

By the Committee on Judiciary and Representative Byrd

1 A bill to be entitled
2 An act relating to civil actions; creating s.
3 40.50, F.S.; providing for instructions to
4 juries after the jury is sworn in; providing
5 for the taking of notes under certain
6 circumstances; providing for notebooks;
7 providing for written questions; providing for
8 final instructions; amending s. 44.102, F.S.;
9 requiring that the court require mediation in
10 certain actions for monetary damages; amending
11 s. 44.104, F.S.; providing for voluntary trial
12 resolution upon the agreement of parties to a
13 civil dispute; providing for the appointment
14 and compensation of a trial resolution judge;
15 providing guidelines for conducting a voluntary
16 trial resolution; providing for enforcement and
17 appeal; amending s. 57.105, F.S.; revising
18 conditions for award of attorney's fees for
19 presenting unsupported claims or defenses;
20 authorizing damage awards against a party for
21 unreasonable delay of litigation; authorizing
22 the court to impose additional sanctions;
23 amending s. 768.79, F.S.; providing for the
24 applicability of offers of judgment and demand
25 of judgment in cases involving multiple
26 plaintiffs; providing that subsequent offers
27 shall void previous offers; providing that
28 prior to awarding costs and fees the court
29 shall determine whether the offer was
30 reasonable under the circumstances known at the
31 time the offer was made; amending s. 57.071,

1 F.S.; providing criteria under which expert
2 witness fees may be awarded as taxable costs;
3 providing for expedited trials; amending s.
4 768.77, F.S.; deleting a requirement to itemize
5 future damages on verdict forms; amending s.
6 768.78, F.S.; conforming provisions relating to
7 alternative methods of payment of damage awards
8 to changes made by the act; correcting a cross
9 reference; amending s. 95.031, F.S.; imposing a
10 12-year statute of repose on actions for
11 product liability, with certain exceptions;
12 specifying the date by which certain actions
13 must be brought or be otherwise barred by the
14 statute of repose; creating s. 768.1256, F.S.;
15 providing a government rules defense with
16 respect to certain product liability actions;
17 providing for a rebuttable presumption;
18 creating s. 768.0705, F.S.; providing
19 limitations on premises liability for a person
20 or organization owning or controlling an
21 interest in a business premises; providing for
22 a presumption against liability; providing
23 conditions for the presumption; amending s.
24 768.075, F.S.; delineating the duty owed to
25 trespassers by a person or organization owning
26 or controlling an interest in real property;
27 providing definitions; providing for the
28 avoidance of liability to discovered and
29 undiscovered trespassers under described
30 circumstances; providing immunity from certain
31 liability arising out of the attempt to commit

1 or the commission of a felony; creating s.
2 768.725, F.S.; providing for evidentiary
3 standards for an award of punitive damages;
4 amending s. 768.72, F.S.; revising provisions
5 with respect to claims for punitive damages in
6 civil actions; requiring clear and convincing
7 evidence of gross negligence or intentional
8 misconduct to support the recovery of such
9 damages; providing definitions; providing
10 criteria for the imposition of punitive damages
11 with respect to employers, principals,
12 corporations, or other legal entities for the
13 conduct of an employee or agent; providing for
14 the application of the section; amending s.
15 768.73, F.S.; revising provisions with respect
16 to limitations on punitive damages; providing
17 monetary limitations; providing an exception
18 with respect to intentional misconduct;
19 providing for the effect of certain previous
20 punitive damages awards; specifying the basis
21 for calculating attorney's fees on judgments
22 for punitive damages; providing for the
23 application of the section; creating s.
24 768.736, F.S.; providing that ss. 768.725 and
25 768.73, F.S., relating to punitive damages, do
26 not apply to intoxicated defendants; amending
27 s. 768.81, F.S.; providing for the
28 apportionment of damages on the basis of joint
29 and several liability when a party's fault
30 exceeds a certain percentage; limiting the
31 applicability of joint and several liability

1 based on the amount of damages; providing for
2 the allocation of fault to a nonparty;
3 requiring that such fault must be proved by a
4 preponderance of the evidence; amending s.
5 324.021, F.S.; providing that the lessor of a
6 motor vehicle under certain rental agreements
7 shall be deemed the owner of the vehicle for
8 the purpose of determining liability for the
9 operation of the vehicle within certain limits;
10 providing for the liability of the owner of a
11 motor vehicle who loans the vehicle to certain
12 users; providing for application; limiting
13 liability of parties to joint employment
14 arrangement; providing a definition of joint
15 employment; providing for severability;
16 providing an effective date.

