

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. 57.071, F.S.; providing criteria
24 under which expert witness fees may be awarded
25 as taxable costs; providing for expedited
26 trials; amending s. 768.77, F.S.; deleting a
27 requirement to itemize future damages on
28 verdict forms; amending s. 768.78, F.S.;
29 conforming provisions relating to alternative
30 methods of payment of damage awards to changes
31 made by the act; correcting a cross reference;

1 creating s. 47.025, F.S.; providing that
2 certain venue provisions in a contract for
3 improvement to real property are void;
4 specifying appropriate venue for actions
5 against resident contractors, subcontractors,
6 sub-subcontractors, and materialmen; requiring
7 the clerk of courts to report certain
8 information on negligence cases to the Office
9 of the State Courts Administrator; amending s.
10 95.031, F.S.; imposing a 12-year statute of
11 repose on actions brought to recover for harm
12 caused by products with a specified expected
13 useful life; exempting certain categories of
14 products from the statute of repose; imposing
15 variable repose periods based on specific
16 warranties by the manufacturer; providing an
17 exception for certain injuries; providing for
18 tolling under particular circumstances;
19 specifying the date by which certain actions
20 must be brought or be otherwise barred by the
21 statute of repose; amending s. 90.407, F.S.;
22 providing limitations on the admissibility of
23 subsequent remedial measures; providing
24 exceptions; creating s. 768.1257, F.S.;
25 requiring the finder of fact, in certain
26 product defect actions, to consider
27 circumstances that existed at the time of
28 manufacture; creating s. 768.1256, F.S.;
29 providing a government rules defense with
30 respect to certain products liability actions;
31 providing for rebuttable presumptions;

1 providing an exception; creating s. 768.096,
2 F.S.; providing an employer with a presumption
3 against negligent hiring under specified
4 conditions in an action for civil damages
5 resulting from an intentional tort committed by
6 an employee; amending s. 768.095, F.S.;
7 revising the conditions under which an employer
8 is immune from civil liability for disclosing
9 information regarding an employee to a
10 prospective employer; creating s. 768.0705,
11 F.S.; providing a presumption against liability
12 for criminal acts for convenience business
13 under specified conditions; amending s.
14 768.075, F.S.; delineating the duty owed to
15 trespassers by a person or organization owning
16 or controlling an interest in real property;
17 providing definitions; providing for the
18 avoidance of liability to discovered and
19 undiscovered trespassers under described
20 circumstances; providing immunity from certain
21 liability arising out of the attempt to commit
22 or the commission of a felony; creating s.
23 768.36, F.S.; prohibiting a plaintiff from
24 recovering damages if plaintiff is more than a
25 specified percentage at fault due to the
26 influence of alcoholic beverages or drugs;
27 creating s. 768.725, F.S.; providing for
28 evidentiary standards for an award of punitive
29 damages; amending s. 768.72, F.S.; revising
30 provisions with respect to claims for punitive
31 damages in civil actions; requiring clear and

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

1 joint and several liability based on the amount
 2 of damages; providing for the allocation of
 3 fault to a nonparty; requiring that such fault
 4 must be proved by a preponderance of the
 5 evidence; amending s. 324.021, F.S.; providing
 6 the lessor of a motor vehicle under certain
 7 rental agreements shall be deemed the owner of
 8 the vehicle for the purpose of determining
 9 liability for the operation of the vehicle
 10 within certain limits; providing for the
 11 liability of the owner of a motor vehicle who
 12 loans the vehicle to certain users; creating s.
 13 768.098, F.S.; limiting the liability of
 14 employers in a joint employment relationship
 15 under specific circumstances; providing
 16 exceptions and limitations; amending s.
 17 400.023, F.S., relating to actions brought on
 18 behalf of nursing home residents; providing
 19 that a party to any such action may not recover
 20 attorney's fees unless parties submit to
 21 mediation; specifying requirements for such
 22 mediation; providing for application; providing
 23 a standard for an award of punitive damages;
 24 amending s. 400.429, F.S.; relating to actions
 25 brought on behalf of assisted living care
 26 facility residents; providing that a party to
 27 any such action may not recover attorney's fees
 28 unless parties submit to mediation; specifying
 29 requirements for such mediation; providing for
 30 application; providing a standard for an award
 31 of punitive damages; amending s. 400.629, F.S.;

