CIVIL LITIGATION REFORM

CS/SB 874 — Civil Litigation Reform

by Conference Committee on Litigation Reform, Rules & Calendar Committee and Senators McKay, Dudley, Rossin, Ostalkiewicz, Lee, and Campbell

This bill is the product of the Senate and the House of Representatives Conference Committee on Civil Litigation Reform. The bill makes wide-ranging and substantial modifications to procedural and substantive components of the civil litigation system in Florida. The bill is summarized below by topics with reference to the corresponding bill sections.

Juror Bill of Rights

Section 1 creates s. 40.50, F.S., the Juror Bill of Rights, to provide for a series of jury reform measures to be implemented by the courts including, but not limited to, providing detailed preliminary and post-trial final instructions to the jurors, furnishing notebooks to jurors in trials likely to exceed 5 days, permitting jurors to take notes and allowing the jurors to submit written questions to witnesses (subject to approval by the court). This section also requires judges, attorneys, and court staff to provide detailed information to jurors and to assure certain things, such as proceeding according to trial schedules and providing fair compensation for jury service.

Mediation

Section 2 amends s. 44.102, F.S., relating to court-ordered mediation, to mandate that all civil actions for monetary damages be referred to mediation unless it falls within one of six exceptions. The exceptions are actions involving personal injury claims between landlord and tenant, actions for debt collection, actions for medical malpractice, actions governed by the Florida Small Claims Rules, actions the court determines should be referred to non-binding arbitration, and those actions which the parties have agreed to binding arbitration. In all cases for which mediation is not mandatory under the proposed changes, the court would retain the current statutory discretion to refer those cases to mediation under s. 44.102, F.S.

Voluntary Trial Resolution

Section 3 creates s. 44.1051, F.S., to allow two or more parties involved in a civil action, in which no constitutional issues are raised, to agree to a voluntary trial resolution. The parties are responsible for selecting and compensating the trial resolution judge. The trial resolution judge must be a member in good standing of the Florida for the preceding 5 years (the same qualifications needed for a circuit court or county court judge). Under current law, a retired Florida judge may be assigned on a temporary basis to conduct civil or criminal trials.

The trial resolution judge shall have the authority to administer oaths and conduct the proceedings in accordance with the Florida Rules of Civil Procedure, and issue enforceable subpoenas. A party may enforce a judgment obtained in a voluntary trial resolution by filing a petition for enforcement in circuit court. An appeal may be made to the appropriate appellate court but review of factual findings is not allowed on appeal. The "harmless error doctrine" applies in all appeals which is generally applied in all appellate cases under current law. The language does not clarify what the standard of review will be other than state that no further review will be allowed of a judgment unless a constitutional issue is raised. The presence of competent substantial evidence to support the findings is a standard of review for most appellate cases.

Voluntary trial resolution is not available to parties in actions involving child custody, visitation, child support or any dispute involving the rights of a party not participating in a voluntary trial resolution.

Frivolous Lawsuits

Section 4 amends s. 57.105, F.S., relating to award of attorney's fees in frivolous (or unfounded) lawsuits. This section replaces the existing standard for an award of attorney's fees based on a complete absence of a justiciable issue of law or fact in cases. The new standard for an award of attorney's fees, upon the court's initiative or motion of a party, will be based on whether the losing party or the losing party's attorney knew or should have known that the claim or defense at the time it was initially presented or at any time before trial, was not supported by material facts or by the application of then-existing law. This section retains the good faith exception (modified slightly to apply to the new standard) for the losing party's attorney if the attorney acted in good faith based on his or her client's representations as to material facts. In addition, sanctions for attorney's fees will not apply if the claim or defense is determined to have been made as a good-faith attempt with a reasonable probability of changing then-existing law.

This section expands the court's authority to impose sanctions of damages for protracted litigation if the moving party proves by a preponderance of evidence that any litigation activities were taken for the primary purpose of unreasonable delay.

This section also authorizes the court to impose additional sanctions as are just and warranted for either unsupported claims or defenses, or protracted litigation, including contempt of court, award of taxable costs, striking of a claim, or dismissal of the pleading.

Offer/Demand for Judgment

Section 5 amends s. 768.79, F.S., and requires an offer of judgment to specify to whom the offer is made and the terms of the offer in cases involving multi-parties. A subsequent offer to a party automatically voids a previous offer to that party. This section additionally requires the court to determine whether an offer was reasonable under the circumstances known at the time the offer was made before awarding costs and fees.