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

19

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

22 40.50 Jury duty and instructions in civil cases.--

23 (1) In any civil action immediately after the jury is
24 sworn, the court shall instruct the jury concerning its
25 duties, its conduct, the order of proceedings, the procedure
26 for submitting written questions of witnesses, and the
27 elementary legal principles that will govern the proceeding as
28 provided in this section.

29 (2) The court shall instruct that the jurors may take
30 notes regarding the evidence and keep the notes to refresh
31 their memory and to use during recesses and deliberations. The

1 court may provide materials suitable for this purpose. The
2 court should emphasize confidentiality of the notes. After
3 the jury has rendered its verdict, the notes shall be
4 collected by the bailiff or clerk who shall promptly destroy
5 them.

6 (3) If the court determines that the trial is likely
7 to exceed 5 days, the court shall provide a notebook for each
8 juror. Notebooks may contain:

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

11 (b) Jurors' notes.

12 (c) Witnesses' names and either photographs or
13 biographies or both.

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

16 (e) A glossary of technical terms.

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

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19 The court may authorize documents and exhibits in evidence to
20 be included in notebooks for use by the jurors during trial to
21 aid them in performing their duties. The court should ensure
22 that preliminary jury instructions are removed, discarded, and
23 replaced by the final jury instructions before the court reads
24 the latter to the jury.

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

28 (5) The court shall permit jurors to submit to the
29 court written questions directed to witnesses or to the court.
30 The court shall give counsel an opportunity to object to such

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1 questions outside the presence of the jury. The court may, as
2 appropriate, limit the submission of questions to witnesses.

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

18 (7) The court may give final instructions to the jury
19 before closing arguments of counsel to enhance jurors' ability
20 to apply the law to the facts. In that event, the court may
21 withhold giving the necessary procedural and housekeeping
22 instructions until after closing arguments.

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

25 44.102 Court-ordered mediation.--

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

27 (a) Must, upon request of one party, refer to
28 mediation any filed civil action for monetary damages,
29 provided the requesting party is willing and able to pay the
30 costs of the mediation or the costs can be equitably divided
31 between the parties, unless:

- 1 1. The action is a landlord and tenant dispute that
2 does not include a claim for personal injury.
- 3 2. The action is filed for the purpose of collecting a
4 debt.
- 5 3. The action is a claim of medical malpractice.
- 6 4. The action is governed by the Florida Small Claims
7 Rules.
- 8 5. The court determines that the action is proper for
9 referral to nonbinding arbitration under this chapter.
- 10 6. The parties have agreed to binding arbitration.
- 11 7. The parties have agreed to an expedited trial
12 pursuant to section 7 of this act.
- 13 8. The parties have agreed to voluntary trial
14 resolution pursuant to s. 44.104.
- 15 ~~(b)(a)~~ May refer to mediation all or any part of a
16 filed civil action for which mediation is not required under
17 this section.
- 18 ~~(c)(b)~~ In circuits in which a family mediation program
19 has been established and upon a court finding of a dispute,
20 shall refer to mediation all or part of custody, visitation,
21 or other parental responsibility issues as defined in s.
22 61.13. Upon motion or request of a party, a court shall not
23 refer any case to mediation if it finds there has been a
24 history of domestic violence that would compromise the
25 mediation process.
- 26 ~~(d)(e)~~ In circuits in which a dependency or in need of
27 services mediation program has been established, may refer to
28 mediation all or any portion of a matter relating to
29 dependency or to a child in need of services or a family in
30 need of services.
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1 Section 3. Section 44.104, Florida Statutes, is
2 amended to read:

3 44.104 Voluntary binding arbitration and voluntary
4 trial resolution.--

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

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

26 (3) The arbitrators or trial resolution judge shall be
27 compensated by the parties according to their agreement, ~~but~~
28 ~~not at an amount less than \$75 per day.~~

29 (4) Within 10 days after ~~of~~ the submission of the
30 request for binding arbitration, or voluntary trial
31 resolution, the court shall provide for the appointment of the

1 arbitrator or arbitrators, or trial resolution judge, as the
2 case requires. Once appointed, the arbitrators or trial
3 resolution judge shall notify the parties of the time and
4 place for the hearing.