1 relating to actions brought on behalf of adult
2 family care home residents; providing that a
3 party to any such action may not recover
4 attorney's fees unless parties submit to
5 mediation; specifying requirements for such
6 mediation; providing for application; providing
7 a standard for an award of punitive damages;
8 requiring the Office of Program Policy Analysis
9 and Government Accountability to contract with
10 an actuarial firm to conduct an actuarial
11 analysis of expected reductions in judgments
12 and related costs resulting from litigation
13 reforms; specifying the basis and due date for
14 the actuarial report; providing a declaration
15 of intent pertaining to the constitutional
16 prerogatives of the judiciary; providing for
17 severability; providing effective dates.

18

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

20

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

23 40.50 Jury duty and instructions in civil cases.--

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

29 (2) In any civil action which the court determines is
30 likely to exceed 5 days, the court shall instruct that the
31 jurors may take notes regarding the evidence and keep the

1 notes to refresh their memory and to use during recesses and
2 deliberations. The court may provide materials suitable for
3 this purpose. The court should emphasize the confidentiality
4 of the notes. After the jury has rendered its verdict, any
5 notes shall be collected by the bailiff or clerk who shall
6 promptly destroy them.

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

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

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

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

3 44.102 Court-ordered mediation.--

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

5 (a) Must, upon request of one party, refer to
6 mediation any filed civil action for monetary damages,
7 provided the requesting party is willing and able to pay the
8 costs of the mediation or the costs can be equitably divided
9 between the parties, unless:

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

12 2. The action is filed for the purpose of collecting a
13 debt.

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

15 4. The action is governed by the Florida Small Claims
16 Rules.

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

19 6. The parties have agreed to binding arbitration.

20 7. The parties have agreed to an expedited trial
21 pursuant to section 6 of this act.

22 8. The parties have agreed to voluntary trial
23 resolution pursuant to s. 44.104.

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

27 (c)(b) In circuits in which a family mediation program
28 has been established and upon a court finding of a dispute,
29 shall refer to mediation all or part of custody, visitation,
30 or other parental responsibility issues as defined in s.
31 61.13. Upon motion or request of a party, a court shall not

1 refer any case to mediation if it finds there has been a
2 history of domestic violence that would compromise the
3 mediation process.

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

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

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

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

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

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 arbitrator 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
24 unsupported claims or defenses; damages for delay of
25 litigation.--

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

1 party's attorney knew or should have known that a claim or
2 defense when initially presented to the court or at any time
3 before trial:

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

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

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

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

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

1 to any request by any other party, was taken primarily for the
2 purpose of unreasonable delay, the court shall award damages
3 to the moving party for its reasonable expenses incurred in
4 obtaining the order, which may include attorney's fees, and
5 other loss resulting from the improper delay.

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

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

18 Section 5. Section 57.071, Florida Statutes, is
19 amended to read:

20 57.071 Costs; what taxable.--

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

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

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

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

31

1 (2) Expert witness fees may not be awarded as taxable
2 costs unless the party retaining the expert witness furnishes
3 each opposing party with a written report signed by the expert
4 witness which summarizes the expert witness's opinions and the
5 factual basis of the opinions, including documentary evidence
6 and the authorities relied upon in reaching the opinions. Such
7 report shall be filed at least 5 days prior to the deposition
8 of the expert or at least 20 days prior to discovery cutoff,
9 whichever is sooner, or as otherwise determined by the court.
10 This subsection does not apply to any action proceeding under
11 the Florida Family Law Rules of Procedure.

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

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

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

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

29 (4) The case may be tried to a jury.
30
31

1 (5) The case may be tried within 30 days after the
2 60-day discovery cutoff, if such schedule would not impose an
3 undue burden on the court calendar.

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

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

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

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

12 (10) The jury may be given "plain language" jury
13 instructions at the beginning of the trial as well as a "plain
14 language" jury verdict form. The parties must agree to the
15 jury instructions and verdict form.

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

20 (12) At trial the parties may use excerpts from
21 depositions, including video depositions, regardless of where
22 the deponent lives or whether the deponent is available to
23 testify.

