

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 requiring the Office of Program Policy Analysis
16 and Governmental Accountability to contract
17 with an actuarial firm to conduct an actuarial
18 analysis of expected reductions in judgments
19 and related costs resulting from litigation
20 reforms; specifying the basis and due date for
21 the actuarial report; providing an effective
22 date.

23

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

25

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

28 40.50 Jury duty and instructions in civil cases.--
29 (1) In any civil action immediately after the jury is
30 sworn, the court shall instruct the jury concerning its
31 duties, its conduct, the order of proceedings, the procedure

1 for submitting written questions of witnesses, and the legal
2 issues involved in the proceeding.

3 (2) In any civil action which the court determines is
4 likely to exceed 5 days, the court shall instruct that the
5 jurors may take notes regarding the evidence and keep the
6 notes to refresh their memory and to use during recesses and
7 deliberations. The court may provide materials suitable for
8 this purpose. The court should emphasize the confidentiality
9 of the notes. After the jury has rendered its verdict, any
10 notes shall be collected by the bailiff or clerk who shall
11 promptly destroy them.

12 (3) The court shall permit jurors to submit to the
13 court written questions directed to witnesses or to the court.
14 The court shall give counsel an opportunity to object to such
15 questions outside the presence of the jury. The court may, as
16 appropriate, limit the submission of questions to witnesses.

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

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

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

8 44.102 Court-ordered mediation.--

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

10 (a) Must, upon request of one party, refer to
11 mediation any filed civil action for monetary damages,
12 provided the requesting party is willing and able to pay the
13 costs of the mediation or the costs can be equitably divided
14 between the parties, unless:

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

17 2. The action is filed for the purpose of collecting a
18 debt.

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

20 4. The action is governed by the Florida Small Claims
21 Rules.

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

24 6. The parties have agreed to binding arbitration.

25 7. The parties have agreed to an expedited trial
26 pursuant to section 7 of this act.

27 8. The parties have agreed to voluntary trial
28 resolution pursuant to s. 44.104.

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

1 ~~(c)(b)~~ In circuits in which a family mediation program
2 has been established and upon a court finding of a dispute,
3 shall refer to mediation all or part of custody, visitation,
4 or other parental responsibility issues as defined in s.
5 61.13. Upon motion or request of a party, a court shall not
6 refer any case to mediation if it finds there has been a
7 history of domestic violence that would compromise the
8 mediation process.

9 ~~(d)(c)~~ In circuits in which a dependency or in need of
10 services mediation program has been established, may refer to
11 mediation all or any portion of a matter relating to
12 dependency or to a child in need of services or a family in
13 need of services.

14 Section 3. Section 44.104, Florida Statutes, is
15 amended to read:

16 44.104 Voluntary binding arbitration and voluntary
17 trial resolution.--

18 (1) Two or more opposing parties who are involved in a
19 civil dispute may agree in writing to submit the controversy
20 to voluntary binding arbitration, or voluntary trial
21 resolution, in lieu of litigation of the issues involved,
22 prior to or after a lawsuit has been filed, provided no
23 constitutional issue is involved.

24 (2) If the parties have entered into an agreement
25 which provides in voluntary binding arbitration for a method
26 for appointing the appointment of one or more arbitrators, or
27 which provides in voluntary trial resolution a method for
28 appointing a member of the Florida Bar in good standing for
29 more than 5 years to act as trial resolution judge, the court
30 shall proceed with the appointment as prescribed, ~~except that~~.
31 However, in voluntary binding arbitration at least one of the

1 arbitrators, who shall serve as the chief arbitrator, shall
2 meet the qualifications and training requirements adopted
3 pursuant to s. 44.106. In the absence of an agreement, or if
4 the agreement method fails or for any reason cannot be
5 followed, the court, on application of a party, shall appoint
6 one or more qualified arbitrators, or the trial resolution
7 judge, as the case requires.

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

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

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

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

30 (7) The chief arbitrator or trial resolution judge may
31 ~~shall have such power to~~ administer oaths or affirmation and

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

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

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

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

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

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

24 (c) Whether the decision reaches a result contrary to
25 the Constitution of the United States or of the State of
26 Florida.

