and the
29 plaintiff prevails but is awarded an amount in damages,
30 exclusive of attorney's fees, which is equal to or less than
31 the last offer made by the defendant at mediation, the

1 plaintiff is not entitled to recover any attorney's fees.

2 (c) This subsection applies only to claims for
3 liability and damages and does not apply to actions for
4 injunctive relief.

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

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

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

17 Section 15. Effective October 1, 1999, the minimum per
18 claim financial responsibility required under sections
19 458.320(2)(b) and (c) and 459.0085(2)(b) and (c), Florida
20 Statutes, shall be increased from \$250,000 to \$500,000 and the
21 minimum aggregate requirement specified in said sections shall
22 be increased from \$750,000 to \$1,000,000; provided, further
23 that the provisions of sections 458.320(5)(g) and
24 459.0085(5)(g), Florida Statutes, respectively, shall not
25 apply to any physician or osteopathic physician with hospital
26 staff privileges.

27 Section 16. Section 768.1256, Florida Statutes, is
28 created to read:

29 768.1256 Government rules defense.--

30 (1) In a product liability action brought against a
31 manufacturer or seller for harm allegedly caused by a product,

1 there is a rebuttable presumption pursuant to s. 90.302(1)
2 that the product is not defective or unreasonably dangerous
3 and the manufacturer or seller is not liable if, at the time
4 the specific unit of the product was sold or delivered to the
5 initial purchaser or user, the aspect of the product that
6 allegedly caused the harm:

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

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

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

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

22 (a) Were relevant to the event causing the death or
23 injury;

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

26 (c) Require compliance as a condition for selling or
27 distributing the product.

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

31 Section 17. Section 768.096, Florida Statutes, is

1 created to read:

2 768.096 Employer presumption against negligent
3 hiring.--

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

14 (a) Obtaining a criminal background investigation on
15 the prospective employee under subsection (2);

16 (b) Making a reasonable effort to contact references
17 and former employers of the prospective employee concerning
18 the suitability of the prospective employee for employment;

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

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

1 (e) Interviewing the prospective employee.

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

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

11 Section 18. Section 768.095, Florida Statutes, is
12 amended to read:

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

29 Section 19. Section 768.071, Florida Statutes, is
30 created to read:

31 768.071 Business premises liability; areas outside

1 enclosed buildings.--Notwithstanding any other provision of
2 law to the contrary, a person or organization owning or
3 controlling an interest in a business premises shall be liable
4 for civil damages for the death of, or injury or damage to, an
5 invitee or guest caused by a criminal act committed by a
6 person who is not an employee or agent of the business and
7 occurring on part of the business premises that is not within
8 an enclosed building only if the person or organization owning
9 or controlling an interest in the business premises
10 disregarded his or her duty to protect invitees or guests on
11 the property. For purposes of this section a person or
12 organization owning or controlling an interest in a business
13 premises may be found to have disregarded his or her duty to
14 protect invitees or guests only if the person or organization
15 owning or controlling an interest in the business premises
16 knew that a criminal act was likely to occur on the portions
17 of the property that are not within an enclosed building and
18 failed to take any corrective action which could have
19 prevented the injury.

20 Section 20. Section 768.075, Florida Statutes, is
21 amended to read:

22 768.075 Immunity from liability for injury to
23 trespassers on real property.--

24 (1) A person or organization owning or controlling an
25 interest in real property, or an agent of such person or
26 organization, shall not be held liable for any civil damages
27 for death of or injury or damage to a trespasser upon the
28 property ~~resulting from or arising by reason of the~~
29 ~~trespasser's commission of the offense of trespass as~~
30 ~~described in s. 810.08 or s. 810.09,~~ when such trespasser was
31 under the influence of alcoholic beverages with a

1 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such
2 trespasser was under the influence of any chemical substance
3 set forth in s. 877.111, when such trespasser was illegally
4 under the influence of any substance controlled under chapter
5 893, or if the trespasser is affected by any of the aforesaid
6 substances to the extent that her or his normal faculties are
7 impaired. ~~For the purposes of this section, voluntary~~
8 ~~intoxication or impediment of faculties by use of alcohol or~~
9 ~~any of the aforementioned substances shall not excuse a party~~
10 ~~bringing an action or on whose behalf an action is brought~~
11 ~~from proving the elements of trespass.~~ However, the person or
12 organization owning or controlling the interest in real
13 property shall not be immune from liability if gross
14 negligence or intentional willful and wanton misconduct on the
15 part of such person or organization or agent thereof is a
16 proximate cause of the death of or injury or damage to the
17 trespasser.