24 (13) Except as otherwise provided in this section, the
25 Florida Evidence Code and the Florida Rules of Civil Procedure
26 apply.

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

29 Section 7. Section 768.77, Florida Statutes, is
30 amended to read:

31 768.77 Itemized verdict.--

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

6 (1)~~(a)~~ Amounts intended to compensate the claimant for
7 economic losses;

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

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

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

23 Section 8. Paragraph (a) of subsection (1) of section
24 768.78, Florida Statutes, is amended to read:

25 768.78 Alternative methods of payment of damage
26 awards.--

27 (1)(a) In any action to which this part applies in
28 which the court determines that ~~trier of fact makes~~ an award
29 to compensate the claimant includes ~~for~~ future economic losses
30 which exceed \$250,000, payment of amounts intended to
31 compensate the claimant for these losses shall be made by one

1 of the following means, unless an alternative method of
2 payment of damages is provided in this section:

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

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

13 Section 9. Section 47.025, Florida Statutes, is
14 created to read:

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

27 Section 10. Through the state's uniform case reporting
28 system, the clerk of court shall report to the Office of the
29 State Courts Administrator, beginning in 2003, information
30 from each settlement or jury verdict and final judgment in
31 negligence cases as defined in section 768.81(4), Florida

1 Statutes, as the President of the Senate and the Speaker of
2 the House of Representatives deem necessary from time to time.
3 The information shall include, but need not be limited
4 to: the name of each plaintiff and defendant; the verdict;
5 the percentage of fault of each; the amount of economic
6 damages and noneconomic damages awarded to each plaintiff,
7 identifying those damages that are to be paid jointly and
8 severally and by which defendants; and the amount of any
9 punitive damages to be paid by each defendant.

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

12 95.031 Computation of time.--Except as provided in
13 subsection (2) and in s. 95.051 and elsewhere in these
14 statutes, the time within which an action shall be begun under
15 any statute of limitations runs from the time the cause of
16 action accrues.

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

27 (b) An action for products liability under s. 95.11(3)
28 must be begun within the period prescribed in this chapter,
29 with the period running from the date that the facts giving
30 rise to the cause of action were discovered, or should have
31 been discovered with the exercise of due diligence, rather

1 than running from any other date prescribed elsewhere in s.
 2 95.11(3), except as provided within this subsection. Under no
 3 circumstances may a claimant commence an action for products
 4 liability, including a wrongful death action or any other
 5 claim arising from personal injury or property damage caused
 6 by a product, to recover for harm allegedly caused by a
 7 product with an expected useful life of 10 years or less, if
 8 the harm was caused by exposure to or use of the product more
 9 than 12 years after delivery of the product to its first
 10 purchaser or lessee who was not engaged in the business of
 11 selling or leasing the product or of using the product as a
 12 component in the manufacture of another product. All products,
 13 except those included within subparagraph 1. or subparagraph
 14 2., are conclusively presumed to have an expected useful life
 15 of 10 years or less.

16 1. Aircraft used in commercial or contract carrying of
 17 passengers or freight, vessels of more than 100 gross tons,
 18 railroad equipment used in commercial or contract carrying of
 19 passengers or freight, and improvements to real property,
 20 including elevators and escalators, are not subject to the
 21 statute of repose provided within this subsection.

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

1 component in the manufacture of another product, whichever is
2 later.

3 3. With regard to those products listed in
4 subparagraph 1., except for escalators, elevators, and
5 improvements to real property, no action for products
6 liability may be brought more than 20 years after delivery of
7 the product to its first purchaser or lessor who was not
8 engaged in the business of selling or leasing the product or
9 of using the product as a component in the manufacture of
10 another product. However, if the manufacturer specifically
11 warranted, through express representation or labeling, that
12 the product has an expected useful life exceeding 20 years,
13 the repose period shall be the time period warranted in
14 representations or label.

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

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

30 Section 12. (1) The amendments to section 95.031(2),
31 Florida Statutes, made by this act shall apply to any action

1 commenced on or after the effective date of that section,
2 regardless of when the cause of action accrued, except that
3 any action for products liability which would not have been
4 barred under section 95.031(2), Florida Statutes, prior to the
5 amendments to that section made by this act may be commenced
6 before July 1, 2003, and, if it is not commenced by that date
7 and is barred by the amendments to section 95.031(2), Florida
8 Statutes, made by this act, it shall be barred.

