

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 written questions;
7 providing for final instructions; amending s.
8 44.102, F.S.; requiring that the court require
9 mediation in certain actions for monetary
10 damages; amending s. 44.104, F.S.; providing
11 for voluntary trial resolution upon the
12 agreement of parties to a civil dispute;
13 providing for the appointment and compensation
14 of a trial resolution judge; providing
15 guidelines for conducting a voluntary trial
16 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.; providing for discussion of
7 structured settlements; conforming provisions
8 relating to alternative methods of payment of
9 damage awards to changes made by the act;
10 correcting a cross reference; amending s.
11 95.031, F.S.; imposing a 12-year statute of
12 repose on actions founded upon violations of
13 chapter 517; imposing a 12-year statute of
14 repose on actions brought to recover for harm
15 caused by products with a specified expected
16 useful life; exempting certain categories of
17 products from the statute of repose; imposing
18 variable repose periods based on specific
19 warranties by the manufacturer; providing an
20 exception for certain injuries; providing for
21 tolling under particular circumstances;
22 specifying the date by which certain actions
23 must be brought or be otherwise barred by the
24 statute of repose; amending s. 90.407, F.S.;
25 providing limitations on the admissibility of
26 subsequent remedial measures; providing
27 exceptions; creating s.768.044, F.S.; requiring
28 the finder of fact, in certain product defect
29 actions, to consider circumstances that existed
30 at the time of manufacture; amending s.
31 95.11, F.S.; deleting a 5 year limit on

1 commencing actions founded on chapter 517;
2 creating s. 768.1256, F.S.; providing a
3 government rules defense with respect to
4 certain products liability actions; providing
5 for a rebuttable presumption; creating s.
6 768.0705, F.S.; providing limitations on
7 premises liability for a person or organization
8 owning or controlling an interest in a business
9 premises; providing an exception; providing for
10 a presumption against liability for convenience
11 businesses under specified circumstances;
12 amending s. 768.075, F.S.; delineating the duty
13 owed to trespassers by a person or organization
14 owning or controlling an interest in real
15 property; providing definitions; providing for
16 the avoidance of liability to discovered and
17 undiscovered trespassers under described
18 circumstances; providing immunity from certain
19 liability arising out of the attempt to commit
20 or the commission of a felony; creating s.
21 768.725, F.S.; providing for evidentiary
22 standards for an award of punitive damages;
23 amending s. 768.72, F.S.; revising provisions
24 with respect to claims for punitive damages in
25 civil actions; requiring clear and convincing
26 evidence of gross negligence or intentional
27 misconduct to support the recovery of such
28 damages; providing definitions; providing
29 criteria for the imposition of punitive damages
30 with respect to employers, principals,
31 corporations, or other legal entities for the

1 conduct of an employee or agent; providing for
 2 the application of the section; amending s.
 3 768.73, F.S.; revising provisions with respect
 4 to limitations on punitive damages; providing
 5 monetary limitations; providing an exception
 6 with respect to intentional misconduct;
 7 providing for the effect of certain previous
 8 punitive damages awards; providing for the
 9 application of the section; creating s.
 10 768.736, F.S.; providing that ss. 768.725 and
 11 768.73, F.S., relating to punitive damages, do
 12 not apply to intoxicated defendants; amending
 13 s. 768.81, F.S.; providing for the
 14 apportionment of damages on the basis of joint
 15 and several liability when a party's fault
 16 exceeds a certain percentage; limiting the
 17 applicability of joint and several liability
 18 based on the amount of damages; providing for
 19 the allocation of fault to a nonparty;
 20 requiring that such fault must be proved by a
 21 preponderance of the evidence; amending s.
 22 324.021, F.S.; providing the lessor of a motor
 23 vehicle under certain rental agreements shall
 24 be deemed the owner of the vehicle for the
 25 purpose of determining liability for the
 26 operation of the vehicle within certain limits;
 27 providing for the liability of the owner of a
 28 motor vehicle who loans the vehicle to certain
 29 users; limiting the liability of employers in a
 30 joint employment relationship under specific
 31 circumstances; providing exceptions and