18 (2) A person or organization owning or controlling an
19 interest in real property, or an agent of such person or
20 organization, is not liable for any civil damages for the
21 death of or injury or damage to any discovered or undiscovered
22 trespasser, except as provided in paragraphs (3)(a), (b), and
23 (c), and regardless of whether the trespasser was intoxicated
24 or otherwise impaired.

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

26 1. "Invitation" means that the visitor entering the
27 premises has an objectively reasonable belief that he or she
28 has been invited or is otherwise welcome on that portion of
29 the real property where injury occurs.

30 2. "Discovered trespasser" means a person who enters
31 real property without invitation, either express or implied,

1 and whose actual physical presence was detected, within 24
2 hours preceding the accident, by the person or organization
3 owning or controlling an interest in real property or to whose
4 actual physical presence the person or organization owning or
5 controlling an interest in real property was alerted by a
6 reliable source within 24 hours preceding the accident. The
7 status of a person who enters real property shall not be
8 elevated to that of an invitee, unless the person or
9 organization owning or controlling an interest in real
10 property has issued an express invitation to enter the
11 property or has manifested a clear intent to hold the property
12 open to use by persons pursuing purposes such as those pursued
13 by the person whose status is at issue.

14 3. "Undiscovered trespasser" means a person who enters
15 property without invitation, either express or implied, and
16 whose actual physical presence was not detected, within 24
17 hours preceding the accident, by the person or organization
18 owning or controlling an interest in real property.

19 (b) To avoid liability to undiscovered trespassers, a
20 person or organization owning or controlling an interest in
21 real property must refrain from intentional misconduct, but
22 has no duty to warn of dangerous conditions. To avoid
23 liability to discovered trespassers, a person or organization
24 owning or controlling an interest in real property must
25 refrain from gross negligence or intentional misconduct, and
26 must warn the trespasser of dangerous conditions that are
27 known to the person or organization owning or controlling an
28 interest in real property but that are not readily observable
29 by others.

30 (c) This subsection shall not be interpreted or
31 construed to alter the common law as it pertains to the

1 "attractive nuisance doctrine."

2 (4) A person or organization owning or controlling an
3 interest in real property, or an agent of such person or
4 organization, shall not be held liable for negligence that
5 results in the death of, injury to, or damage to a person who
6 is attempting to commit a felony or who is engaged in the
7 commission of a felony on the property.

8 Section 21. Section 768.36, Florida Statutes, is
9 created to read:

10 768.36 Alcohol or drug defense.--

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

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

15 (b) "Drug" means any chemical substance set forth in
16 s. 877.111 or any substance controlled under chapter 893. The
17 term does not include any drug or medication obtained pursuant
18 to a prescription as defined in s. 893.02 which was taken in
19 accordance with the prescription, or any medication that is
20 authorized under state or federal law for general distribution
21 and use without a prescription in treating human diseases,
22 ailments, or injuries and that was taken in the recommended
23 dosage.

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

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

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

4 Section 22. Section 768.098, Florida Statutes, is
5 created to read:

6 768.098 Limitation of liability for employee
7 leasing.--

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

13 (a) The employer seeking to avoid liability pursuant
14 to this section did not authorize or direct the tortious
15 action;

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

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

27 (d) The employer seeking to avoid liability pursuant
28 to this section is expressly absolved in the written contract
29 forming the joint employment relationship of control over the
30 day to day job duties of the jointly employed employee who has
31 committed a tortious act, and of the portion of the job site

1 at which or from which the tortious conduct arose or at which
2 and from which the jointly employed employee worked, and that
3 said control was assigned to the other employer under the
4 contract; and

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

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

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

27 Section 23. Section 768.725, Florida Statutes, is
28 created to read:

29 768.725 Punitive damages; burden of proof.--In all
30 civil actions the plaintiff must establish at trial by clear
31 and convincing evidence its entitlement to an award of

1 punitive damages. The "greater weight of the evidence" burden
2 of proof applies to a determination of the amount of damages.