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

10 Section 13. 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 injury or harm ~~the event~~ 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 14. 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 15. Section 768.1256, Florida Statutes, is
31 created to read:

1 768.1256 Government rules defense.--

2 (1) In a product liability action brought against a
3 manufacturer or seller for harm allegedly caused by a product,
4 there is a rebuttable presumption that the product is not
5 defective or unreasonably dangerous and the manufacturer or
6 seller is not liable if, at the time the specific unit of the
7 product was sold or delivered to the initial purchaser or
8 user, the aspect of the product that allegedly caused the
9 harm:

10 (a) Complied with federal or state codes, statutes,
11 rules, regulations, or standards relevant to the event causing
12 the death or injury;

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

16 (c) Compliance with the codes, statutes, rules,
17 regulations, or standards is required as a condition for
18 selling or distributing the product.

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

25 (a) Were relevant to the event causing the death or
26 injury;

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

29 (c) Require compliance as a condition for selling or
30 distributing the product.

31

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

4 Section 16. Section 768.096, Florida Statutes, is
5 created to read:

6 768.096 Employer presumption against negligent
7 hiring.--

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

18 (a) Obtaining a criminal background investigation on
19 the prospective employee under subsection (2);

20 (b) Making a reasonable effort to contact references
21 and former employers of the prospective employee concerning
22 the suitability of the prospective employee for employment;

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

31

1 (d) Obtaining, with written authorization from the
2 prospective employee, a check of the driver's license record
3 of the prospective employee if such a check is relevant to the
4 work the employee will be performing and if the record can
5 reasonably be obtained; or

6 (e) Interviewing the prospective employee.

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

12 (3) The election by an employer not to conduct the
13 investigation specified in subsection (1) does not raise any
14 presumption that the employer failed to use reasonable care in
15 hiring an employee.

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

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

1 any civil right of the former or current employee protected
2 under chapter 760.

3 Section 18. Section 768.0705, Florida Statutes, is
4 created to read:

5 768.0705 Limitation on premises liability.--The owner
6 or operator of a convenience business that substantially
7 implements the applicable security measures listed in ss.
8 812.173 and 812.174 shall gain a presumption against liability
9 in connection with criminal acts that occur on the premises
10 and that are committed by third parties who are not employees
11 or agents of the owner or operator of the convenience
12 business.

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

15 768.075 Immunity from liability for injury to
16 trespassers on real property.--

17 (1) A person or organization owning or controlling an
18 interest in real property, or an agent of such person or
19 organization, shall not be held liable for any civil damages
20 for death of or injury or damage to a trespasser upon the
21 property ~~resulting from or arising by reason of the~~
22 ~~trespasser's commission of the offense of trespass as~~
23 ~~described in s. 810.08 or s. 810.09,~~ when such trespasser was
24 under the influence of alcoholic beverages with a
25 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such
26 trespasser was under the influence of any chemical substance
27 set forth in s. 877.111, when such trespasser was illegally
28 under the influence of any substance controlled under chapter
29 893, or if the trespasser is affected by any of the aforesaid
30 substances to the extent that her or his normal faculties are
31 impaired. ~~For the purposes of this section, voluntary~~

1 ~~intoxication or impediment of faculties by use of alcohol or~~
2 ~~any of the aforementioned substances shall not excuse a party~~
3 ~~bringing an action or on whose behalf an action is brought~~
4 ~~from proving the elements of trespass.~~ However, the person or
5 organization owning or controlling the interest in real
6 property shall not be immune from liability if gross
7 negligence or intentional willful and wanton misconduct on the
8 part of such person or organization or agent thereof is a
9 proximate cause of the death of or injury or damage to the
10 trespasser.

11 (2) A person or organization owning or controlling an
12 interest in real property, or an agent of such person or
13 organization, is not liable for any civil damages for the
14 death of or injury or damage to any discovered or undiscovered
15 trespasser, except as provided in paragraphs (3)(a), (b), and
16 (c), and regardless of whether the trespasser was intoxicated
17 or otherwise impaired.