Expert Witness Costs

Section 6 amends s. 57.071, F.S., relating to taxable costs in civil proceedings, to condition the recovery of expert witness fees as taxable costs to a prevailing party. The prevailing party must file a written notice within 30 days after entry of an order setting the trial date, setting out the expertise and experience of the witness, the subjects upon which the expert is expected to testify, and an estimate of expert witness total fees by flat rate or hourly. The party retaining the expert witness must also furnish each opposing party a written report signed by the expert witness which summarizes the opinions expressed, the factual basis, the authorities relied upon for such opinions. The report must be filed at least 10 days prior to the discovery deadline, 45 days prior to trial, or as otherwise determined by the court. This section overlaps and may conflict with the Florida Rules of Civil Procedure governing procedures for disclosure and discovery of expert witnesses and the *Florida Supreme Court Statewide Uniform Guidelines for Taxation of Costs in Civil Actions.*

Expedited Civil Trial

Section 7 creates an optional speedy civil trial procedure called an expedited trial. Upon joint motion of the parties with approval of the court, the court is authorized to conduct an expedited civil trial. For purposes of the expedited trial where two or more plaintiffs or defendants have a unity of interest such as a husband and wife, the parties shall be considered one party. Unless otherwise ordered by the court or agreed to by the parties, discovery must be completed within 60 days. This section does not specify when discovery must begin. The court must determine the number of depositions required. The trial, whether jury or non-jury, must be conducted within

30 days after discovery ends. Jury selection is limited to 1 hour. Case presentation by each party is limited to 3 hours each. The trial is limited to 1 day. Expert witness reports and excerpts from depositions, including video depositions, may be introduced in lieu of live testimony regardless of availability of expert witness or deponent (note: this may represent a departure from the current rule of evidence governing admissible evidence.) The trial must be tried within 30 days after the discovery cut-off.

Itemized Jury Verdicts

Section 8 amends s. 768.77, F.S., relating to itemized verdicts, to repeal the requirements that the trier of fact itemize and calculate on the verdict form economic damages before and after reduction to present value and to specify the period of time for which future damages are intended to provide compensation. This section may have the effect of simplifying the verdict form and reducing some of the confusion for jurors. The trier of fact would still be required to itemize damages as to economic and non-economic losses, and to itemize punitive damages when awarded.

Alternative Methods of Payment

Section 9 amends s. 768.78, F.S., relating to alternative methods of payment of damage awards, to conform the provisions of the alternative payment statute with the elimination of the itemization of future economic losses by the trier of fact as amended in s. 768.77, F.S. The term "trier of fact" is replaced with the term "the court" as the specific trier of fact to make the determination of whether an award includes future economic losses exceeding $250,000, for purposes of alternative methods of payment of damage awards.

Venue

Section 10 creates s. 47.025, F.S., providing that legal action against a resident contractor, subcontractor, or sub-subcontractor to be brought outside the state is void as a matter of public policy if enforcement would be unreasonable or unjust. In that event, such legal actions arising out of that contract may brought only in the State of Florida and only in either the county where the defendant resides, where the cause of action occurred, or where the property in litigation is located, unless the parties agree to the contrary after the defendant has been served.

Case Reporting

Section 11 requires the clerk of the court through the uniform state case reporting system to report to the Office of the State Court Administrator certain information from each settlement or jury verdict and final judgment in a negligence case as defined in s. 768.81(4), F.S. This reporting

requirement need be made only as deemed necessary from time to time by the President of the Senate and the Speaker of the House of Representatives.

Hearsay Testimony

Section 12 amends s. 90.803, F.S., to broaden substantially the hearsay exception for former testimony. This section allows the admission into evidence certain former testimony even if the witness is *available* to testify. In addition, the use of former testimony is no longer limited to retrials involving the same parties and facts. The former testimony exception will be applicable to testimony given as a witness at another hearing of the same or different proceeding, or in a deposition during the course of the same or another proceeding. However, use of the former testimony may be allowed only if the party against whom it is offered, a predecessor in interest, or a person with a similar interest "had an opportunity and similar motive to develop the testimony" by direct, cross, or redirect examination." However, if former testimony will not be admissible if the court finds that the testimony is not inadmissible under s. 90.402, F.S., relating to admissibility of relevant evidence, or s. 90.403, F.S., relating to exclusion of relevant evidence on grounds of prejudice or confusion.

