

141-482AX-99

Bill No. HB 775e1

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Cosgrove offered the following Substitute Amendment for Amendment (832329) :

Substitute Amendment to Amendment (832329) (with title amendment)

Remove from the bill: Everything after the enacting clause and insert in lieu thereof:

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

40.50 Jury duty and instructions in civil cases.--
(1) In any civil action immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses, and the elementary legal principles that will govern the proceeding as provided in this section.

(2) The court shall instruct that the jurors may take notes regarding the evidence and keep the notes for the purpose of refreshing their memory for use during recesses and deliberations. The court may provide materials suitable for

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

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

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

10 (b) Jurors' notes.

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

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

15 (e) A glossary of technical terms.

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

17

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

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

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

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

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

22 Section 2. Section 44.102, Florida Statutes, is
 23 amended to read:

24 44.102 Court-ordered mediation.--

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

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

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

31 1. The action is a landlord and tenant dispute that

1 does not include a claim for personal injury.

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

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

5 4. The action is governed by the Florida Small Claims
6 Rules.

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

9 6. The parties have agreed to binding arbitration.

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

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

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

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

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1 requirements of chapter 119 and shall be confidential and
2 inadmissible as evidence in any subsequent legal proceeding,
3 unless all parties agree otherwise.

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

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

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

30 (b) Nonvolunteer mediators shall be compensated
31 according to rules adopted by the Supreme Court. If a

1 mediation program is funded pursuant to s. 44.108, a mediator
2 may be compensated by the county or by the parties. When a
3 party has been declared indigent or insolvent, that party's
4 pro rata share of a mediator's compensation shall be paid by
5 the county at the rate set by administrative order of the
6 chief judge of the circuit.

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

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

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

21 Section 3. Section 44.1051, Florida Statutes, is
22 created to read:

23 44.1051 Voluntary trial resolution.--

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

29 (2) If the parties have entered into an agreement that
30 provides for a method for appointment of a member of The
31 Florida Bar in good standing for more than 5 years to act as

1 trial resolution judge, the court shall proceed with the
2 appointment as prescribed.

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

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

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

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

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

30 (8) The hearing shall be conducted by the trial
31 resolution judge, who may determine any question and render a

1 final decision.

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

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

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

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

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

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

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 the time necessitated by the conduct
7 in question.

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

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

22 Section 5. Subsections (3), (5), and (7) of section
23 768.79, Florida Statutes, are amended to read:

24 768.79 Offer of judgment and demand for judgment.--

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

1 the offer as the offer applies to such party.

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

7 (7)(a) If a party is entitled to costs and fees
8 pursuant to the provisions of this section, the court may, in
9 its discretion, determine that an offer was 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 entitlement to and
13 reasonableness of an award of attorney's fees pursuant to this
14 section, the court shall consider, along with all other
15 relevant criteria, the 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 proposal was reasonably rejected.

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

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

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

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 shall not be awarded as
15 taxable costs unless:

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

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

1 cut-off, 45 days prior to the trial, or as otherwise
2 determined by the court.

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

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

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

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

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

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

23 (5) The case must be tried within 30 days after the
24 60-day discovery cut-off.

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

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

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

30 (9) The defendant will have 3 hours to present its
31 case, including its opening, all of its testimony and

1 evidence, and its closing.

2 (10) The jury will be given "plain language" jury
3 instructions at the beginning of the trial as well as a "plain
4 language" jury verdict form. The jury instructions and verdict
5 form must be agreed to by the parties.

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

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

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

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

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

19 768.77 Itemized verdict.--

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

25 (1)~~(a)~~ Amounts intended to compensate the claimant for
26 economic losses;

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

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

31 ~~(2) Each category of damages, other than punitive~~

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

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

15 768.78 Alternative methods of payment of damage
16 awards.--

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

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

1 (b) Once a structured settlement is agreed to by the
2 parties, the defendant or the defendant's liability carrier
3 may not withdraw from the agreement because of the plaintiff's
4 choice of third-party assignee.