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

19 1. "Invitation" means that the visitor entering the
20 premises has an objectively reasonable belief that he or she
21 has been invited or is otherwise welcome on that portion of
22 the real property where injury occurs.

23 2. "Discovered trespasser" means a person who enters
24 real property without invitation, either express or implied,
25 and whose actual physical presence was detected, within 24
26 hours preceding the accident, by the person or organization
27 owning or controlling an interest in real property or to whose
28 actual physical presence the person or organization owning or
29 controlling an interest in real property was alerted by a
30 reliable source within 24 hours preceding the accident. The
31 status of a person who enters real property shall not be

1 elevated to that of an invitee, unless the person or
2 organization owning or controlling an interest in real
3 property has issued an express invitation to enter the
4 property or has manifested a clear intent to hold the property
5 open to use by persons pursuing purposes such as those pursued
6 by the person whose status is at issue.

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

12 (b) To avoid liability to undiscovered trespassers, a
13 person or organization owning or controlling an interest in
14 real property must refrain from intentional misconduct that
15 proximately causes injury to the undiscovered trespasser, but
16 has no duty to warn of dangerous conditions. To avoid
17 liability to discovered trespassers, a person or organization
18 owning or controlling an interest in real property must
19 refrain from gross negligence or intentional misconduct that
20 proximately causes injury to the discovered trespasser, and
21 must warn the trespasser of dangerous conditions that are
22 known to the person or organization owning or controlling an
23 interest in real property but that are not readily observable
24 by others.

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

28 (4) A person or organization owning or controlling an
29 interest in real property, or an agent of such person or
30 organization, shall not be held liable for negligence that
31 results in the death of, injury to, or damage to a person who

1 is attempting to commit a felony or who is engaged in the
2 commission of a felony on the property.

3 Section 20. Section 768.36, Florida Statutes, is
4 created to read:

5 768.36 Alcohol or drug defense.--

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

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

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

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

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

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

30 Section 21. Section 768.725, Florida Statutes, is
31 created to read:

1 768.725 Punitive damages; burden of proof.--In all
2 civil actions, the plaintiff must establish at trial, by clear
3 and convincing evidence, its entitlement to an award of
4 punitive damages. The "greater weight of the evidence" burden
5 of proof applies to a determination of the amount of damages.

6 Section 22. Section 768.72, Florida Statutes, is
7 amended to read:

8 768.72 Pleading in civil actions; claim for punitive
9 damages.--

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

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

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

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

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

10 (a) The employer, principal, corporation, or other
11 legal entity actively and knowingly participated in such
12 conduct;

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

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

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

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

25 768.73 Punitive damages; limitation.--

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

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

31

1 ~~2. The sum of \$500,000.~~~~In any civil action based on~~
2 ~~negligence, strict liability, products liability, misconduct~~
3 ~~in commercial transactions, professional liability, or breach~~
4 ~~of warranty, and involving willful, wanton, or gross~~
5 ~~misconduct, the judgment for the total amount of punitive~~
6 ~~damages awarded to a claimant may not exceed three times the~~
7 ~~amount of compensatory damages awarded to each person entitled~~
8 ~~thereto by the trier of fact, except as provided in paragraph~~
9 ~~(b). However, this subsection does not apply to any class~~
10 ~~action.~~

11 (b) Where the fact finder determines that the wrongful
12 conduct proven under this section was motivated solely by
13 unreasonable financial gain and determines that the
14 unreasonably dangerous nature of the conduct, together with
15 the high likelihood of injury resulting from the conduct, were
16 actually known by the managing agent, director, officer, or
17 other person responsible for making policy decisions on behalf
18 of the defendant, it may award an amount of punitive damages
19 not to exceed the greater of:

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

23 2. ~~The sum of \$2,000,000.~~~~If any award for punitive~~
24 ~~damages exceeds the limitation specified in paragraph (a), the~~
25 ~~award is presumed to be excessive and the defendant is~~
26 ~~entitled to remittitur of the amount in excess of the~~
27 ~~limitation unless the claimant demonstrates to the court by~~
28 ~~clear and convincing evidence that the award is not excessive~~
29 ~~in light of the facts and circumstances which were presented~~
30 ~~to the trier of fact.~~

31

1 (c) Where the fact finder determines that at the time
2 of injury the defendant had a specific intent to harm the
3 claimant and determines that the defendant's conduct did in
4 fact harm the claimant, there shall be no cap on punitive
5 damages.