The changes to this section bring it almost to conformity with exact language in s. 90.804, F.S., relating to an exception to the former testimony hearsay exception which allows certain former testimony into evidence provided the witness is *unavailable* to testify. Since this section expands the former hearsay exception in s. 90.803, F.S., it also may have the effect of expanding s. 90.804, F.S. Like s. 90.803, F.S., s. 90.804, F.S., as part of the Florida Evidence Code, was adopted by the Florida Supreme Court as rules of evidence to the extent that they concern court procedure.

[Note: This section incorporates verbatim the text of SB 1830, which passed as CS/HB 1597 during the 1997 Session and which the Governor subsequently vetoed. Veto notwithstanding, CS/HB 1597 became law on March 11, 1998 by veto override of the Senate and the House of Representatives. See ch. 98-2, L.O.F.]

Statute of Repose

Section 13 amends s. 95.031, F.S., to create a 12-year statute of repose applicable to product liability actions, regardless of the product. The new statute of repose requires that an action based on products liability be brought within 12 years from the date of delivery of the completed product to the original purchaser or lessee, regardless of the date on which the defect in the product was or should have been discovered. Otherwise, the action is forever barred. This provision would operate in conjunction with s. 95.11(3), F.S., relating to 4-year statute of limitations, to bar product liability actions. The 12-year statute of repose would not apply if the manufacturer knew

of a defect and concealed or attempted to conceal the defect. The 12-year statute of repose also would not apply in those product liability actions whereby the claimant's injury did not manifest itself until after the 12-year period has expired. The new statute of repose period only applies to products delivered on or after October 1, 1998.

Section 14 creates a grandfather clause to allow products liability actions that would not have otherwise been barred, but for the new statute of repose provisions, to be brought before July 1, 2003, or otherwise be subject to the new 12-year statute of repose limitation.

Governmental Rules Defense

Section 15 creates s. 768.1256, F.S., to provide for a "governmental rules defense" in product liability actions. This section provides that a manufacturer or seller could raise a rebuttable presumption that a product is not defective or unreasonably dangerous and thus, he or she would not be liable, if at the time the product was sold or delivered to the initial purchaser or user the aspect of the product that allegedly caused the harm was in compliance with applicable federal or state product design, construction, or safety standards and such standards were designed to prevent the type of harm that allegedly occurred. Non-compliance with the applicable standards or lack of agency approval, however, does not raise a presumption of liability. The term "product" is not defined and would presumably include drugs or medical devices approved by the Federal Food and Drug Administration (FDA).

Negligent Hiring

Section 16 creates s. 768.096, F.S., to provide for a rebuttable presumption that an employer was not negligent in hiring an employee if, before hiring such employee, the employer conducted a pre-employment background investigation and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the individual for the particular work to be performed or for the employment in general. The background investigation must consist of: 1) a criminal background investigation, 2) reasonable efforts to contact references and former employers, 3) completion of an employment application that elicits information on criminal convictions and civil actions for intentional tort, 4) a check of the prospective employee's driver's license record, if such a check is relevant to the type of work the employee will be conducting and the record can be reasonably obtained, and 5) an interview with the prospective employee.

Section 17 amends s. 768.095, F.S., to broaden the immunity from liability for information disclosed by an employer about a former employee to a prospective employer, to apply also to information disclosed about current employees. The bill also expands the immunity from liability to apply to information disclosed beyond information about an employee's job performance.

Further, this section narrows the grounds for subjecting the employer to liability by requiring a showing of clear and convincing evidence that the information disclosed by the employer was knowingly false or violated the person's civil rights. Under current law, the employer may also be subject to liability if the information was intentionally misleading or was disclosed with a malicious purpose. This section eliminates those two grounds.

Premises Liability

Section 18 creates s. 768.0705, F.S., providing that a person or organization owning or controlling an interest in a business premises ("business property owner") is not liable for civil damages sustained by invitees, guests, or other members of the public caused by the intentional criminal acts of third parties, other than employees or agents, if the business property owner maintains a reasonably safe premises in light of the foreseeability of the occurrence of the particular criminal act. This provision essentially restates current case law on premises liability for damages sustained by visitors from criminal acts by third parties.

Additionally, this section creates a "safe harbor" for business property owners from civil premises liability, by providing a presumption that adequate security existed for invitees, guests or other members of the public against criminal acts of third parties, other than employees or agents, that occurring in common areas, in parking areas, or on portions of the premises not occupied by buildings or structures. (Convenience stores are not included as business premises.) In order for the presumption to apply, the business property owner must have substantially complied or implemented at least six of nine statutory security measures enumerated in this section. This presumption would not be applicable in actions where criminal acts of third parties took place in the interior of buildings or structures.