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

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

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

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

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

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

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

27 2. Subject to the provisions of this subsection, the
28 court shall, at the request of either party, unless the court
29 determines that manifest injustice would result to any party,
30 enter a judgment ordering future economic damages, as itemized
31 pursuant to s. 768.77(1)~~(a)~~, in excess of \$250,000 to be paid

1 in whole or in part by periodic payments rather than by a
2 lump-sum payment.

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

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

1 or be subject to cancellation unless at least 60 days' advance
2 written notice is filed with the court and the judgment
3 creditor. Upon termination of periodic payments, the court
4 shall order the return of the security, or so much as remains,
5 to the judgment debtor.

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

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

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

16 c. Enter other orders or sanctions as appropriate to
17 protect the judgment creditor.

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

23 a. Order additional security;

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

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

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

30 (e) The judgment providing for payment of future
31 damages by periodic payments shall specify the recipient or

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1 recipients of the payments, the dollar amounts of the
2 payments, the interval between payments, and the number of
3 payments or the period of time over which payments shall be
4 made. Periodic payments shall be subject to modification only
5 as specified in this subsection.

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

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

24 Section 10. Section 47.025, Florida Statutes, is
25 created to read:

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

1 venue provision in the contract is void under this section,
2 any legal action arising out of that contract shall be brought
3 only in this state in the county where the defendant resides,
4 where the cause of action accrued, or where the property in
5 litigation is located, unless, after the dispute arises, the
6 parties stipulate to another venue.

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

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

24 768.81 Comparative fault.--

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

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

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

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

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

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

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

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

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

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

21 400.023 Civil enforcement.--

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

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

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

1 a. Agree on a mediator. If the parties cannot agree on
2 a mediator, the defendant shall immediately notify the court,
3 which shall appoint a mediator within 10 days after such
4 notice.

5 b. Set a date for mediation.

6 c. Prepare an order for the court that identifies the
7 mediator, the scheduled date of the mediation, and other terms
8 of the mediation. Absent any disagreement between the parties,
9 the court may issue the order for the mediation submitted by
10 the parties without a hearing.

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

15 3. The mediation shall be conducted in the following
16 manner:

17 a. Each party shall ensure that all persons necessary
18 for complete settlement authority are present at the
19 mediation.

20 b. Each party shall mediate in good faith.

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

25 (b) If the parties do not settle the case pursuant to
26 mediation, the last offer of the defendant made at mediation
27 shall be recorded by the mediator in a written report that
28 states the amount of the offer, the date the offer was made in
29 writing, and the date the offer was rejected. If the matter
30 subsequently proceeds to trial under this section and the
31 plaintiff prevails but is awarded an amount in damages,

1 exclusive of attorney's fees, which is equal to or less than
2 the last offer made by the defendant at mediation, the
3 plaintiff is not entitled to recover any attorney's fees.

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

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

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

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

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

29 Section 16. Section 768.1256, Florida Statutes, is
30 created to read:

31 768.1256 Government rules defense.--

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

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

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

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

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

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

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

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

30 (3) This section does not apply to an action brought
31 for harm allegedly caused by a drug that is ordered off the

1 market or seized by the Federal Food and Drug Administration.

2 Section 17. Section 768.096, Florida Statutes, is
3 created to read:

4 768.096 Employer presumption against negligent
5 hiring.--

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

16 (a) Obtaining a criminal background investigation on
17 the prospective employee under subsection (2);

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

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

29 (d) Obtaining, with written authorization from the
30 prospective employee, a check of the driver's license record
31 of the prospective employee if such a check is relevant to the

1 work the employee will be performing and if the record can
2 reasonably be obtained; and

3 (e) Interviewing the prospective employee.

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

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

13 Section 18. Section 768.095, Florida Statutes, is
14 amended to read:

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

31 Section 19. Section 768.071, Florida Statutes, is

1 created to read:

2 768.071 Business premises liability; areas outside
3 enclosed buildings.--Notwithstanding any other provision of
4 law to the contrary, a person or organization owning or
5 controlling an interest in a business premises shall be liable
6 for civil damages for the death of, or injury or damage to, an
7 invitee or guest caused by a criminal act committed by a
8 person who is not an employee or agent of the business and
9 occurring on part of the business premises that is not within
10 an enclosed building only if the person or organization owning
11 or controlling an interest in the business premises
12 disregarded his or her duty to protect invitees or guests on
13 the property. For purposes of this section a person or
14 organization owning or controlling an interest in a business
15 premises may be found to have disregarded his or her duty to
16 protect invitees or guests only if the person or organization
17 owning or controlling an interest in the business premises
18 knew that a criminal act was likely to occur on the portions
19 of the property that are not within an enclosed building and
20 failed to take any corrective action which could have
21 prevented the injury.