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

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

23 (b) In subsequent civil actions involving the same act
24 or single course of conduct for which punitive damages have
25 already been awarded, if the court determines by clear and
26 convincing evidence that the amount of prior punitive damages
27 awarded was insufficient to punish that defendant's behavior,
28 the court may permit a jury to consider an award of subsequent
29 punitive damages. In permitting a jury to consider awarding
30 subsequent punitive damages, the court shall make specific
31 findings of fact in the record to support its conclusion. In

1 addition, the court may consider whether the defendant's act
2 or course of conduct has ceased. Any subsequent punitive
3 damage awards must be reduced by the amount of any earlier
4 punitive damage awards rendered in state or federal court.

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

11 (4)(2) The jury may neither be instructed nor informed
12 as to the provisions of this section.

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

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

18 768.735 Punitive damages; exceptions; limitation.--

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

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

1 as provided in paragraph (b). This subsection does not apply
2 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 which 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. 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 do not apply to any
21 defendant who, at the time of the act or omission for which
22 punitive damages are sought, was under the influence of any
23 alcoholic beverage or drug to the extent that the defendant's
24 normal faculties were impaired, or who had a blood or breath
25 alcohol level of 0.08 percent or higher.

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

28 768.737 Punitive damages; application in
29 arbitration.--Where punitive damages are available as a remedy
30 in an arbitration proceeding, ss. 768.72, 768.725, and 768.73
31 apply. When an award of punitive damages is made in an

1 arbitration proceeding, the arbitrator who renders the award
2 must issue a written opinion setting forth the conduct which
3 gave rise to the award and how the arbitrator applied the
4 standards in s. 768.72 to such conduct.

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

7 768.81 Comparative fault.--

8 (3) APPORTIONMENT OF DAMAGES.--In cases to which this
9 section applies, the court shall enter judgment against each
10 party liable on the basis of such party's percentage of fault
11 and not on the basis of the doctrine of joint and several
12 liability, except as provided in paragraphs (a), (b), and (c):

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

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

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

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

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

28
29 For any defendant under subparagraph 2., subparagraph 3., or
30 subparagraph 4., the amount of economic damages calculated
31 under joint and several liability shall be in addition to the

1 amount of economic and noneconomic damages already apportioned
2 to that defendant based on that defendant's percentage of
3 fault.

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

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

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

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

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

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

26 (c) With respect to any defendant whose percentage of
27 fault is less than the fault of a particular plaintiff, the
28 doctrine of joint and several liability shall not apply to any
29 damages imposed against the defendant. ~~provided that with~~
30 ~~respect to any party whose percentage of fault equals or~~
31 ~~exceeds that of a particular claimant, the court shall enter~~

1 ~~judgment with respect to economic damages against that party~~
2 ~~on the basis of the doctrine of joint and several liability.~~

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

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

16 (4) APPLICABILITY.--

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

26 (b) This section does not apply to any action brought
27 by any person to recover actual economic damages resulting
28 from pollution, to any action based upon an intentional tort,
29 or to any cause of action as to which application of the
30 doctrine of joint and several liability is specifically

31

1 provided by chapter 403, chapter 498, chapter 517, chapter
2 542, or chapter 895.

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

8 (5)~~(6)~~ Notwithstanding anything in law to the
9 contrary, in an action for damages for personal injury or
10 wrongful death arising out of medical malpractice, whether in
11 contract or tort, when an apportionment of damages pursuant to
12 this section is attributed to a teaching hospital as defined
13 in s. 408.07, the court shall enter judgment against the
14 teaching hospital on the basis of such party's percentage of
15 fault and not on the basis of the doctrine of joint and
16 several liability.