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

14 (6) Filing of the application for binding arbitration
15 or voluntary trial resolution will toll the running of the
16 applicable statutes of limitation.

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

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

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

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

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

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

12 (c) Whether the decision reaches a result contrary to
13 the Constitution of the United States or of the State of
14 Florida.

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

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

25 (13)~~(11)~~ If no appeal is taken within the time
26 provided by rules promulgated by the Supreme Court, then the
27 decision shall be referred to the presiding judge in the case,
28 or if one has not been assigned, then to the chief judge of
29 the circuit for assignment to a circuit judge, who shall enter
30 such orders and judgments as are required to carry out the
31 terms of the decision, which orders shall be enforceable by

1 the contempt powers of the court and for which judgments
2 execution shall issue on request of a party.

3 (14)~~(12)~~ This section shall not apply to any dispute
4 involving child custody, visitation, or child support, or to
5 any dispute which involves the rights of a third party not a
6 party to the arbitration or voluntary trial resolution when
7 the third party would be an indispensable party if the dispute
8 were resolved in court or when the third party notifies the
9 chief arbiter or the trial resolution judge that the third
10 party would be a proper party if the dispute were resolved in
11 court, that the third party intends to intervene in the action
12 in court and that the third party does not agree to proceed
13 under this section.

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

16 57.105 Attorney's fee; sanctions for raising unfounded
17 claims or defenses; damages for delay of litigation.--

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

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

29 (b) Would not be supported by the application of
30 then-existing law to those material facts.~~there was a~~
31 ~~complete absence of a justiciable issue of either law or fact~~

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

12 (2) Paragraph (1)(b) does not apply if the court
13 determines that the claim or defense was initially presented
14 to the court as a good faith argument for the extension,
15 modification, or reversal of existing law or the establishment
16 of new law, with a reasonable expectation of success.

17 (3) At any time in any civil proceeding or action in
18 which the moving party proves by a preponderance of the
19 evidence that any action taken by the opposing party,
20 including, but not limited to, the filing of any pleading or
21 part thereof, the assertion of or response to any discovery
22 demand, the assertion of any claim or defense, or the response
23 to any request by any other party, was taken primarily for the
24 purpose of unreasonable delay, the court shall award damages
25 to the moving party for its reasonable expenses incurred in
26 obtaining the order that may include attorney fees, and other
27 loss resulting from the improper delay.

28 (4) The provisions of this section are supplemental to
29 other sanctions or remedies available under law or under court
30 rules.
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1 ~~(5)(2)~~ If a contract contains a provision allowing
2 attorney's fees to a party when he or she is required to take
3 any action to enforce the contract, the court may also allow
4 reasonable attorney's fees to the other party when that party
5 prevails in any action, whether as plaintiff or defendant,
6 with respect to the contract. This subsection applies to any
7 contract entered into on or after October 1, 1988.~~This act~~
8 ~~shall take effect October 1, 1988, and shall apply to~~
9 ~~contracts entered into on said date or thereafter.~~

10 Section 5. Subsections (3), (5), and (7) of section
11 768.79, Florida Statutes, are amended to read:

12 768.79 Offer of judgment and demand for judgment.--

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

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

26 (7)(a) No party ~~if a party~~ is entitled to costs and
27 fees under ~~pursuant to the provisions of this section unless~~
28 the court determines, the court may, in its discretion,
29 ~~determine~~ that an offer was reasonable and not made in good
30 faith. ~~In such case, the court may disallow an award of costs~~
31 ~~and attorney's fees.~~

1 (b) When determining the reasonableness of an award of
2 attorney's fees pursuant to this section, the court shall
3 consider, along with all other relevant criteria, the
4 following additional factors:

5 1. The then apparent merit or lack of merit in the
6 claim.

7 2. The number and nature of offers made by the
8 parties.

9 3. The closeness of questions of fact and law at
10 issue.

11 4. Whether the person making the offer had
12 unreasonably refused to furnish information necessary to
13 evaluate the reasonableness of such offer.