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

24 768.075 Immunity from liability for injury to
25 trespassers on real property.--

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

1 ~~described in s. 810.08 or s. 810.09,~~ when such trespasser was
2 under the influence of alcoholic beverages with a
3 blood-alcohol level of 0.08 ~~0.10~~ percent or higher, when such
4 trespasser was under the influence of any chemical substance
5 set forth in s. 877.111, when such trespasser was illegally
6 under the influence of any substance controlled under chapter
7 893, or if the trespasser is affected by any of the aforesaid
8 substances to the extent that her or his normal faculties are
9 impaired. ~~For the purposes of this section, voluntary~~
10 ~~intoxication or impediment of faculties by use of alcohol or~~
11 ~~any of the aforementioned substances shall not excuse a party~~
12 ~~bringing an action or on whose behalf an action is brought~~
13 ~~from proving the elements of trespass.~~ However, the person or
14 organization owning or controlling the interest in real
15 property shall not be immune from liability if gross
16 negligence or intentional willful and wanton misconduct on the
17 part of such person or organization or agent thereof is a
18 proximate cause of the death of or injury or damage to the
19 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, is not liable for any civil damages for the
23 death of or injury or damage to any discovered or undiscovered
24 trespasser, except as provided in paragraphs (3)(a), (b), and
25 (c), and regardless of whether the trespasser was intoxicated
26 or otherwise impaired.

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

28 1. "Invitation" means that the visitor entering the
29 premises has an objectively reasonable belief that he or she
30 has been invited or is otherwise welcome on that portion of
31 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 the
13 property or has manifested a clear intent to hold the property
14 open to use by persons pursuing purposes such as those pursued
15 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) To avoid liability to undiscovered trespassers, a
22 person or organization owning or controlling an interest in
23 real property must refrain from intentional misconduct, but
24 has no duty to warn of dangerous conditions. To avoid
25 liability to discovered trespassers, a person or organization
26 owning or controlling an interest in real property must
27 refrain from gross negligence or intentional misconduct, and
28 must warn the trespasser of dangerous conditions that are
29 known to the person or organization owning or controlling an
30 interest in real property but that are not readily observable
31 by others.

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

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

10 Section 21. Section 768.36, Florida Statutes, is
11 created to read:

12 768.36 Alcohol or drug defense.--

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

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

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

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

30 (a) The plaintiff was under the influence of any
31 alcoholic beverage or drug to the extent that the plaintiff's

1 normal faculties were impaired or the plaintiff had a blood or
2 breath alcohol level of 0.08 percent or higher; and

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

6 Section 22. Section 768.098, Florida Statutes, is
7 created to read:

8 768.098 Limitation of liability for employee
9 leasing.--

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

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

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

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

29 (d) The employer seeking to avoid liability pursuant
30 to this section is expressly absolved in the written contract
31 forming the joint employment relationship of control over the

1 day to day job duties of the jointly employed employee who has
2 committed a tortious act, and of the portion of the job site
3 at which or from which the tortious conduct arose or at which
4 and from which the jointly employed employee worked, and that
5 said control was assigned to the other employer under the
6 contract; and

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

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

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

29 Section 23. Section 768.725, Florida Statutes, is
30 created to read:

31 768.725 Punitive damages; burden of proof.--In all

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

5 Section 24. Section 768.72, Florida Statutes, is
6 amended to read:

7 768.72 Pleading in civil actions; claim for punitive
8 damages.--

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

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

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

31 (b) "Gross negligence" means that the defendant's

1 conduct was so reckless or wanting in care that it constituted
2 a conscious disregard or indifference to the life, safety, or
3 rights of persons exposed to such conduct.