27 (11) Any party may enforce a final decision rendered
28 in a voluntary trial by filing a petition for final judgment
29 in the circuit court in the circuit in which the voluntary
30 trial took place. Upon entry of final judgment by the circuit
31 court, any party may appeal to the appropriate appellate

1 court. Factual findings determined in the voluntary trial are
2 not subject to appeal.

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

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

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

26 Section 4. Section 57.105, Florida Statutes, is
27 amended to read:

28 57.105 Attorney's fee; sanctions for raising unfounded
29 claims or defenses; damages for delay of litigation.--

30 (1) Upon the court's initiative or motion of any
31 party, the court shall award a reasonable attorney's fee to be

1 paid to the prevailing party in equal amounts by the losing
2 party and the losing party's attorney on any claim or defense
3 at any time during a ~~in any~~ civil proceeding or action in
4 which the court finds that ~~the losing party or the losing~~
5 party's attorney knew or should have known that a claim or
6 defense when initially presented to the court or at any time
7 before trial:

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

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

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

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

29 (3) At any time in any civil proceeding or action in
30 which the moving party proves by a preponderance of the
31 evidence that any action taken by the opposing party,

1 including, but not limited to, the filing of any pleading or
2 part thereof, the assertion of or response to any discovery
3 demand, the assertion of any claim or defense, or the response
4 to any request by any other party, was taken primarily for the
5 purpose of unreasonable delay, the court shall award damages
6 to the moving party for its reasonable expenses incurred in
7 obtaining the order that may include attorney fees, and other
8 loss resulting from the improper delay.

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

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

21 Section 5. Subsections (3), (5), and (7) of section
22 768.79, Florida Statutes, are amended to read:

23 768.79 Offer of judgment and demand for judgment.--

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

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

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

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

16 1. The then apparent merit or lack of merit in the
17 claim.

18 2. The number and nature of offers made by the
19 parties.

20 3. The closeness of questions of fact and law at
21 issue.

22 4. Whether the person making the offer had
23 unreasonably refused to furnish information necessary to
24 evaluate the reasonableness of such offer.

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

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

31

1 Section 6. Section 57.071, Florida Statutes, is
2 amended to read:

3 57.071 Costs; what taxable.--

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

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

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

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

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

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

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

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

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

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

11 (5) The case may be tried within 30 days after the
12 60-day discovery cut-off, if such schedule would not impose an
13 undue burden on the court calendar.

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

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

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

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

22 (10) The jury may be given "plain language" jury
23 instructions at the beginning of the trial as well as a "plain
24 language" jury verdict form. The parties must agree to the
25 jury instructions and verdict form.

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

30 (12) At trial the parties may use excerpts from
31 depositions, including video depositions, regardless of where

1 the deponent lives or whether the deponent is available to
2 testify.

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

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

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

10 768.77 Itemized verdict.--

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

16 (1)~~(a)~~ Amounts intended to compensate the claimant for
17 economic losses;

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

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

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

31

1 ~~the trier of fact shall set forth the period of years over~~
2 ~~which such amounts are intended to provide compensation.~~

3 Section 9. Subsections (1) and (2) of section 768.78,
4 Florida Statutes, are renumbered as subsections (2) and (3),
5 respectively, paragraph (a) of present subsection (1) is
6 amended, and a new subsection (1) is added to said section, to
7 read:

8 768.78 Proposals for structured settlement;
9 alternative methods of payment of damage awards.--

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

18 (a) To the extent the liability for payment of damages
19 to the plaintiff qualify for assignment under Section 130, or
20 any successor section, of the Internal Revenue Code as it may
21 be amended from time to time, the defendant or the defendant's
22 liability carrier shall assign the liability to make such
23 periodic payments to a third party assignee agreed to by the
24 plaintiff and defendant.

25 (b) The plaintiff shall have the right to
26 independently select a properly licensed and appointed
27 structured settlement broker to place the structured
28 settlement on behalf of the plaintiff and defendant.