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

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

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

22 57.071 Costs; what taxable.--

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

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

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

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

4 (2) Expert witness fees may not be awarded as taxable
5 costs unless:

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

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

25 Section 7. Expedited trials.--Upon the joint
26 stipulation of the parties to any civil case, the court may
27 conduct an expedited trial as provided in this section. Where
28 two or more plaintiffs or defendants have a unity of interest,
29 such as a husband and wife, they shall be considered one party
30 for the purpose of this section. Unless otherwise ordered by
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1 the court or agreed to by the parties with approval of the
2 court, an expedited trial shall be conducted as follows:
3 (1) All discovery shall be completed within 60 days
4 after the court enters an order adopting the joint expedited
5 trial stipulation.
6 (2) All interrogatories and requests for production
7 must be served within 10 days after the court enters the order
8 adopting the joint expedited trial stipulation and all
9 responses must be served within 20 days after receipt.
10 (3) The court shall determine the number of
11 depositions required.
12 (4) The case may be tried to a jury.
13 (5) The case may be tried within 30 days after the
14 60-day discovery cut-off, if such schedule would not impose an
15 undue burden on the court calendar.
16 (6) The trial must be limited to 1 day.
17 (7) The jury selection must be limited to 1 hour.
18 (8) The plaintiff will have no more than 3 hours to
19 present its case, including the opening, all testimony and
20 evidence, and the closing.
21 (9) The defendant will have no more than 3 hours to
22 present its case, including the opening, all testimony and
23 evidence, and the closing.
24 (10) The jury may be given "plain language" jury
25 instructions at the beginning of the trial as well as a "plain
26 language" jury verdict form. The parties must agree to the
27 jury instructions and verdict form.
28 (11) The parties may introduce a verified written
29 report of any expert and an affidavit of the expert's
30 curriculum vitae instead of calling the expert to testify at
31 trial.

1 (12) At trial the parties may use excerpts from
2 depositions, including video depositions, regardless of where
3 the deponent lives or whether the deponent is available to
4 testify.

5 (13) Except as otherwise provided in this section, the
6 Florida Evidence Code and the Florida Rules of Civil Procedure
7 apply.

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

10 Section 8. Section 768.77, Florida Statutes, is
11 amended to read:

12 768.77 Itemized verdict.--

13 ~~(1)~~ In any action to which this part applies in which
14 the trier of fact determines that liability exists on the part
15 of the defendant, the trier of fact shall, as a part of the
16 verdict, itemize the amounts to be awarded to the claimant
17 into the following categories of damages:

18 (1)(a) Amounts intended to compensate the claimant for
19 economic losses;

20 (2)(b) Amounts intended to compensate the claimant for
21 noneconomic losses; and

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

24 ~~(2) Each category of damages, other than punitive~~
25 ~~damages, shall be further itemized into amounts intended to~~
26 ~~compensate for losses which have been incurred prior to the~~
27 ~~verdict and into amounts intended to compensate for losses to~~
28 ~~be incurred in the future. Future damages itemized under~~
29 ~~paragraph (1)(a) shall be computed before and after reduction~~
30 ~~to present value. Damages itemized under paragraph (1)(b) or~~
31 ~~paragraph (1)(c) shall not be reduced to present value. In~~

1 ~~itemizing amounts intended to compensate for future losses,~~
2 ~~the trier of fact shall set forth the period of years over~~
3 ~~which such amounts are intended to provide compensation.~~

4 Section 9. Paragraph (a) of subsection (1) of section
5 768.78, Florida Statutes, is amended to read:

6 768.78 Alternative methods of payment of damage
7 awards.--

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

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

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

25 Section 10. Subsection (2) of section 95.031, Florida
26 Statutes, is amended to read:

27 95.031 Computation of time.--Except as provided in
28 subsection (2) and in s. 95.051 and elsewhere in these
29 statutes, the time within which an action shall be begun under
30 any statute of limitations runs from the time the cause of
31 action accrues.

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

11 (b) An action for products liability under s.
12 95.11(3), including a wrongful death action or any other claim
13 from a personal injury or property damage caused by a product,
14 must be begun within the period prescribed in this chapter,
15 with the period running from the date that the facts giving
16 rise to the cause of action were discovered, or should have
17 been discovered with the exercise of due diligence, rather
18 than running from any other date prescribed elsewhere in s.
19 95.11(3) except as provided in paragraph (c). In no event may
20 an action for products liability be commenced in which the
21 alleged harm was caused by an exposure to or use of a product,
22 which exposure or use occurred more than 12 years after
23 delivery of the product to its first purchaser or lessee who
24 was not engaged in the business of selling or leasing the
25 product or of using the product as a component in the
26 manufacture of another product. In addition, the 12-year
27 limitation does not apply if the claimant was exposed to or
28 used the product within the 12-year period, but an injury
29 caused by such exposure or use did not manifest itself until
30 after the 12-year period.