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

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

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

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

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

23 Section 25. Section 768.73, Florida Statutes, is
24 amended to read:

25 768.73 Punitive damages; limitation.--

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

1 claimant may not exceed three times the amount of compensatory
2 damages or \$250,000, whichever is higher, except as provided
3 in paragraph (b).~~based on negligence, strict liability,~~
4 ~~products liability, misconduct in commercial transactions,~~
5 ~~professional liability, or breach of warranty, and involving~~
6 ~~willful, wanton, or gross misconduct, the judgment for the~~
7 ~~total amount of punitive damages awarded to a claimant may not~~
8 ~~exceed three times the amount of compensatory damages awarded~~
9 ~~to each person entitled thereto by the trier of fact, except~~
10 ~~as provided in paragraph (b). However, this subsection does~~
11 ~~not apply to any class action.~~

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

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

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

1 the claimant seeks compensatory damages. For purposes of a
2 civil action, the term "the same act or single course of
3 conduct" includes acts resulting in the same manufacturing
4 defects, acts resulting in the same defects in design, or
5 failure to warn of the same hazards, with respect to similar
6 units of a product.

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

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

26 (4)(2) The jury may neither be instructed nor informed
27 as to the provisions of this section.

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

1 Section 26. Section 768.735, Florida Statutes, is
2 created to read:

3 768.735 Punitive damages; exceptions; limitation.--

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

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

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

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

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

1 Section 27. Section 768.736, Florida Statutes, is
2 created to read:

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

10 Section 28. Paragraph (b) of subsection (9) of section
11 324.021, Florida Statutes, is amended, and paragraph (c) is
12 added to that subsection, to read:

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

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

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

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

1 paragraph shall be applicable so long as the insurance meeting
2 these requirements is in effect. The insurance meeting such
3 requirements may be obtained by the lessor or lessee,
4 provided, if such insurance is obtained by the lessor, the
5 combined coverage for bodily injury liability and property
6 damage liability shall contain limits of not less than \$1
7 million and may be provided by a lessor's blanket policy.

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

26 3. The owner who is a natural person and loans a motor
27 vehicle to any permissive user shall be liable for the
28 operation of the vehicle or the acts of the operator in
29 connection therewith only up to \$100,000 per person and up to
30 \$300,000 per incident for bodily injury and up to \$50,000 for
31 property damage. If the permissive user of the motor vehicle

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

11 (c) Application.--The limits on liability in
12 subparagraphs (b)2. and 3. do not apply to an owner of motor
13 vehicles that are used for commercial activity in the owner's
14 ordinary course of business, other than a rental company that
15 rents or leases motor vehicles. For purposes of this
16 paragraph, the term "rental company" includes only an entity
17 that is engaged in the business of renting or leasing motor
18 vehicles to the general public and that rents or leases a
19 majority of its motor vehicles to persons with no direct or
20 indirect affiliation with the rental company. The term also
21 includes a motor vehicle dealer that provides temporary
22 replacement vehicles to its customers for up to 10 days.
23 Furthermore, the limits on liability in subparagraphs (b)2.
24 and 3. do not apply to a motor vehicle that has a gross
25 vehicle weight of greater than 26,000 pounds or any vehicle
26 designed to transport 16 or more passengers including the
27 driver. Furthermore, the limits on liability in subparagraphs
28 (b)2. and 3. do not apply to a motor vehicle that is used in
29 the transportation of materials found to be hazardous for the
30 purposes of the Hazardous Materials Transportation Act, as
31 amended (49 U.S.C. ss. 1801 et seq.), and that is required

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Bill No. HB 775e1Amendment No. 1 (for drafter's use only)

1 pursuant to such act to carry placards warning others of the
2 hazardous cargo.

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

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

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

20 (b) An action for products liability under s. 95.11(3)
21 must be begun within the period prescribed in this chapter,
22 with the period running from the date that the facts giving
23 rise to the cause of action were discovered, or should have
24 been discovered with the exercise of due diligence, rather
25 than running from any other date prescribed elsewhere in s.
26 95.11(3), but in no event may an action for products liability
27 under s. 95.11(3) be commenced unless the complaint is served
28 and filed within 18 years after the date of delivery of the
29 product to its first purchaser or lessee who was not engaged
30 in the business of selling or leasing the product or of using
31 the product as a component in the manufacture of another

1 product, regardless of the date that the defect in the product
 2 was or should have been discovered. However, the 18-year
 3 limitation on filing an action for products liability does not
 4 apply if the manufacturer knew of a defect in the product and
 5 concealed or attempted to conceal this defect. In addition,
 6 the 18-year limitation does not apply if the claimant was
 7 exposed to or used a product capable of causing a latent
 8 disease and an injury caused by such exposure or use did not
 9 manifest itself until after the 18-year period. The provisions
 10 of this paragraph shall not apply to any aircraft which, at
 11 the time of the accident, was engaged in scheduled
 12 passenger-carrying operations.