3 Section 24. Section 768.72, Florida Statutes, is
4 amended to read:

5 768.72 Pleading in civil actions; claim for punitive
6 damages.--

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

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

24 (a) "Intentional misconduct" means that the defendant
25 had actual knowledge of the wrongfulness of the conduct and
26 the high probability that injury or damage to the claimant
27 would result and, despite that knowledge, intentionally
28 pursued that course of conduct, resulting in injury or damage.

29 (b) "Gross negligence" means that the defendant's
30 conduct was so reckless or wanting in care that it constituted
31 a conscious disregard or indifference to the life, safety, or

1 rights of persons exposed to such conduct.

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

7 (a) The employer, principal, corporation, or other
8 legal entity actively and knowingly participated in such
9 conduct;

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

13 (c) The employer, principal, corporation, or other
14 legal entity engaged in conduct that constituted gross
15 negligence and that contributed to the loss, damages, or
16 injury suffered by the claimant.

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

21 Section 25. Section 768.73, Florida Statutes, is
22 amended to read:

23 768.73 Punitive damages; limitation.--

24 (1)(a) In any civil action in which the judgment for
25 compensatory damages is for \$50,000 or less, judgment for
26 punitive damages awarded to a claimant may not exceed
27 \$250,000, except as provided in paragraph (b). In any civil
28 action in which the judgment for compensatory damages exceeds
29 \$50,000, the judgment for punitive damages awarded to a
30 claimant may not exceed three times the amount of compensatory
31 damages or \$250,000, whichever is higher, except as provided

1 ~~in paragraph (b). based on negligence, strict liability,~~
2 ~~products liability, misconduct in commercial transactions,~~
3 ~~professional liability, or breach of warranty, and involving~~
4 ~~willful, wanton, or gross misconduct, the judgment for the~~
5 ~~total amount of punitive damages awarded to a claimant may not~~
6 ~~exceed three times the amount of compensatory damages awarded~~
7 ~~to each person entitled thereto by the trier of fact, except~~
8 ~~as provided in paragraph (b). However, this subsection does~~
9 ~~not apply to any class action.~~

10 (b) ~~An~~ If any award for punitive damages may not
11 exceed ~~exceeds~~ the limitations ~~limitation~~ specified in
12 paragraph (a), ~~the award is presumed to be excessive and the~~
13 ~~defendant is entitled to remittitur of the amount in excess of~~
14 ~~the limitation~~ unless the claimant demonstrates to the court
15 by clear and convincing evidence that the defendant engaged in
16 intentional misconduct or gross negligence and that the award
17 is not excessive in light of the facts and circumstances which
18 were presented to the trier of fact.

19 (c) This subsection is not intended to prohibit an
20 appropriate court from exercising its jurisdiction under s.
21 768.74 in determining the reasonableness of an award of
22 punitive damages that is less than three times the amount of
23 compensatory damages.

24 (2)(a) Except as provided in paragraph (b), punitive
25 damages may not be awarded against a defendant in a civil
26 action if that defendant establishes, before trial, that
27 punitive damages have previously been awarded against that
28 defendant in any state or federal court in any action alleging
29 harm from the same act or single course of conduct for which
30 the claimant seeks compensatory damages. For purposes of a
31 civil action, the term "the same act or single course of

1 conduct" includes acts resulting in the same manufacturing
2 defects, acts resulting in the same defects in design, or
3 failure to warn of the same hazards, with respect to similar
4 units of a product.

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

18 (3) The claimant attorney's fees, if payable from the
19 judgment, are, to the extent that the fees are based on the
20 punitive damages, calculated based on the final judgment for
21 punitive damages. This subsection does not limit the payment
22 of attorney's fees based upon an award of damages other than
23 punitive damages.