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1 (c) However, if the manufacturer had actual knowledge
2 that the product at issue in the litigation (or substantially
3 similar units of the same product) was defective in the same
4 manner as alleged in the underlying lawsuit, but intentionally
5 concealed the defect, the 12-year limitation period is tolled
6 during the time of actual concealment. The 12-year limitation
7 period may not be tolled on the grounds of concealment where
8 the defect has become publicly known because the federal
9 government issued public warnings about the defect and banned
10 sale or use of the product for the specific use at issue in
11 the litigation.

12 1. In this context, a manufacturer's "actual knowledge
13 of defect" means that at or before the time of concealment,
14 the officers, directors, or managing agents of the
15 manufacturer acknowledged or actually knew that, taken as a
16 whole, the risks and dangers of the product outweighed its
17 benefits to such an extent as to render the product
18 unreasonably dangerous.

19 2. In this context, "concealment" means that the
20 officers, directors, or managing agents of the manufacturer
21 intentionally took affirmative steps to conceal substantially
22 probative proof of a defect relating to the same defect
23 alleged in the underlying lawsuit, from a court of competent
24 jurisdiction or parties to pending litigation, a regulatory
25 agency charged with regulation or oversight of the specific
26 product at issue, or others to whom the manufacturer had a
27 legal duty to report such information. It is not concealment
28 under this section to maintain the confidentiality of trade
29 secrets, or to discard records or other documents in the
30 normal course of business pursuant to a regular document
31 disposal program.

1 3. Any claim of concealment under this section must be
2 based upon, at or before the time made, substantial factual
3 and legal support. The allegations of concealment and defect
4 shall be made with specificity. At the earliest possible time
5 prior to trial, the trial judge shall conduct an evidentiary
6 hearing to determine whether the plaintiff has sustained its
7 burden of proving these allegations. The judge shall make
8 specific findings of fact supporting his or her findings. If
9 the plaintiff's claims of concealment are found lacking in
10 substantial factual or legal support, the plaintiff is liable
11 for the costs and attorney's fees incurred in the defense
12 against the claim.

13 Section 11. Any action for products liability which
14 would not have been barred under section 95.031(2), Florida
15 Statutes, prior to the amendments to that section made by this
16 act may be commenced before July 1, 2003 and, if it is not
17 commenced by that date and is barred by the amendments to
18 section 95.031(2), Florida Statutes, made by this act, it
19 shall be barred.

20 Section 12. Section 768.1256, Florida Statutes, is
21 created to read:

22 768.1256 Government rules defense.--In a product
23 liability action brought against a manufacturer or seller for
24 harm allegedly caused by a product, there is a rebuttable
25 presumption that the product is not defective or unreasonably
26 dangerous and the manufacturer or seller is not liable if, at
27 the time the specific unit of the product was sold or
28 delivered to the initial purchaser or user, the aspect of the
29 product that allegedly caused the harm was in compliance with
30 product design, construction, or safety standards relevant to
31 the event causing the death or injury promulgated by a federal

1 or state statute or rule, such standards are designed to
2 prevent the type of harm that allegedly occurred, and
3 compliance with such standards is required as a condition for
4 selling or otherwise distributing the product.

5 Section 13. Section 768.0705, Florida Statutes, is
6 created to read:

7 768.0705 Limitation on premises liability.--

8 (1) The owner or operator of a convenience business
9 that substantially implements the applicable security measures
10 listed in ss. 812.173 and 812.174 shall gain a presumption
11 against liability in connection with criminal acts that occur
12 on the premises and that are committed by third parties who
13 are not employees or agents of the owner or operator of the
14 convenience business.

15 (2) Failure to implement ss 812.173 and 812.174 shall
16 not create a presumption of liability and no inference may be
17 drawn from such failure.