1 limitations; creating s. 768.735, F.S.;
2 providing that ss. 768.72(2)-(5), 768.725, and
3 768.73, F.S., relating to punitive damages, are
4 inapplicable to specified causes of action;
5 limiting the amount of punitive damages that
6 may be awarded to a claimant in certain civil
7 actions involving abuse or arising under ch.
8 400, F.S.; amending s. 400.023(1), F.S.,
9 limiting the recovery of attorney fees;
10 providing that an attorney may receive
11 additional fees from his or her client;
12 providing for severability; creating s.
13 768.737, F.S., providing for application of
14 punitive damages statutes to arbitration;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 40.50, Florida Statutes, is created
20 to read:

21 40.50 Jury duty and instructions in civil cases.--

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

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

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

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

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

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

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

1 44.102 Court-ordered mediation.--
2 (2) A court, under rules adopted by the Supreme Court:
3 (a) Must, upon request of one party, refer to
4 mediation any filed civil action for monetary damages,
5 provided the requesting party is willing and able to pay the
6 costs of the mediation or the costs can be equitably divided
7 between the parties, unless:
8 1. The action is a landlord and tenant dispute that
9 does not include a claim for personal injury.
10 2. The action is filed for the purpose of collecting a
11 debt.
12 3. The action is a claim of medical malpractice.
13 4. The action is governed by the Florida Small Claims
14 Rules.
15 5. The court determines that the action is proper for
16 referral to nonbinding arbitration under this chapter.
17 6. The parties have agreed to binding arbitration.
18 7. The parties have agreed to an expedited trial
19 pursuant to section 7 of this act.
20 8. The parties have agreed to voluntary trial
21 resolution pursuant to s. 44.104.
22 ~~(b)(a)~~ May refer to mediation all or any part of a
23 filed civil action for which mediation is not required under
24 this section.
25 ~~(c)(b)~~ In circuits in which a family mediation program
26 has been established and upon a court finding of a dispute,
27 shall refer to mediation all or part of custody, visitation,
28 or other parental responsibility issues as defined in s.
29 61.13. Upon motion or request of a party, a court shall not
30 refer any case to mediation if it finds there has been a
31

1 history of domestic violence that would compromise the
2 mediation process.

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

8 Section 3. Section 44.104, Florida Statutes, is
9 amended to read:

10 44.104 Voluntary binding arbitration and voluntary
11 trial resolution.--

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

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

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

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

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

22 (6) Filing of the application for binding arbitration
23 or voluntary trial resolution will toll the running of the
24 applicable statutes of limitation.

25 (7) The chief arbitrator or trial resolution judge may
26 ~~shall have such power to~~ administer oaths or affirmation and
27 ~~to~~ conduct the proceedings as the rules of court shall
28 provide. At the request of any party, the chief arbitrator or
29 trial resolution judge shall issue subpoenas for the
30 attendance of witnesses and for the production of books,
31 records, documents, and other evidence and may apply to the

1 court for orders compelling attendance and production.

2 Subpoenas shall be served and shall be enforceable in the
3 manner provided by law.

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

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

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

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

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

19 (c) Whether the decision reaches a result contrary to
20 the Constitution of the United States or of the State of
21 Florida.

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

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

1 ~~(13)~~~~(11)~~ If no appeal is taken within the time
2 provided by rules promulgated by the Supreme Court, then the
3 decision shall be referred to the presiding judge in the case,
4 or if one has not been assigned, then to the chief judge of
5 the circuit for assignment to a circuit judge, who shall enter
6 such orders and judgments as are required to carry out the
7 terms of the decision, which orders shall be enforceable by
8 the contempt powers of the court and for which judgments
9 execution shall issue on request of a party.

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

21 Section 4. Section 57.105, Florida Statutes, is
22 amended to read:

23 57.105 Attorney's fee; sanctions for raising unfounded
24 claims or defenses; damages for delay of litigation.--

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

1 defense when initially presented to the court or at any time
2 before trial:

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

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

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

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

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

1 to the moving party for its reasonable expenses incurred in
2 obtaining the order that may include attorney fees, and other
3 loss resulting from the improper delay.

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

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

16 Section 5. Subsections (3), (5), and (7) of section
17 768.79, Florida Statutes, are amended to read:

18 768.79 Offer of judgment and demand for judgment.--

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

27 (5) An offer may be withdrawn in writing which is
28 served before the date a written acceptance is filed. Once
29 withdrawn, an offer is void. A subsequent offer to a party
30 shall have the effect of voiding any previous offer to that
31 party.