24 (4)(2) The jury may neither be instructed nor informed
25 as to the provisions of this section.

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

30 Section 26. Section 768.735, Florida Statutes, is
31 created to read:

1 768.735 Punitive damages; exceptions; limitation.--
2 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
3 apply to any civil action based upon child abuse, abuse of the
4 elderly, or abuse of the developmentally disabled or any civil
5 action arising under chapter 400. Such actions are governed by
6 applicable statutes and controlling judicial precedent.

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

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

23 (c) This subsection is not intended to prohibit an
24 appropriate court from exercising its jurisdiction under s.
25 768.74 in determining the reasonableness of an award of
26 punitive damages which is less than three times the amount of
27 compensatory damages.

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

30 Section 27. Section 768.736, Florida Statutes, is
31 created to read:

1 768.736 Punitive damages; exceptions for
2 intoxication.--Sections 768.725 and 768.73 do not apply to any
3 defendant who, at the time of the act or omission for which
4 punitive damages are sought, was under the influence of any
5 alcoholic beverage or drug to the extent that the defendant's
6 normal faculties were impaired, or who had a blood or breath
7 alcohol level of 0.08 percent or higher.

8 Section 28. Paragraph (b) of subsection (9) of section
9 324.021, Florida Statutes, is amended, and paragraph (c) is
10 added to that subsection, to read:

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

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

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

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

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1 requirements may be obtained by the lessor or lessee,
2 provided, if such insurance is obtained by the lessor, the
3 combined coverage for bodily injury liability and property
4 damage liability shall contain limits of not less than \$1
5 million and may be provided by a lessor's blanket policy.

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

24 3. The owner who is a natural person and loans a motor
25 vehicle to any permissive user other than a relative residing
26 in the same household as defined in s. 627.732(4) shall be
27 liable for the operation of the vehicle or the acts of the
28 operator in connection therewith only up to \$100,000 per
29 person and up to \$300,000 per incident for bodily injury and
30 up to \$50,000 for property damage. If the permissive user of
31 the motor vehicle is uninsured or has any insurance with

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1 limits less than \$500,000 combined property damage and bodily
2 injury liability, the owner shall be liable for up to an
3 additional \$500,000 in economic damages only arising out of
4 the use of the motor vehicle. The additional specified
5 liability of the owner for economic damages shall be reduced
6 by amounts actually recovered from the permissive user and
7 from any insurance or self-insurance covering the permissive
8 user. Nothing in this subparagraph shall be construed to
9 affect the liability of the owner for his or her own
10 negligence.

11 (c) Application.--The limits on liability in
12 subparagraphs (b)2. and 3. do not apply to an owner of motor
13 vehicles that are used for commercial activity in the owner's
14 ordinary course of business, other than a rental company that
15 rents or leases motor vehicles. For purposes of this
16 paragraph, the term "rental company" includes only an entity
17 that is engaged in the business of renting or leasing motor
18 vehicles to the general public and that rents or leases a
19 majority of its motor vehicles to persons with no direct or
20 indirect affiliation with the rental company. The term also
21 includes a motor vehicle dealer that provides temporary
22 replacement vehicles to its customers for up to 10 days.
23 Furthermore, the limits on liability in subparagraphs (b)2.
24 and 3. do not apply to a motor vehicle that has a gross
25 vehicle weight of greater than 26,000 pounds.

26 Section 29. Subsection (2) of section 95.031, Florida
27 Statutes, is amended to read:

28 95.031 Computation of time.--Except as provided in
29 subsection (2) and in s. 95.051 and elsewhere in these
30 statutes, the time within which an action shall be begun under
31 any statute of limitations runs from the time the cause of

1 action accrues.