18 Section 14. Section 768.075, Florida Statutes, is
19 amended to read:

20 768.075 Immunity from liability for injury to
21 trespassers on real property; definitions; duty to
22 trespassers.--

23 (1) A person or organization owning or controlling an
24 interest in real property, or an agent of such person or
25 organization, shall not be held liable for any civil damages
26 for death of or injury or damage to a trespasser upon the
27 property ~~resulting from or arising by reason of the~~
28 ~~trespasser's commission of the offense of trespass as~~
29 ~~described in s. 810.08 or s. 810.09, when such trespasser was~~
30 under the influence of alcoholic beverages with a
31 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such

1 trespasser was under the influence of any chemical substance
2 set forth in s. 877.111, when such trespasser was illegally
3 under the influence of any substance controlled under chapter
4 893, or if the trespasser is affected by any of the aforesaid
5 substances to the extent that her or his normal faculties are
6 impaired. For the purposes of this section, voluntary
7 intoxication or impediment of faculties by use of alcohol or
8 any of the aforementioned substances shall not excuse a party
9 relying upon this section as a defense to a claim for civil
10 damages bringing an action or on whose behalf an action is
11 ~~brought~~ from proving the elements of trespass. However, the
12 person or organization owning or controlling the interest in
13 real property shall not under this subsection be immune from
14 liability if gross negligence or intentional willful and
15 ~~wanton~~ misconduct on the part of such person or organization
16 or agent thereof is a proximate cause of the death of or
17 injury or damage to the 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, shall not be held liable for any civil damages
21 for death of or injury or damage to any discovered or
22 undiscovered trespasser, except as provided in subsection (3),
23 and regardless of whether the trespasser was intoxicated or
24 otherwise impaired.

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

26 1. "Implied invitation" means that the visitor
27 entering the premises has an objectively reasonable belief
28 that he or she has been invited or is otherwise welcome on
29 that portion of 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 or remain
11 upon the property or has manifested a clear intent to hold the
12 property open to use by persons pursuing purposes such as
13 those pursued 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) A person or organization owning or controlling an
20 interest in real property has no duty to warn undiscovered
21 trespassers of dangerous conditions, but may be held liable
22 for injury proximately caused by the person's or
23 organization's intentional misconduct. A person or
24 organization owning or controlling an interest in real
25 property has a duty to warn discovered trespassers of latent
26 dangerous conditions that are known to the person or
27 organization owning or controlling an interest in real
28 property but may otherwise be held liable by discovered
29 trespassers for injury proximately caused by the gross
30 negligence or intentional misconduct of the person or
31 organization controlling an interest in real property.

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

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

10 Section 15. Section 768.725, Florida Statutes, is
11 created to read:

12 768.725 Punitive damages; burden of proof.--In all
13 civil actions a party seeking punitive damages must establish
14 at trial by clear and convincing evidence its entitlement to
15 an award of punitive damages. The "greater weight of the
16 evidence" burden of proof shall apply to the determination
17 regarding the amount of damages.

18 Section 16. Section 768.72, Florida Statutes, is
19 amended to read:

20 768.72 Pleading in civil actions; claim for punitive
21 damages.--

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

1 financial worth shall proceed until after the pleading
2 concerning punitive damages is permitted.

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

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

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

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

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

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

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

1 (4) For the purposes of subsection (3), a corporation
2 or other legal entity acts through one or more managers,
3 officers, directors, or primary owners.

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

8 Section 17. Section 768.73, Florida Statutes, is
9 amended to read:

10 768.73 Punitive damages; limitation.--

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

28 (b) No award for punitive damages may exceed the
29 limitations if any award for punitive damages exceeds the
30 limitation specified in paragraph (a), the award is presumed
31 to be excessive and the defendant is entitled to remittitur of

1 ~~the amount in excess of the limitation~~ unless the claimant
2 demonstrates to the court by clear and convincing evidence
3 that the defendant engaged in intentional misconduct and that
4 the award is not excessive in light of the facts and
5 circumstances which were presented to the trier of fact.