29 (c) Any order approving or adopting a settlement to
30 which this section applies shall include a finding that the
31 settlement complies with this section.

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

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

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

7 (g) This section shall not apply to a defendant or his
8 liability carrier if the liability carrier generally (except
9 where otherwise agreed to or ordered by a court) assigns
10 payment obligations to an affiliated life insurance company,
11 and the liability company does not generally use outside
12 brokers and retains liability in the event of the affiliated
13 life insurance company's default.

14 (2)(1)(a) In any action to which this part applies in
15 which the court determines that ~~trier of fact makes~~ an award
16 to compensate the claimant includes for future economic losses
17 which exceed \$250,000, payment of amounts intended to
18 compensate the claimant for these losses shall be made by one
19 of the following means, unless an alternative method of
20 payment of damages is provided in this section:

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

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

31

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

3 95.031 Computation of time.--Except as provided in
4 subsection (2) and in s. 95.051 and elsewhere in these
5 statutes, the time within which an action shall be begun under
6 any statute of limitations runs from the time the cause of
7 action accrues.

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

18 (b) An action for products liability under s.
19 95.11(3), must be begun within the period prescribed in this
20 chapter, with the period running from the date that the facts
21 giving rise to the cause of action were discovered, or should
22 have been discovered with the exercise of due diligence,
23 rather than running from any other date prescribed elsewhere
24 in s. 95.11(3) except as provided within this subsection.
25 Under no circumstances may a claimant commence an action for
26 products liability, including a wrongful death action or any
27 other claim arising from personal injury or property damage
28 caused by a product, to recover for harm allegedly caused by a
29 product with an expected useful life of 10 years or less, if
30 the harm was caused by exposure to or use of the product more
31 than 12 years after delivery of the product to its first

1 purchaser or lessee who was not engaged in the business of
2 selling or leasing the product or of using the product as a
3 component in the manufacture of another product. All products,
4 except those included within subparagraphs 1 or 2, are
5 conclusively presumed to have an expected useful life of 10
6 years or less.

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

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

25 (c) The repose period prescribed within paragraph (b)
26 does not apply if the claimant was exposed to or used the
27 product within the repose period, but an injury caused by such
28 exposure or use did not manifest itself until after expiration
29 of the repose period.

30 (d) The repose period prescribed within paragraph
31 (b) is tolled for any period during which the manufacturer

1 through its officers, directors, partners, or managing agents
2 had actual knowledge that the product was defective in the
3 manner alleged by the claimant and concealed the defect. Any
4 claim of concealment under this section shall be made with
5 specificity, and must be based upon substantial factual and
6 legal support. Maintaining the confidentiality of trade
7 secrets does not constitute concealment under this section.

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

15 Section 12. Section 90.407 Florida Statutes, is
16 amended to read:

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

27 Section 13. Section 768.1257 Florida Statutes, is
28 created to read:

29 768.1257 State-of-the-art defense for products
30 liability.--In an action based upon defective design, brought
31 against the manufacturer of a product, the finder of fact

1 shall consider the state of the art of scientific and
2 technical knowledge and other circumstances that existed at
3 the time of manufacture, not at the time of loss or injury.

4 Section 14. Section 768.1256, Florida Statutes, is
5 created to read:

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

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

22 768.0705 Limitation on premises liability.--

23 (1) Except as provided for in subsection (2) or in the
24 absence of an express contract to the contrary, a person or
25 organization owning or controlling an interest in a business
26 premises, including a convenience business that is in
27 compliance with ss. 812.173 and 812.174, may not be held
28 liable for civil damages sustained by invitees, licensees, or
29 trespassers, caused by criminal acts committed by third
30 parties who are not employees or agents of the person or
31

1 organization, which take place on portions of the property not
2 within an enclosed building.

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

6 (a) Has actual knowledge that the perpetrator is on the
7 premises;

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

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

13 (3) The owner or operator of a convenience business
14 that substantially implements the applicable security measures
15 listed in ss. 812.173 and 812.174 shall gain a presumption
16 against liability in connection with criminal acts that occur
17 on the premises and that are committed by third parties who
18 are not employees or agents of the owner or operator of the
19 convenience business.