13 Section 30. Any action for products liability which
 14 would not have been barred under section 95.031(2), Florida
 15 Statutes, prior to the amendments to that section made by this
 16 act may be commenced before July 1, 2003, and, if it is not
 17 commenced by that date and is barred by the amendments to
 18 section 95.031(2), Florida Statutes, made by this act, it
 19 shall be barred.

20 Section 31. If any provision of this act or the
 21 application thereof to any person or circumstance is held
 22 invalid, the invalidity does not affect other provisions or
 23 applications of the act which can be given effect without the
 24 invalid provision or application, and to this end the
 25 provisions of this act are declared severable.

26 Section 32. This act shall take effect October 1,
 27 1999.

28
 29
 30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

1 On page 1,
2 remove from the title of the bill: everything before the
3 enacting clause

4
5 and insert in lieu thereof:

6 A bill to be entitled
7 An act relating to civil actions; creating s.
8 40.50, F.S.; providing for instructions to
9 juries after the jury is sworn in; providing
10 for the taking of notes under certain
11 circumstances; providing for notebooks;
12 providing for written questions; providing for
13 final instructions; amending s. 44.102, F.S.;
14 requiring that the court require mediation in
15 certain actions for monetary damages; creating
16 s. 44.1051, F.S.; providing for voluntary trial
17 resolution; providing for the appointment of a
18 trial resolution judge; providing for
19 compensation; providing for fees; providing for
20 the tolling of applicable statutes of
21 limitation; providing for powers of trial
22 resolution judges; providing for hearings and
23 evidence; providing for appeal; providing for
24 application; amending s. 57.105, F.S.; revising
25 conditions for award of attorney's fees for
26 presenting unsupported claims or defenses;
27 authorizing damage awards against a party for
28 unreasonable delay of litigation; authorizing
29 the court to impose additional sanctions;
30 amending s. 768.79, F.S.; providing for the
31 applicability of offers of judgment and demand

1 of judgment in cases involving multiple
2 plaintiffs; providing that subsequent offers
3 shall void previous offers; providing that
4 prior to awarding costs and fees the court
5 shall consider whether the proposal was
6 reasonably rejected; amending s. 57.071, F.S.;
7 providing criteria under which expert witness
8 fees may be awarded as taxable costs; providing
9 for expedited trials; amending s. 768.77, F.S.;
10 deleting a requirement to itemize future
11 damages on verdict forms; amending s. 768.78,
12 F.S.; providing for proposals for structured
13 settlements; requiring structured-settlement
14 discussion in settlement negotiations;
15 requiring assignment of liability for payment
16 to a third-party assignee selected by the
17 plaintiff; granting the plaintiff the right to
18 select a settlement broker; providing for
19 findings in orders approving or adopting a
20 settlement; conforming provisions relating to
21 alternative methods of payment of damage awards
22 to changes made by the act; correcting a
23 cross-reference; creating s. 47.025, F.S.;
24 providing that certain venue provisions in a
25 contract for improvement to real property are
26 void; specifying appropriate venue for actions
27 against resident contractors, subcontractors,
28 sub-subcontractors, and materialmen; requiring
29 the clerk of court to report certain
30 information on negligence cases to the Office
31 of the State Courts Administrator; amending s.