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

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

11 1. The then apparent merit or lack of merit in the
12 claim.

13 2. The number and nature of offers made by the
14 parties.

15 3. The closeness of questions of fact and law at
16 issue.

17 4. Whether the person making the offer had
18 unreasonably refused to furnish information necessary to
19 evaluate the reasonableness of such offer.

20 5. Whether the suit was in the nature of a test case
21 presenting questions of far-reaching importance affecting
22 nonparties.

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

26 Section 6. Section 57.071, Florida Statutes, is
27 amended to read:

28 57.071 Costs; what taxable.--

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

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

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

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

9 (2) Expert witness fees may not be awarded as taxable
10 costs unless the party retaining the expert witness furnishes
11 each opposing party with a written report signed by the expert
12 witness which summarizes the expert witness's opinions and the
13 factual basis of the opinions, including documentary evidence
14 and the authorities relied upon in reaching the opinions. Such
15 report shall be filed at least 5 days prior to the deposition
16 of the expert or at least 20 days prior to discovery cut-off,
17 whichever is sooner, or as otherwise determined by the court.

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

26 (1) All discovery shall be completed within 60 days
27 after the court enters an order adopting the joint expedited
28 trial stipulation.

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

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

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

6 (5) The case may be tried within 30 days after the
7 60-day discovery cut-off, if such schedule would not impose an
8 undue burden on the court calendar.

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

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

11 (8) The plaintiff will have no more than 3 hours to
12 present its case, including the opening, all testimony and
13 evidence, and the closing.

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

17 (10) The jury may be given "plain language" jury
18 instructions at the beginning of the trial as well as a "plain
19 language" jury verdict form. The parties must agree to the
20 jury instructions and verdict form.

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

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

29 (13) Except as otherwise provided in this section, the
30 Florida Evidence Code and the Florida Rules of Civil Procedure
31 apply.

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

3 Section 8. Section 768.77, Florida Statutes, is
4 amended to read:

5 768.77 Itemized verdict.--

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

11 (1)(a) Amounts intended to compensate the claimant for
12 economic losses;

13 (2)(b) Amounts intended to compensate the claimant for
14 noneconomic losses; and

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

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

28 Section 9. Subsection (1) & (2) of section 768.78,
29 Florida Statutes, are redesignated as (2) & (3) respectfully,
30 paragraph (a) of the redesignated subsection (2) is amended to
31 read, and a new subsection (1) is created to read:

1 768.78 Proposals for structured settlement;
2 alternative methods of payment of damage awards.--

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

11 (a) To the extent the liability for payment of damages
12 to the plaintiff qualify for assignment under Section 130, or
13 any successor section, of the Internal Revenue Code as it may
14 be amended from time to time, the defendant or the defendant's
15 liability carrier shall assign the liability to make such
16 periodic payments to a third party assignee agreed to by the
17 plaintiff and defendant.

18 (b) The plaintiff shall have the right to
19 independently select a properly licensed and appointed
20 structured settlement broker to place the structured
21 settlement on behalf of the plaintiff and defendant.

22 (c) Any order approving or adopting a settlement to
23 which this section applies shall include a finding that the
24 settlement complies with this section.

25 (d) This section shall not apply to cases the
26 settlement of which is under \$100,000.

27 (e) Nothing herein shall create an additional action
28 against the defendant or his attorneys.

29 (f) This section shall apply only to cases impacted by
30 s. 104(a)(1), (2), and (3) of the Internal Revenue Code.

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1 (g) This section shall not apply to a defendant or his
2 liability carrier if the liability carrier generally (except
3 where otherwise agreed or ordered by a court) assigns payment
4 obligations to an affiliated life insurance company, and the
5 liability company does not generally use outside brokers and
6 retains liability in the even of the affiliated life insurance
7 company's default.

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

11 (b) An action for products liability under s.
 12 95.11(3), must be begun within the period prescribed in this
 13 chapter, with the period running from the date that the facts
 14 giving rise to the cause of action were discovered, or should
 15 have been discovered with the exercise of due diligence,
 16 rather than running from any other date prescribed elsewhere
 17 in s. 95.11(3) except as provided within this subsection.
 18 Under no circumstances may a claimant commence an action for
 19 products liability, including a wrongful death action or any
 20 other claim arising from personal injury or property damage
 21 caused by a product, to recover for harm allegedly caused by a
 22 product with an expected useful life of 10 years or less, if
 23 the harm was caused by exposure to or use of the product more
 24 than 12 years after delivery of the product to its first
 25 purchaser or lessee who was not engaged in the business of
 26 selling or leasing the product or of using the product as a
 27 component in the manufacture of another product. All products,
 28 except those included within subparagraphs 1 or 2, are
 29 conclusively presumed to have an expected useful life of 10
 30 years or less.