20 Section 16. Section 768.075, Florida Statutes, is
21 amended to read:

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

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

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

20 (2) 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 any discovered or
 24 undiscovered trespasser, except as provided in subsection (3),
 25 and regardless of whether the trespasser was intoxicated or
 26 otherwise impaired.

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

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

1 2. "Discovered trespasser" means a person who enters
 2 real property without invitation, either express or implied,
 3 and whose actual physical presence was detected, within 24
 4 hours preceding the accident, by the person or organization
 5 owning or controlling an interest in real property or to whose
 6 actual physical presence the person or organization owning or
 7 controlling an interest in real property was alerted by a
 8 reliable source within 24 hours preceding the accident. The
 9 status of a person who enters real property shall not be
 10 elevated to that of an invitee, unless the person or
 11 organization owning or controlling an interest in real
 12 property has issued an express invitation to enter or remain
 13 upon the property or has manifested a clear intent to hold the
 14 property open to use by persons pursuing purposes such as
 15 those pursued by the person whose status is at issue.

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

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

1 negligence or intentional misconduct of the person or
2 organization controlling an interest in real property.

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

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

12 Section 17. Section 768.725, Florida Statutes, is
13 created to read:

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

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

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

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

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

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

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

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

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

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

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

29 (c) The officers, directors, partners, or managers of
30 the employer, principal, corporation or other legal entity
31

1 engaged in gross negligence that contributed to losses or
2 damages sustained by the claimant.

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

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

10 Section 19. Section 768.73, Florida Statutes, is
11 amended to read:

12 768.73 Punitive damages; limitation.--

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

30 (b) No award for punitive damages may exceed the
31 limitations ~~if any award for punitive damages exceeds the~~

1 ~~limitation~~ specified in paragraph (a), ~~the award is presumed~~
2 ~~to be excessive and the defendant is entitled to remittitur of~~
3 ~~the amount in excess of the limitation~~ unless the claimant
4 demonstrates to the court by clear and convincing evidence
5 that the defendant engaged in intentional misconduct and that
6 the award is not excessive in light of the facts and
7 circumstances which were presented to the trier of fact.

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

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

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

1 court may consider whether the defendant's act or course of
2 conduct has ceased. If subsequent punitive damages are
3 permitted, the court shall make specific findings of fact in
4 the record to support its determination of the insufficiency
5 of prior punitive damages. If subsequent punitive damages are
6 awarded by the trier of fact, the court shall reduce the
7 subsequent punitive damage award by the amount of any punitive
8 damage awards previously collected through judgments rendered
9 in any state or federal court to punish the same act or single
10 course of conduct.

11 ~~(3)(2)~~ The jury may neither be instructed nor informed
12 as to the provisions of this section.

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

17 Section 20. Section 768.736, Florida Statutes, is
18 created to read:

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

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

30 768.81 Comparative fault.--
31

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

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

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

25 (4) APPLICABILITY.--

26 (a) This section applies to negligence cases. For
27 purposes of this section, "negligence cases" includes, but is
28 not limited to, civil actions for damages based upon theories
29 of negligence, strict liability, products liability,
30 professional malpractice whether couched in terms of contract
31 or tort, or breach of warranty and like theories. In

1 determining whether a case falls within the term "negligence
2 cases," the court shall look to the substance of the action
3 and not the conclusory terms used by the parties.