17 Section 28. Effective July 1, 1999, paragraph (b) of
18 subsection (9) of section 324.021, Florida Statutes, is
19 amended, and paragraph (c) is added to that subsection, to
20 read:

21 324.021 Definitions; minimum insurance required.--The
22 following words and phrases when used in this chapter shall,
23 for the purpose of this chapter, have the meanings
24 respectively ascribed to them in this section, except in those
25 instances where the context clearly indicates a different
26 meaning:

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

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

30 1. The lessor, under an agreement to lease a motor
31 vehicle for 1 year or longer which requires the lessee to

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

16 2. The lessor, under an agreement to rent or lease a
 17 motor vehicle for a period of less than 1 year, shall be
 18 deemed the owner of the motor vehicle for the purpose of
 19 determining liability for the operation of the vehicle or the
 20 acts of the operator in connection therewith only up to
 21 \$100,000 per person and up to \$300,000 per incident for bodily
 22 injury and up to \$50,000 for property damage. If the lessee or
 23 the operator of the motor vehicle is uninsured or has any
 24 insurance with limits less than \$500,000 combined property
 25 damage and bodily injury liability, the lessor shall be liable
 26 for up to an additional \$500,000 in economic damages only
 27 arising out of the use of the motor vehicle. The additional
 28 specified liability of the lessor for economic damages shall
 29 be reduced by amounts actually recovered from the lessee, from
 30 the operator, and from any insurance or self-insurance
 31 covering the lessee or operator. Nothing in this subparagraph

1 shall be construed to affect the liability of the lessor for
2 its own negligence.

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

19 (c) Application.--

20 1. The limits on liability in subparagraphs (b)2. and
21 (b)3. do not apply to an owner of motor vehicles that are used
22 for commercial activity in the owner's ordinary course of
23 business, other than a rental company that rents or leases
24 motor vehicles. For purposes of this paragraph, the term
25 "rental company" includes only an entity that is engaged in
26 the business of renting or leasing motor vehicles to the
27 general public and that rents or leases a majority of its
28 motor vehicles to persons with no direct or indirect
29 affiliation with the rental company. The term also includes a
30 motor vehicle dealer that provides temporary replacement
31 vehicles to its customers for up to 10 days.

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

11 a. The lessee indicates in writing that the vehicle
12 will not be used to transport materials found to be hazardous
13 for the purposes of the Hazardous Materials Transportation
14 Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et
15 seq.; or

16 b. The lessee or other operator of the commercial
17 motor vehicle has in effect insurance with limits of at least
18 \$5,000,000 combined property damage and bodily injury
19 liability.

20 Section 29. Section 768.098, Florida Statutes, is
21 created to read:

22 768.098 Limitation of liability for employee
23 leasing.--

24 (1) An employer in a joint employment relationship
25 pursuant to s. 468.520 shall not be liable for the tortious
26 actions of another employer in that relationship, or for the
27 tortious actions of any jointly employed employee under that
28 relationship, provided that:

29 (a) The employer seeking to avoid liability pursuant
30 to this section did not authorize or direct the tortious
31 action;

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

4 (c) The employer seeking to avoid liability pursuant
5 to this section did not have actual control over the
6 day-to-day job duties of the jointly employed employee who has
7 committed a tortious act nor actual control over the portion
8 of a job site at which or from which the tortious conduct
9 arose or at which and from which a jointly employed employee
10 worked, and that said control was assigned to the other
11 employer under the contract;

12 (d) The employer seeking to avoid liability pursuant
13 to this section is expressly absolved in the written contract
14 forming the joint employment relationship of control over the
15 day-to-day job duties of the jointly employed employee who has
16 committed a tortious act, and actual control over the portion
17 of the job site at which or from which the tortious conduct
18 arose or at which and from which the jointly employed employee
19 worked, and that said control was assigned to the other
20 employer under the contract; and

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

31

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
10 day-to-day job duties of the jointly employed employee and who
11 has actual control over the portion of a job site at which or
12 from which the employee is employed, which arises from s.
13 768.096.

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

16 400.023 Civil enforcement.--

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

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

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

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

31 b. Set a date for mediation.

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

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

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

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

15 b. Each party shall mediate in good faith.