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

12 (b) An action for products liability under s. 95.11(3)
13 must be begun within the period prescribed in this chapter,
14 with the period running from the date that the facts giving
15 rise to the cause of action were discovered, or should have
16 been discovered with the exercise of due diligence, rather
17 than running from any other date prescribed elsewhere in s.
18 95.11(3), but in no event may an action for products liability
19 under s. 95.11(3) be commenced unless the complaint is served
20 and filed within 18 years after the date of delivery of the
21 product to its first purchaser or lessee who was not engaged
22 in the business of selling or leasing the product or of using
23 the product as a component in the manufacture of another
24 product, regardless of the date that the defect in the product
25 was or should have been discovered. However, the 18-year
26 limitation on filing an action for products liability does not
27 apply if the manufacturer knew of a defect in the product and
28 concealed or attempted to conceal this defect. In addition,
29 the 18-year limitation does not apply if the claimant was
30 exposed to or used the product within the 18-year period, but
31 an injury caused by such exposure or use did not manifest

1 itself until after the 18-year period.

2 Section 30. Any action for products liability which
3 would not have been barred under section 95.031(2), Florida
4 Statutes, prior to the amendments to that section made by this
5 act may be commenced before July 1, 2003, and, if it is not
6 commenced by that date and is barred by the amendments to
7 section 95.031(2), Florida Statutes, made by this act, it
8 shall be barred.

9 Section 31. If any provision of this act or the
10 application thereof to any person or circumstance is held
11 invalid, the invalidity does not affect other provisions or
12 applications of the act which can be given effect without the
13 invalid provision or application, and to this end the
14 provisions of this act are declared severable.

15 Section 32. This act shall take effect October 1,
16 1999.

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

20 And the title is amended as follows:

21 On page 1,
22 remove from the title of the bill: everything before the
23 enacting clause

24

25 and insert in lieu thereof:

26 A bill to be entitled
27 An act relating to civil actions; creating s.
28 40.50, F.S.; providing for instructions to
29 juries after the jury is sworn in; providing
30 for the taking of notes under certain
31 circumstances; providing for notebooks;

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1 providing for written questions; providing for
2 final instructions; amending s. 44.102, F.S.;
3 requiring that the court require mediation in
4 certain actions for monetary damages; creating
5 s. 44.1051, F.S.; providing for voluntary trial
6 resolution; providing for the appointment of a
7 trial resolution judge; providing for
8 compensation; providing for fees; providing for
9 the tolling of applicable statutes of
10 limitation; providing for powers of trial
11 resolution judges; providing for hearings and
12 evidence; providing for appeal; providing for
13 application; amending s. 57.105, F.S.; revising
14 conditions for award of attorney's fees for
15 presenting unsupported claims or defenses;
16 authorizing damage awards against a party for
17 unreasonable delay of litigation; authorizing
18 the court to impose additional sanctions;
19 amending s. 768.79, F.S.; providing for the
20 applicability of offers of judgment and demand
21 of judgment in cases involving multiple
22 plaintiffs; providing that subsequent offers
23 shall void previous offers; providing that
24 prior to awarding costs and fees the court
25 shall consider whether the proposal was
26 reasonably rejected; amending s. 57.071, F.S.;
27 providing criteria under which expert witness
28 fees may be awarded as taxable costs; providing
29 for expedited trials; amending s. 768.77, F.S.;
30 deleting a requirement to itemize future
31 damages on verdict forms; amending s. 768.78,

1 F.S.; providing for proposals for structured
2 settlements; requiring structured-settlement
3 discussion in settlement negotiations;
4 requiring assignment of liability for payment
5 to a third-party assignee selected by the
6 plaintiff; granting the plaintiff the right to
7 select a settlement broker; providing for
8 findings in orders approving or adopting a
9 settlement; conforming provisions relating to
10 alternative methods of payment of damage awards
11 to changes made by the act; correcting a
12 cross-reference; creating s. 47.025, F.S.;
13 providing that certain venue provisions in a
14 contract for improvement to real property are
15 void; specifying appropriate venue for actions
16 against resident contractors, subcontractors,
17 sub-subcontractors, and materialmen; requiring
18 the clerk of court to report certain
19 information on negligence cases to the Office
20 of the State Courts Administrator; amending s.
21 768.81, F.S.; providing for the apportionment
22 of damages on the basis of joint and several
23 liability when a party's fault exceeds a
24 certain percentage; repealing s. 768.81(5),
25 F.S.; relating to the applicability of joint
26 and several liability to actions in which the
27 total amount of damages does not exceed a
28 specified amount; requiring the Department of
29 Insurance to contract with an actuarial firm to
30 conduct an actuarial analysis of expected
31 reductions in judgments and related costs