1 768.81, F.S.; providing for the apportionment
2 of damages on the basis of joint and several
3 liability when a party's fault exceeds a
4 certain percentage; repealing s. 768.81(5),
5 F.S.; relating to the applicability of joint
6 and several liability to actions in which the
7 total amount of damages does not exceed a
8 specified amount; requiring the Department of
9 Insurance to contract with an actuarial firm to
10 conduct an actuarial analysis of expected
11 reductions in judgments and related costs
12 resulting from litigation reforms; specifying
13 the basis and due date for the actuarial
14 report; providing for a review of rate filings
15 by certain types of insurers after a specified
16 date; providing that such provisions do not
17 limit the refund of excessive profits by
18 certain insurers; creating s. 768.1256, F.S.;
19 providing a government rules defense with
20 respect to certain products liability actions;
21 providing for rebuttable presumptions;
22 providing an exception; amending s. 400.023,
23 F.S., relating to actions brought on behalf of
24 nursing home residents; providing that a party
25 to any such action may not recover attorney's
26 fees unless parties submit to mediation;
27 specifying requirements for such mediation;
28 providing for application; providing a standard
29 for any award of punitive damages; increasing
30 minimum financial responsibility requirements
31 for physicians and osteopathic physicians and

1 eliminating an alternative method of satisfying
2 financial responsibility requirements for
3 physicians and osteopathic physicians with
4 hospital staff privileges; creating s. 768.096,
5 F.S.; providing an employer with a presumption
6 against negligent hiring under specified
7 conditions in an action for civil damages
8 resulting from an intentional tort committed by
9 an employee; amending s. 768.095, F.S.;
10 revising the conditions under which an employer
11 is immune from civil liability for disclosing
12 information regarding an employee to a
13 prospective employer; creating s. 768.071,
14 F.S.; providing limitations on premises
15 liability for a person or organization owning
16 or controlling an interest in a business
17 premises; amending s. 768.075, F.S.; modifying
18 the conditions under which a person or
19 organization owning or controlling an interest
20 in real property is liable for a trespasser's
21 injury or death; providing definitions;
22 providing for the avoidance of liability to
23 discovered and undiscovered trespassers under
24 described circumstances; providing immunity
25 from certain liability arising out of the
26 attempt to commit or the commission of a
27 felony; creating s. 768.36, F.S.; prohibiting a
28 plaintiff from recovering damages if plaintiff
29 is more than a specified percentage at fault
30 due to the influence of alcoholic beverages or
31 drugs; creating s. 768.098, F.S.; providing a

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Bill No. HB 775e1Amendment No. 1 (for drafter's use only)

1 limitation of liability for employee leasing
2 under specified conditions; creating s.
3 768.725, F.S.; providing evidentiary standards
4 for an award of punitive damages; amending s.
5 768.72, F.S.; revising provisions with respect
6 to claims for punitive damages in civil
7 actions; requiring clear and convincing
8 evidence of gross negligence or intentional
9 misconduct to support the recovery of such
10 damages; providing definitions; providing
11 criteria for the imposition of punitive damages
12 with respect to employers, principals,
13 corporations, or other legal entities for the
14 conduct of an employee or agent; providing for
15 the application of the section; amending s.
16 768.73, F.S.; revising provisions with respect
17 to limitations on punitive damages; providing
18 monetary limitations; providing an exception
19 with respect to intentional misconduct;
20 prohibiting the award of subsequent punitive
21 damages against a defendant if punitive damages
22 were previously awarded against the defendant
23 for harm arising out of the same act or single
24 course of conduct; providing an exception;
25 specifying the basis for calculating attorney's
26 fees on judgments for punitive damages;
27 providing for the application of the section;
28 creating s. 768.735, F.S.; providing that ss.
29 768.72(2)-(4), 768.725, and 768.73, F.S.,
30 relating to punitive damages, are inapplicable
31 to specified causes of action; limiting the

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Bill No. HB 775e1

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

1 amount of punitive damages that may be awarded
2 to a claimant in certain civil actions
3 involving abuse or arising under ch. 400, F.S.;
4 creating s. 768.736, F.S.; providing that ss.
5 768.725 and 768.73, F.S., relating to punitive
6 damages, do not apply to intoxicated
7 defendants; amending s. 324.021, F.S.;
8 providing a limitation on the liability for
9 bodily injury, property, and economic damages
10 for certain lessors and owners of motor
11 vehicles; providing for applicability; amending
12 s. 95.031; providing a statute of repose of 18
13 years; providing for severability; providing an
14 effective date. providing for severability;
15 providing an effective date.

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