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1 1. Aircraft used in commercial or contract carrying of
2 passengers or freight, vessels of more than 100 gross tons,
3 railroad equipment used in commercial or contract carrying of
4 passengers or freight, and improvements to real property,
5 including elevators and escalators, are not subject to the
6 statute of repose provided within this subsection.

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

19 (c) The repose period prescribed within paragraph (b)
20 does not apply if the claimant was exposed to or used the
21 product within the repose period, but an injury caused by such
22 exposure or use did not manifest itself until after expiration
23 of the repose period.

24 (d) The repose period prescribed within paragraph
25 (b) is tolled for any period during which the manufacturer
26 through its officers, directors, partners, or managing agents
27 had actual knowledge that the product was defective in the
28 manner alleged by the claimant and concealed the defect. Any
29 claim of concealment under this section shall be made with
30 specificity, and must be based upon substantial factual and
31

1 legal support. Maintaining the confidentiality of trade
2 secrets does not constitute concealment under this section.

3 Section 11. Any action for products liability which
4 would not have been barred under section 95.031(2), Florida
5 Statutes, prior to the amendments to that section made by this
6 act may be commenced before July 1, 2003 and, if it is not
7 commenced by that date and is barred by the amendments to
8 section 95.031(2), Florida Statutes, made by this act, it
9 shall be barred.

10 Section 12. Section 90.407 Florida Statutes, is
11 amended to read:

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

22 Section 13. Section 768.1257 Florida Statutes, is
23 created to read:

24 768.1257 State-of-the-art defense for products
25 liability.--In an action based upon defective design, brought
26 against the manufacturer of a product, the finder of fact
27 shall consider the state of the art of scientific and
28 technical knowledge and other circumstances that existed at
29 the time of manufacture, not at the time of loss or injury.

30 Section 14. Section 768.1256, Florida Statutes, is
31 created to read:

1 768.1256 Government rules defense.--In a products
2 liability action brought against a manufacturer or seller for
3 harm allegedly caused by a product, there is a rebuttable
4 presumption that the product is not defective or unreasonably
5 dangerous and the manufacturer or seller is not liable if, at
6 the time the specific unit of the product was sold or
7 delivered to the initial purchaser or user, the aspect of the
8 product that allegedly caused the harm was in compliance with
9 product design, construction, or safety standards relevant to
10 the event causing the death or injury promulgated by a federal
11 or state statute or rule, such standards are designed to
12 prevent the type of harm that allegedly occurred, and
13 compliance with such standards is required as a condition for
14 selling or otherwise distributing the product.

15 Section 15. Section 768.0705, Florida Statutes, is
16 created to read:

17 768.0705 Limitation on premises liability.--

18 (1) Except as provided for in subsection (2) or in the
19 absence of an express contract to the contrary, a person or
20 organization owning or controlling an interest in a business
21 premises, including a convenience business that is in
22 compliance with ss. 812.173 and 812.174, may not be held
23 liable for civil damages sustained by invitees, licensees, or
24 trespassers, caused by criminal acts committed by third
25 parties who are not employees or agents of the person or
26 organization, which take place on portions of the property not
27 within an enclosed building.

28 (2) With respect to invitees and licensees, subsection
29 (1) does not apply if a person or organization owning or
30 controlling an interest in a business premises:

31

1 (a) Has actual knowledge that the perpetrator is on the
2 premises;

3 (b) Has reason to believe that the perpetrator will
4 commit a criminal act against an invitee or licensee on the
5 premises; and

6 (c) Has failed to take reasonable action under the
7 circumstances to prevent the occurrence of the criminal act.