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

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

30
31

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

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

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

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

16 Section 31. Section 400.429, Florida statutes, is
17 amended to read:

18 400.429 Civil actions to enforce rights.--

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

1 plaintiff who prevails in any such action may be entitled to
2 recover reasonable attorney's fees, costs of the action, and
3 damages, unless the court finds that the plaintiff has acted
4 in bad faith, with malicious purpose, and that there was a
5 complete absence of a justiciable issue of either law or fact.
6 A prevailing defendant may be entitled to recover reasonable
7 attorney's fees pursuant to s. 57.105. The remedies provided
8 in this section are in addition to and cumulative with other
9 legal and administrative remedies available to a resident or
10 to the agency.

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

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

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

21 a. Agree on a mediator. If the parties cannot agree on
22 a mediator, the defendant shall immediately notify the court,
23 which shall appoint a mediator within 10 days after such
24 notice.

25 b. Set a date for mediation.

26 c. Prepare an order for the court that identifies the
27 mediator, the scheduled date of the mediation, and other terms
28 of the mediation. Absent any disagreement between the parties,
29 the court may issue the order for the mediation submitted by
30 the parties without a hearing.

31

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

5 3. The mediation shall be conducted in the following
6 manner:

7 a. Each party shall ensure that all persons necessary
8 for complete settlement authority are present at the
9 mediation.

10 b. Each party shall mediate in good faith.

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

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

25 (c) This subsection applies only to claims for
26 liability and damages and does not apply to actions for
27 injunctive relief.

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

30 (3) Discovery of financial information for the purpose
31 of determining the value of punitive damages may not be had

1 unless the plaintiff shows the court by proffer or evidence in
2 the record that a reasonable basis exists to support a claim
3 for punitive damages.

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

9 Section 32. Section 400.629, Florida Statutes, 1998
10 Supplement, is amended to read:

11 400.629 Civil actions to enforce rights.--

12 (1) Any person or resident whose rights as specified
13 in this part are violated has a cause of action against any
14 adult family-care home, provider, or staff responsible for the
15 violation. The action may be brought by the resident or the
16 resident's guardian, or by a person or organization acting on
17 behalf of a resident with the consent of the resident or the
18 resident's guardian, to enforce the right. The action may be
19 brought in any court of competent jurisdiction to enforce such
20 rights and to recover actual damages, and punitive damages
21 when malicious, wanton, or willful disregard of the rights of
22 others can be shown. Any plaintiff who prevails in any such
23 action is entitled to recover reasonable attorney's fees,
24 costs of the action, and damages, unless the court finds that
25 the plaintiff has acted in bad faith or with malicious purpose
26 or that there was a complete absence of a justiciable issue of
27 either law or fact. A prevailing defendant is entitled to
28 recover reasonable attorney's fees pursuant to s. 57.105. The
29 remedies provided in this section are in addition to other
30 legal and administrative remedies available to a resident or
31 to the agency.

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

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

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

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

15 b. Set a date for mediation.

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

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

25 3. The mediation shall be conducted in the following
26 manner:

27 a. Each party shall ensure that all persons necessary
28 for complete settlement authority are present at the
29 mediation.

30 b. Each party shall mediate in good faith.

31

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

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

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

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

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

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

30 Section 33. (1) The Office of Program Policy Analysis
31 and Government 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 Office of Program Policy Analysis and Government
 15 Accountability by March 1, 2007.

16 Section 34. It is the intent of this act and the
 17 Legislature to accord the utmost comity and respect to the
 18 constitutional prerogatives of Florida's judiciary, and
 19 nothing in this act should be construed as any effort to
 20 impinge upon those prerogatives. To that end, should any court
 21 of competent jurisdiction enter a final judgment concluding or
 22 declaring that any provision of this act improperly encroaches
 23 upon the authority of the Florida Supreme Court to determine
 24 the rules of practice and procedure in Florida courts, the
 25 Legislature hereby declares its intent that any such provision
 26 be construed as a request for rule change pursuant to s. 2,
 27 Art. 5 of the State Constitution and not as a mandatory
 28 legislative directive.

29 Section 35. If any provision of this act or the
 30 application thereof to any person or circumstance is held
 31 invalid, the invalidity does not affect other provisions or

1 applications of the act which can be given effect without the
2 invalid provision or application, and to this end the
3 provisions of this act are declared severable.

4 Section 36. Except as otherwise provided herein, this
5 act shall take effect October 1, 1999.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31