A bill to be entitled
An act relating to tort reform; creating s. 768.1258, F.S.; providing a short title; providing definitions; providing procedures for use in specified products liability actions; specifying that a seller is not liable for unreasonable misuse of a product; authorizing reduction of damage for misuse of products; providing that the trier of fact may apportion in such cases; providing guidelines for determining when a misused product may be considered to be defective; creating s. 768.755, F.S.; providing for the calculation of damages under specified circumstances; specifying that certain contracts are not subject to discovery or disclosure in certain actions; limiting the amount of damages in certain actions involving liens or subrogation claims by certain payors; creating s. 768.82, F.S.; limiting noneconomic damages in civil actions; providing that a jury may not be informed of such limit; providing an effective date.

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

Section 1. Section 768.1258, Florida Statutes, is created to read:

768.1258 Products liability; rational use.—
(1) SHORT TITLE.—This section may be cited as the "Rational Use of a Product Act" and shall apply in any products liability action as defined in s. 768.81.

(2) DEFINITIONS.—As used in this section, the term:
   (a) "Misuse" means the use of a product for a purpose or manner different from the purpose or manner for which the product was manufactured. Misuse includes, but is not limited to, a use that is:
       1. Unintended by the seller;
       2. Inconsistent with a specification or standard applicable to the product;
       3. Contrary to an instruction or warning provided by the seller or other person possessing knowledge or training regarding the use or maintenance of the product; or
       4. Determined to be improper by a federal or state agency.
   (b) "Seller" means the manufacturer, wholesaler, distributor, or retailer of the relevant product.
   (c) "Unreasonable misuse" means a type of misuse in which a product was used for a purpose or in a manner that was not reasonably foreseeable by the seller, or a reasonably prudent person would not have used the product in the same or similar manner or circumstances. The reasonableness of the conduct of a person who is a member of an occupation or profession with special training or experience in the use of the product shall be determined based on use of the product by a reasonably prudent member of that occupation or profession in the similar
(3) MISUSE OF A PRODUCT; AFFIRMATIVE DEFENSE.—

(a) A seller is not liable in a civil action for harm caused by unreasonable misuse of its product. Unreasonable misuse of a product is an affirmative defense.

(b) If paragraph (a) does not apply, the plaintiff's damages may be reduced to the extent any misuse contributed to the injury. The trier of fact may determine that the harm was caused solely by such misuse.

(4) MISUSE IN PRODUCT LIABILITY ACTIONS.—

(a) A misused product may be considered defective in design when the reasonably foreseeable risks of harm related to the misuse of the product could have been significantly reduced or avoided by an alternative design that:

1. Would not have caused an unreasonable increase in the cost of designing and manufacturing the product for its intended use;

2. Would not have reduced the efficiency, utility, or safety of the product for its intended use; and

3. Was available at the time of manufacture.

(b) A misused product may be considered defective because of inadequate instructions or warnings when the reasonably foreseeable risks of harm posed by a misuse of the product could have been significantly reduced or avoided by providing additional instructions or warnings regarding the dangers of the misuse at issue. A product is not defective if additional
instructions or warnings related to such misuse would have
detracted from instructions or warnings intended to prevent more
serious or likely hazards.

Section 2. Section 768.755, Florida Statutes, is created
to read:

768.755 Damages recoverable for cost of medical or health
care services; evidence of amount of damages; applicability.—

(1) In a personal injury or wrongful death action to which
this part applies, damages for the cost of medical or health
care services provided to a claimant shall be calculated as
follows:

(a) If a claimant received and paid a health care provider
for medical or health care services, and there is no outstanding
balance for those services, the actual amount remitted to the
provider is the maximum amount recoverable. Any difference
between the amount originally billed by the provider and the
actual amount remitted to the provider is not recoverable or
admissible in evidence.

(b) If a claimant received medical or health care services
that were paid by a government program or private health
insurance for which there is no outstanding balance due to the
provider other than a copayment or deductible owed by the
claimant, the actual amount remitted to the provider by the
government program or private health insurance, plus any
copayment or deductible owed by the claimant, is the maximum
amount recoverable. Any difference between the amount originally
billed by the provider and the sum of the actual amount remitted to the provider and the copayment or deductible owed by the claimant is not recoverable or admissible in evidence.

(c) If a health care provider provided medical or health care services to a claimant for which an outstanding balance is due to the health care provider, and for claims asserted for medical or health care services to be provided to the claimant in the future, the maximum amount recoverable is the amount accepted from Medicare in payment for such services by other health care providers in the same geographic area. This limitation also applies to any lien asserted for such services in the action, with the exception of liens identified in subsection (3).

(2) An individual contract between a health care provider and an authorized insurer offering health insurance, as defined in s. 624.603, or health maintenance organization, as defined in s. 641.19, is not subject to discovery or disclosure in an action under this part, and such information is not admissible in evidence in an action to which this part applies.

(3) Notwithstanding this section, if a Medicaid managed care plan, Medicare, or a payor regulated under the Florida Insurance Code covered or is covering the cost of a claimant’s medical or health care services and has given notice of its intent to assert a lien or subrogate a claim for past medical expenses in the action, the amount of the lien or subrogation claim, in addition to the amount of a copayment or deductible
paid or payable by the claimant, is the maximum amount
recoverable and admissible into evidence with respect to the
covered medical or health care services.

(4) This section applies only to those actions for
personal injury or wrongful death to which this part applies
arising on or after July 1, 2019, and has no other application
or effect regarding compensation paid to providers of medical or
health care services.

Section 3. Section 768.82, Florida Statutes, is created to
read:

768.82 Limit on noneconomic damages.—In any civil action, damages for noneconomic losses to compensate for pain and
suffering, inconvenience, physical impairment, mental anguish,
disfigurement, loss of capacity for enjoyment of life, loss of
consortium, loss of a decedent's companionship and protection,
lost parental companionship, instruction and guidance, and other
nonpecuniary damages may not exceed $1 million. The jury shall
not be informed of this limit.

Section 4. This act shall take effect July 1, 2019.