8 (3) 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 Section 16. Section 768.075, Florida Statutes, is
16 amended to read:

17 768.075 Immunity from liability for injury to
18 trespassers on real property; definitions; duty to
19 trespassers.--

20 (1) A person or organization owning or controlling an
21 interest in real property, or an agent of such person or
22 organization, shall not be held liable for any civil damages
23 for death of or injury or damage to a trespasser upon the
24 property ~~resulting from or arising by reason of the~~
25 ~~trespasser's commission of the offense of trespass as~~
26 ~~described in s. 810.08 or s. 810.09,~~ when such trespasser was
27 under the influence of alcoholic beverages with a
28 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such
29 trespasser was under the influence of any chemical substance
30 set forth in s. 877.111, when such trespasser was illegally
31 under the influence of any substance controlled under chapter

1 893, or if the trespasser is affected by any of the aforesaid
 2 substances to the extent that her or his normal faculties are
 3 impaired. For the purposes of this section, voluntary
 4 intoxication or impediment of faculties by use of alcohol or
 5 any of the aforementioned substances shall not excuse a party
 6 relying upon this section as a defense to a claim for civil
 7 damages ~~bringing an action or on whose behalf an action is~~
 8 ~~brought~~ from proving the elements of trespass. However, the
 9 person or organization owning or controlling the interest in
 10 real property shall not under this subsection be immune from
 11 liability if gross negligence or intentional willful and
 12 ~~wanton~~ misconduct on the part of such person or organization
 13 or agent thereof is a proximate cause of the death of or
 14 injury or damage to the trespasser.

15 (2) A person or organization owning or controlling an
 16 interest in real property, or an agent of such person or
 17 organization, shall not be held liable for any civil damages
 18 for death of or injury or damage to any discovered or
 19 undiscovered trespasser, except as provided in subsection (3),
 20 and regardless of whether the trespasser was intoxicated or
 21 otherwise impaired.

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

23 1. "Implied invitation" means that the visitor
 24 entering the premises has an objectively reasonable belief
 25 that he or she has been invited or is otherwise welcome on
 26 that portion of the real property where injury occurs.

27 2. "Discovered trespasser" means a person who enters
 28 real property without invitation, either express or implied,
 29 and whose actual physical presence was detected, within 24
 30 hours preceding the accident, by the person or organization
 31 owning or controlling an interest in real property or to whose

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

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

16 (b) A person or organization owning or controlling an
 17 interest in real property has no duty to warn undiscovered
 18 trespassers of dangerous conditions, but may be held liable
 19 for injury proximately caused by the person's or
 20 organization's intentional misconduct. A person or
 21 organization owning or controlling an interest in real
 22 property has a duty to warn discovered trespassers of latent
 23 dangerous conditions that are known to the person or
 24 organization owning or controlling an interest in real
 25 property but may otherwise be held liable by discovered
 26 trespassers for injury proximately caused by the gross
 27 negligence or intentional misconduct of the person or
 28 organization controlling an interest in real property.

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

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

7 Section 17. Section 768.725, Florida Statutes, is
8 created to read:

9 768.725 Punitive damages; burden of proof.--In all
10 civil actions a party seeking punitive damages must establish
11 at trial by clear and convincing evidence its entitlement to
12 an award of punitive damages and the amount of punitive
13 damages.

14 Section 18. Section 768.72, Florida Statutes, is
15 amended to read:

16 768.72 Pleading in civil actions; claim for punitive
17 damages.--

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

30 (2) A defendant may be held liable for punitive
31 damages only if the trier of fact, based on clear and

1 convincing evidence, finds that the defendant was guilty of
2 intentional misconduct or gross negligence. As used in this
3 section, the term:

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

9 (b) "Gross negligence" means that the defendant's
10 conduct was so reckless or wanting in care that it
11 demonstrates a conscious disregard or indifference to the
12 life, safety, or rights of persons exposed to such conduct.

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

18 (a) The officers, directors, partners, or managers of
19 the employer, principal, corporation or other legal entity
20 actively and knowingly participated in such conduct;

21 (b) The officers, directors, partners, or managers of
22 the employer, principal, corporation, or other legal entity
23 knowingly condoned, ratified, or consented to such conduct; or

24 (c) The officers, directors, partners, or managers of
25 the employer, principal, corporation or other legal entity
26 engaged in gross negligence that contributed to losses or
27 damages sustained by the claimant.