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1 resulting from litigation reforms; specifying
2 the basis and due date for the actuarial
3 report; providing for a review of rate filings
4 by certain types of insurers after a specified
5 date; providing that such provisions do not
6 limit the refund of excessive profits by
7 certain insurers; creating s. 768.1256, F.S.;
8 providing a government rules defense with
9 respect to certain products liability actions;
10 providing for rebuttable presumptions;
11 providing an exception; amending s. 400.023,
12 F.S., relating to actions brought on behalf of
13 nursing home residents; providing that a party
14 to any such action may not recover attorney's
15 fees unless parties submit to mediation;
16 specifying requirements for such mediation;
17 providing for application; providing a standard
18 for any award of punitive damages; increasing
19 minimum financial responsibility requirements
20 for physicians and osteopathic physicians and
21 eliminating an alternative method of satisfying
22 financial responsibility requirements for
23 physicians and osteopathic physicians with
24 hospital staff privileges; creating s. 768.096,
25 F.S.; providing an employer with a presumption
26 against negligent hiring under specified
27 conditions in an action for civil damages
28 resulting from an intentional tort committed by
29 an employee; amending s. 768.095, F.S.;
30 revising the conditions under which an employer
31 is immune from civil liability for disclosing

1 information regarding an employee to a
2 prospective employer; creating s. 768.071,
3 F.S.; providing limitations on premises
4 liability for a person or organization owning
5 or controlling an interest in a business
6 premises; amending s. 768.075, F.S.; modifying
7 the conditions under which a person or
8 organization owning or controlling an interest
9 in real property is liable for a trespasser's
10 injury or death; providing definitions;
11 providing for the avoidance of liability to
12 discovered and undiscovered trespassers under
13 described circumstances; providing immunity
14 from certain liability arising out of the
15 attempt to commit or the commission of a
16 felony; creating s. 768.36, F.S.; prohibiting a
17 plaintiff from recovering damages if plaintiff
18 is more than a specified percentage at fault
19 due to the influence of alcoholic beverages or
20 drugs; creating s. 768.098, F.S.; providing a
21 limitation of liability for employee leasing
22 under specified conditions; creating s.
23 768.725, F.S.; providing evidentiary standards
24 for an award of punitive damages; amending s.
25 768.72, F.S.; revising provisions with respect
26 to claims for punitive damages in civil
27 actions; requiring clear and convincing
28 evidence of gross negligence or intentional
29 misconduct to support the recovery of such
30 damages; providing definitions; providing
31 criteria for the imposition of punitive damages

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1 with respect to employers, principals,
2 corporations, or other legal entities for the
3 conduct of an employee or agent; providing for
4 the application of the section; amending s.
5 768.73, F.S.; revising provisions with respect
6 to limitations on punitive damages; providing
7 monetary limitations; providing an exception
8 with respect to intentional misconduct;
9 prohibiting the award of subsequent punitive
10 damages against a defendant if punitive damages
11 were previously awarded against the defendant
12 for harm arising out of the same act or single
13 course of conduct; providing an exception;
14 specifying the basis for calculating attorney's
15 fees on judgments for punitive damages;
16 providing for the application of the section;
17 creating s. 768.735, F.S.; providing that ss.
18 768.72(2)-(4), 768.725, and 768.73, F.S.,
19 relating to punitive damages, are inapplicable
20 to specified causes of action; limiting the
21 amount of punitive damages that may be awarded
22 to a claimant in certain civil actions
23 involving abuse or arising under ch. 400, F.S.;
24 creating s. 768.736, F.S.; providing that ss.
25 768.725 and 768.73, F.S., relating to punitive
26 damages, do not apply to intoxicated
27 defendants; amending s. 324.021, F.S.;
28 providing a limitation on the liability for
29 bodily injury, property, and economic damages
30 for certain lessors and owners of motor
31 vehicles; providing for applicability; amending

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s. 95.031; providing a statute of repose of 18 years; providing for severability; providing an effective date.