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

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

23 (b) In subsequent civil actions involving the same act
24 or single course of conduct for which punitive damages have
25 already been awarded, if the court determines by clear and
26 convincing evidence that the amount of prior punitive damages
27 awarded was insufficient to punish that defendant's behavior,
28 the court may permit an award of subsequent punitive damages.
29 In determining the sufficiency of prior punitive damages, the
30 court may consider whether the defendant's act or course of
31 conduct has ceased. If subsequent punitive damages are

1 awarded, the court shall make specific findings of fact in the
2 record to support its determination of the insufficiency of
3 prior punitive damages. After the award of subsequent punitive
4 damages is announced, and before the judgment is entered, the
5 court shall reduce the subsequent punitive damage award by the
6 total amount of any prior punitive damage awards paid on any
7 judgments rendered in any state or federal court to punish the
8 same act or single course of conduct.

9 (3) The claimant attorney's fees, if payable from the
10 judgment, are, to the extent that the fees are based on the
11 punitive damages, calculated based on the final judgment for
12 punitive damages. This subsection does not limit the payment
13 of attorney's fees based upon an award of damages other than
14 punitive damages.

15 (4)(2) The jury may neither be instructed nor informed
16 as to the provisions of this section.

17 (5) The provisions of this section are remedial in
18 nature and shall 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 18. Section 768.736, Florida Statutes, is
22 created to read:

23 768.736 Punitive damages; exceptions for
24 intoxication.--Sections 768.725 and 768.73 shall not apply to
25 any defendant who, at the time of the act or omission for
26 which punitive damages are sought, was under the influence of
27 any alcoholic beverage or drug to the extent that the
28 defendant's normal faculties were impaired, or who had a blood
29 or breath alcohol level of 0.08 percent or higher. This
30 section shall not apply in cases where the defendant proves
31 that his or her intoxication was involuntary.

1 Section 19. Subsections (3), (4), (5), and (6) of
2 section 768.81, Florida Statutes, are amended to read:

3 768.81 Comparative fault.--

4 (3) APPORTIONMENT OF DAMAGES.--In cases to which this
5 section applies, the court shall enter judgment against each
6 party liable on the basis of such party's percentage of fault
7 and not on the basis of the doctrine of joint and several
8 liability; provided that with respect to any party whose
9 percentage of fault equals or exceeds that of a particular
10 claimant, the court shall enter judgment with respect to
11 economic damages against that party on the basis of the
12 doctrine of joint and several liability. However, the doctrine
13 of joint and several liability shall not apply to that portion
14 of economic damages in excess of \$200,000.

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

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

28 (4) APPLICABILITY.--

29 (a) This section applies to negligence cases. For
30 purposes of this section, "negligence and other cases"
31 includes, but is not limited to, civil actions for damages

1 based upon theories of negligence, strict liability, products
2 liability, professional malpractice whether couched in terms
3 of contract or tort, or breach of warranty and like theories,
4 and negligence actions for damages based upon an intentional
5 tort, including, but not limited to, criminal conduct. In
6 determining whether a case falls within the term "negligence
7 cases," the court shall look to the substance of the action
8 and not the conclusory terms used by the parties.

9 (b) This section does not apply to any action brought
10 by any person to recover actual economic damages resulting
11 from pollution, ~~to any action based upon an intentional tort,~~
12 or to any cause of action as to which application of the
13 doctrine of joint and several liability is specifically
14 provided by chapter 403, chapter 498, chapter 517, chapter
15 542, or chapter 895.

16 ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~
17 ~~LIABILITY. Notwithstanding the provisions of this section,~~
18 ~~the doctrine of joint and several liability applies to all~~
19 ~~actions in which the total amount of damages does not exceed~~
20 ~~\$25,000.~~

21 (5)(6) Notwithstanding anything in law to the
22 contrary, in an action for damages for personal injury or
23 wrongful death arising out of medical malpractice, whether in
24 contract or tort, when an apportionment of damages pursuant to
25 this section is attributed to a teaching hospital as defined
26 in s. 408.07, the court shall enter judgment against the
27 teaching hospital on the basis of such party's percentage of
28 fault and not on the basis of the doctrine of joint and
29 several liability.