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

31

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

5 Section 19. Section 768.73, Florida Statutes, is
6 amended to read:

7 768.73 Punitive damages; limitation.--

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

25 (b) No award for punitive damages may exceed the
26 limitations if any award for punitive damages exceeds the
27 limitation specified in paragraph (a), the award is presumed
28 to be excessive and the defendant is entitled to remittitur of
29 the amount in excess of the limitation unless the claimant
30 demonstrates to the court by clear and convincing evidence
31 that the defendant engaged in intentional misconduct and that

1 the award is not excessive in light of the facts and
2 circumstances which were presented to the trier of fact.

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

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

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

1 awarded by the trier of fact, the court shall reduce the
2 subsequent punitive damage award by the amount of any punitive
3 damage awards previously collected through judgments rendered
4 in any state or federal court to punish the same act or single
5 course of conduct.

6 ~~(3)(2)~~ The jury may neither be instructed nor informed
7 as to the provisions of this section.

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

12 Section 20. Section 768.736, Florida Statutes, is
13 created to read:

14 768.736 Punitive damages; exceptions for
15 intoxication.--Sections 768.725 and 768.73 shall not apply to
16 any defendant who, at the time of the act or omission for
17 which punitive damages are sought, was under the influence of
18 any alcoholic beverage or drug to the extent that the
19 defendant's normal faculties were impaired, or who had a blood
20 or breath alcohol level of 0.08 percent or higher. This
21 section shall not apply in cases where the defendant proves
22 that his or her intoxication was involuntary.

23 Section 21. Subsections (3), (4), (5), and (6) of
24 section 768.81, Florida Statutes, are amended to read:

25 768.81 Comparative fault.--

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

1 claimant, the court shall enter judgment with respect to
2 economic damages against that party on the basis of the
3 doctrine of joint and several liability. However, the doctrine
4 of joint and several liability shall not apply to that portion
5 of economic damages in excess of \$200,000.

6 (a) In order to allocate any or all fault to a
7 nonparty, a defendant must affirmatively plead the fault of a
8 nonparty and, absent a showing of good cause, identify the
9 nonparty, if known, or describe the nonparty as specifically
10 as practicable, either by motion or in the initial responsive
11 pleading when defenses are first presented, subject to
12 amendment any time before trial in accordance with the Florida
13 Rules of Civil Procedure.

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

19 (4) APPLICABILITY.--

20 (a) This section applies to negligence cases. For
21 purposes of this section, "negligence cases" includes, but is
22 not limited to, civil actions for damages based upon theories
23 of negligence, strict liability, products liability,
24 professional malpractice whether couched in terms of contract
25 or tort, or breach of warranty and like theories. In
26 determining whether a case falls within the term "negligence
27 cases," the court shall look to the substance of the action
28 and not the conclusory terms used by the parties.

29 (b) This section does not apply to any action brought
30 by any person to recover actual economic damages resulting
31 from pollution, ~~to any action based upon an intentional tort,~~

1 or to any cause of action as to which application of the
2 doctrine of joint and several liability is specifically
3 provided by chapter 403, chapter 498, chapter 517, chapter
4 542, or chapter 895.

5 ~~(5) APPLICABILITY OF JOINT AND SEVERAL~~
6 ~~LIABILITY. Notwithstanding the provisions of this section,~~
7 ~~the doctrine of joint and several liability applies to all~~
8 ~~actions in which the total amount of damages does not exceed~~
9 ~~\$25,000.~~

10 (5)(6) Notwithstanding anything in law to the
11 contrary, in an action for damages for personal injury or
12 wrongful death arising out of medical malpractice, whether in
13 contract or tort, when an apportionment of damages pursuant to
14 this section is attributed to a teaching hospital as defined
15 in s. 408.07, the court shall enter judgment against the
16 teaching hospital on the basis of such party's percentage of
17 fault and not on the basis of the doctrine of joint and
18 several liability.

19 Section 22. Paragraph (b) of subsection (9) of section
20 324.021, Florida Statutes, is amended, and paragraph (c) is
21 added to that subsection, to read:

22 324.021 Definitions; minimum insurance required.--The
23 following words and phrases when used in this chapter shall,
24 for the purpose of this chapter, have the meanings
25 respectively ascribed to them in this section, except in those
26 instances where the context clearly indicates a different
27 meaning:

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

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

31

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

18 2. The lessor, under an agreement to rent or lease a
 19 motor vehicle for a period of less than 1 year, shall be
 20 deemed the owner of the motor vehicle for the purpose of
 21 determining liability for the operation of the vehicle or the
 22 acts of the operator in connection therewith only up to
 23 \$100,000 per person and up to \$300,000 per incident for bodily
 24 injury and up to \$50,000 for property damage. If the lessee or
 25 the operator of the motor vehicle is uninsured or has any
 26 insurance with limits less than \$500,000 combined property
 27 damage and bodily injury liability, the lessor shall be liable
 28 for up to an additional \$500,000 in economic damages only
 29 arising out of the use of the motor vehicle. The additional
 30 specified liability of the lessor for economic damages shall
 31 be reduced by amounts actually recovered from the lessee, from

1 the operator, and from any insurance or self-insurance
 2 covering the lessee or operator. Nothing in this subparagraph
 3 shall be construed to affect the liability of the lessor for
 4 its own negligence.

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

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

1 includes a motor vehicle dealer that provides temporary
2 replacement vehicles to its customers for up to 10 days.

3 Section 23. (1) An employer in a joint employment
4 relationship pursuant to s. 468.520 shall not be liable for
5 the tortious actions of another employer in that relationship,
6 or for the tortious actions of any jointly employed employee
7 under that relationship, provided that:

8 (a) The employer seeking to avoid liability pursuant
9 to this section did not authorize or direct the tortious
10 action;

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

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

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

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

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

13 Section 24. Section 768.735, Florida Statutes, is
14 created to read:

15 768.735 Punitive damages; exceptions; limitation.--

16 (1) Sections 768.72(2)-(5), 768.725, and 768.73 do not
17 apply to any civil action based upon child abuse, abuse of the
18 elderly, or abuse of the developmentally disabled, or arising
19 under chapter 400. Such actions shall be governed by
20 applicable statutes and controlling judicial precedent.

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

30 (b) If any award for punitive damages exceeds the
31 limitation specified in paragraph (a), the award is presumed

1 to be excessive and the defendant is entitled to remittitur of
2 the amount in excess of the limitation unless the claimant
3 demonstrates to the court by clear and convincing evidence
4 that the award is not excessive in light of the facts and
5 circumstances that 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 (d) The jury may not be instructed or informed as to
12 the provisions of this section.

13 Section 25. Subsection (1) of section 400.023, Florida
14 Statutes, is amended to read:

15 400.023 Civil enforcement.--

16 (1) Any resident whose rights as specified in this
17 part are deprived or infringed upon shall have a cause of
18 action against any licensee responsible for the violation.
19 The action may be brought by the resident or his or her
20 guardian, by a person or organization acting on behalf of a
21 resident with the consent of the resident or his or her
22 guardian, or by the personal representative of the estate of a
23 deceased resident when the cause of death resulted from the
24 deprivation or infringement of the decedent's rights. The
25 action may be brought in any court of competent jurisdiction
26 to enforce such rights and to recover actual and punitive
27 damages for any deprivation or infringement on the rights of a
28 resident. Any plaintiff who prevails in any such action may be
29 entitled to recover reasonable attorney's fees, not to exceed
30 \$50,000, costs of the action, and damages, unless the court
31 finds that the plaintiff has acted in bad faith, with

1 malicious purpose, and that there was a complete absence of a
2 justiciable issue of either law or fact. Prevailing
3 defendants may be entitled to recover reasonable attorney's
4 fees pursuant to s. 57.105. The remedies provided in this
5 section are in addition to and cumulative with other legal and
6 administrative remedies available to a resident and to the
7 agency. This section does not preclude an attorney from
8 receiving attorney's fees from his or her client in addition
9 to attorney's fees recovered under this section.

10 Section 26. If any provision of this act or the
11 application thereof to any person or circumstance is held
12 invalid, the invalidity does not affect other provisions or
13 applications of the act which can be given effect without the
14 invalid provision or application, and to this end the
15 provisions of this act are declared severable.

16 Section 27. Section 768.737, Florida Statutes, is
17 created to read:

18 768.737 Punitive damages; application in
19 arbitration.--Sections 768.72, 768.725, and 768.73 are
20 intended to apply to civil actions, including arbitration
21 proceedings. In the case of an arbitration proceeding, an
22 arbitrator who renders an award for punitive damages must
23 issue a written opinion setting forth the conduct which gave
24 rise to the award and how the arbitrator applied the standards
25 in s. 768.72 to such conduct.

26 Section 28. This act shall take effect October 1,
27 1999.