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

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

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

25 Section 22. Paragraph (b) of subsection (9) of section
26 324.021, Florida Statutes, is amended, and paragraph (c) is
27 added to that subsection, to read:

28 324.021 Definitions; minimum insurance required.--The
29 following words and phrases when used in this chapter shall,
30 for the purpose of this chapter, have the meanings
31 respectively ascribed to them in this section, except in those

1 instances where the context clearly indicates a different
2 meaning:

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

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

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

23 2. The lessor, under an agreement to rent or lease a
24 motor vehicle for a period of less than 1 year, shall be
25 deemed the owner of the motor vehicle for the purpose of
26 determining liability for the operation of the vehicle or the
27 acts of the operator in connection therewith only up to
28 \$100,000 per person and up to \$300,000 per incident for bodily
29 injury and up to \$50,000 for property damage. If the lessee or
30 the operator of the motor vehicle is uninsured or has any
31 insurance with limits less than \$500,000 combined property

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

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

26 (c) Application.--The limits on liability in
 27 subparagraphs (b)2. and (b)3. do not apply to an owner of
 28 motor vehicles that are used for commercial activity in the
 29 owner's ordinary course of business, other than a rental
 30 company that rents or leases motor vehicles. For purposes of
 31 this paragraph, the term "rental company" includes only an

1 entity that is engaged in the business of renting or leasing
2 motor vehicles to the general public and that rents or leases
3 a majority of its motor vehicles to persons with no direct or
4 indirect affiliation with the rental company. The term also
5 includes a motor vehicle dealer that provides temporary
6 replacement vehicles to its customers for up to 10 days.

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

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

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

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

26 (d) That complaints, allegations or incidents of any
27 tortious misconduct or workplace safety violations, regardless
28 of the source, are required to be reported to the employer
29 seeking to avoid liability pursuant to this section by all
30 other joint employers under a written contract forming the
31 joint employment relationship, and that the employer seeking

1 to avoid liability pursuant to this section did not fail to
2 take appropriate action as a result of receiving any such
3 report related to a jointly employed employee who has
4 committed a tortious act.

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

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

17 Section 24. Section 768.735, Florida Statutes, is
18 created to read:

19 768.735 Punitive damages; exceptions; limitation.--

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

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

1 provided in paragraph (b). However, this subsection does not
2 apply to any class action.

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

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

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

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

19 400.023 Civil enforcement.--

20 (1) Any resident whose rights as specified in this
21 part are deprived or infringed upon shall have a cause of
22 action against any licensee responsible for the violation.
23 The action may be brought by the resident or his or her
24 guardian, by a person or organization acting on behalf of a
25 resident with the consent of the resident or his or her
26 guardian, or by the personal representative of the estate of a
27 deceased resident when the cause of death resulted from the
28 deprivation or infringement of the decedent's rights. The
29 action may be brought in any court of competent jurisdiction
30 to enforce such rights and to recover actual and punitive
31 damages for any deprivation or infringement on the rights of a

1 resident. Any plaintiff who prevails in any such action may be
 2 entitled to recover reasonable attorney's fees, not to exceed
 3 \$50,000, costs of the action, and damages, unless the court
 4 finds that the plaintiff has acted in bad faith, with
 5 malicious purpose, and that there was a complete absence of a
 6 justiciable issue of either law or fact. Prevailing
 7 defendants may be entitled to recover reasonable attorney's
 8 fees pursuant to s. 57.105. The remedies provided in this
 9 section are in addition to and cumulative with other legal and
 10 administrative remedies available to a resident and to the
 11 agency. This section does not preclude an attorney from
 12 receiving attorney's fees from his or her client in addition
 13 to attorney's fees recovered under this section.

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

20 Section 27. Section 768.737, Florida Statutes, is
 21 created to read:

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

30 Section 28. (1) The Office of Program Policy Analysis
 31 and Governmental Accountability shall, after issuing a request

1 for proposals, contract with a national independent actuarial
2 firm to conduct an actuarial analysis, consistent with
3 generally accepted actuarial practices, of the expected
4 reduction in liability judgments, settlements, and related
5 costs resulting from the provisions of this act. The analysis
6 shall be based on credible loss cost data derived from
7 settlement or adjudication of liability claims accruing after
8 the effective date of this act. The analysis shall include an
9 estimate of the percentage decrease in such judgments,
10 settlements, and costs by type of coverage affected by this
11 act, including the time period when such savings or reductions
12 are expected.

13 (2) The report shall be completed and submitted to the
14 department by March 1, 2007.

15 Section 29. This act shall take effect October 1,
16 1999.

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