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1 Section 20. Paragraph (b) of subsection (9) of section
2 324.021, Florida Statutes, is amended, and paragraph (c) is
3 added to that subsection, to read:

4 324.021 Definitions; minimum insurance required.--The
5 following words and phrases when used in this chapter shall,
6 for the purpose of this chapter, have the meanings
7 respectively ascribed to them in this section, except in those
8 instances where the context clearly indicates a different
9 meaning:

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

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

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

30 2. The lessor, under an agreement to rent or lease a
31 motor vehicle for a period of less than 1 year, shall be

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

17 3. The owner who is a natural person and loans a motor
18 vehicle to any permissive user shall be liable for the
19 operation of the vehicle or the acts of the operator in
20 connection therewith only up to \$100,000 per person and up to
21 \$300,000 per incident for bodily injury and up to \$50,000 for
22 property damage. If the permissive user of the motor vehicle
23 is uninsured or has any insurance with limits less than
24 \$500,000 combined property damage and bodily injury liability,
25 the owner shall be liable for up to an additional \$500,000 in
26 economic damages only arising out of the use of the motor
27 vehicle. The additional specified liability of the owner for
28 economic damages shall be reduced by amounts actually
29 recovered from the permissive user and from any insurance or
30 self-insurance covering the permissive user. Nothing in this
31

1 subparagraph shall be construed to affect the liability of the
2 owner for his or her own negligence.

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

15 Section 21. (1) No person who is part of a joint
16 employment relationship with another person or persons shall
17 be liable for any damages or injuries which are caused by a
18 shared employee of the joint employment relationship unless
19 the defendant has authorized or directed that person to take
20 the action which results in damage or injury or the defendant
21 has exercised control over the job site at which or from which
22 the tortious conduct arose. This section shall not apply
23 unless at least one other person who is part of the joint
24 employment relationship has authorized or otherwise directed
25 the shared employee to take the action which results in
26 damages or injury or the other person has exercised control
27 over the job site at which or from which the tortious conduct
28 arose.

29 (2) Joint employment shall be defined as a situation
30 where two separate persons share or codetermine the matters
31

1 governing the essential terms and conditions of the employment
2 of employees.

3 Section 22. If any provision of this act or the
4 application thereof to any person or circumstance is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the act which can be given effect without the
7 invalid provision or application, and to this end the
8 provisions of this act are declared severable.

9 Section 23. This act shall take effect October 1,
10 1999.

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HOUSE SUMMARY

Revises various provisions of law governing civil actions to:

1. Provide for instructions to juries after the jury is sworn in, for the taking of notes under described circumstances, for notebooks, written questions, and final instructions.

2. Require mediation in described actions for monetary damages.

3. Provide for voluntary trial resolution upon the agreement of parties to a civil dispute, for the appointment and compensation of a trial resolution judge, and guidelines for conducting a voluntary trial resolution.

4. Revise conditions for the award of attorney's fees for presenting unsupported claims or defenses, authorize damage awards against a party for unreasonable delay of litigation and authorize the court to impose additional sanctions.

5. Provide for the applicability of offers of judgment and demand of judgment in cases involving multiple plaintiffs, provide that subsequent offers void previous offers, and provide that prior to awarding costs and fees the court shall determine whether the offer was reasonable under the circumstances known at the time the offer was made.

6. Provide criteria under which expert witness fees may be awarded as taxable costs.

7. Provide a procedure for expedited trials.

8. Delete a requirement to itemize future damages on verdict forms.

9. Impose a twelve year statute of repose on actions for product liability with described exceptions.

10. Provide a government rules defense with respect to described product liability actions.

11. Provide limitations on premises liability for a person or organization owning or controlling an interest in a business premises.

12. Set forth the duty owed to trespassers by a person or organization owning or controlling an interest in real property and provide for the avoidance of liability to discovered and undiscovered trespassers under described circumstances.

13. Provide for evidentiary standards for an award of punitive damages.

14. Revise provisions with respect to claims for punitive damages in civil actions to require clear and convincing evidence of gross negligence or intentional misconduct to support the recovery of punitive damages and to provide criteria for the imposition of such damages with respect to employers, principals, corporations, or other legal entities for the conduct of an employee or agent.

15. Specify the basis for calculating attorney's fees on judgments for punitive damages.

16. Provide for the apportionment of damages on the basis of joint and several liability when a party's fault exceeds a described percentage, to limit the

1 applicability of joint and several liability based upon
2 the amount of damages, to provide for the allocation of
3 fault to a nonparty, and to require that such fault must
4 be proved by a preponderance of the evidence.
5 17. Provide that the lessor of a motor vehicle
6 under described rental agreements shall be deemed the
7 owner of the vehicle for the purpose of determining
8 liability.
9 18. Limit the liability of parties to joint
10 employment arrangements as defined in the act.
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12 See bill for details.
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