Trespass

Section 19 amends s. 768.075, F.S., to expand the immunity from liability to trespassers on real property, to preclude *all* civil or criminal trespassers under the influence of drugs or alcohol from recovery of damages. The elements of trespass must still be proved by the property owner. This section also lowers the blood-alcohol threshold from 0.10 percent or higher to 0.08 percent or higher. The immunity does not apply if the property owner engaged in gross negligence or intentional misconduct.

This section defines the terms "implied invitation," "discovered trespasser," and "undiscovered trespasser." This section also delineates the duties owed by property owners to different categories of trespassers. Under this section, a property owner is not liable to an undiscovered trespasser if the property owner refrains from intentional misconduct. There is no duty to warn of dangerous

conditions. A property owner is not liable to a discovered trespasser if the property owner refrains from gross negligence or intentional misconduct and warns the discovered trespasser of dangerous conditions known to the property owner but were not readily observable by others. This section modifies the common law as it relates to constructive notice of the presence of trespassers.

This section expressly provides that it does not alter the common law doctrine of attractive nuisance which applies to children who are lured onto property by the structure or condition that injures them, and who, because of their age, are unable to appreciate the risks involved. Therefore, a property owner has a duty to protect children from dangerous conditions when he or she knows that children frequent the area, and the expense of eliminating the danger is slight compared to the risk.

This section also provides that a property owner is not liable for civil damages for negligent conduct resulting in death, injury or damage to a person attempting to commit or in the commission of a felony on the property.

Alcohol Defense

Section 20 creates s. 768.36, F.S., to prohibit recovery of any damages for injury or loss to person or property in any civil action by a plaintiff whose blood or breath alcohol level was at least 0.08 percent or whose faculties were impaired due to the influence of alcohol or drugs, at the time of injury, and, as a result was more than 50 percent at fault for his or her own harm. The section also defines the terms “alcoholic beverage” and “drug.”

Punitive Damages

Section 21 creates s. 768.725, F.S., to raise the common law burden of proof necessary in civil actions from “preponderance of evidence” to “clear and convincing evidence” to establish an entitlement to an award of punitive damages. The greater weight of the evidence burden of proof applies to the determination of the amount of punitive damages.

Section 22 amends s. 768.72, F.S., by adding subsection (2) which stiffens the common law standard of conduct necessary to hold a defendant liable for punitive damages. A defendant may only be liable for punitive damages if shown by clear and convincing evidence that the defendant was guilty of intentional misconduct or gross negligence. The term “intentional misconduct” is defined as conduct which the defendant had actual knowledge of its wrongfulness and of its high probability that it would result in injury to damage to the claimant but intentionally pursued anyway. The term “gross negligence” is defined as conduct so reckless or wanting in care that it

constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

This section also adds subsection (3) to revise substantially the common law threshold for holding an employer vicariously liable. This section specifies the criteria necessary to hold an employer, principal, corporation, or other legal entity liable for punitive damages based on the conduct of an employee or agent. The conduct must rise to the level of gross negligence or intentional misconduct, and either: a) the employer, principal, corporation or other legal actively and knowingly participated in such conduct, b) the officers, directors, or managers thereof knowingly condoned, ratified, or consented to such conduct; or c) the employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

Section 23 amends s. 768.73, F.S., relating to caps on punitive damages, to revise the current cap set at three times the amount of compensatory damages. This section imposes a cap of $250,000 in punitive damages for judgments of $50,000 or less in compensatory damages, and a cap of three times the amount of compensatory damages or $250,000, whichever is higher, for judgments of more $50,000 in compensatory damages. This section eliminates the presumption that an award exceeding the cap is excessive but adds that in order for an award of punitive damages to exceed the cap, the claimant must prove by clear and convincing evidence that the defendant engaged in intentional misconduct in addition to the existing requirement that the award would not be excessive in light of the facts and circumstances of the case.

This section also adds a limitation to multiple awards of punitive damages against the same defendant in any civil action if that defendant can establish that punitive damages have previously been awarded against the defendant in any state or federal civil for the alleged harm from the same act or single course of conduct for which claimant seeks damages and that the defendant's act or course of conduct has ceased. The defendant must establish the inapplicability of punitive damages before trial. A subsequent award of punitive damages may be made if the court determines by clear and convincing evidence that the amount of prior awards was insufficient to punish the defendant's behavior, with the subsequent award to be reduced by the amount of the earlier award or awards.

The amendments in this section apply to all civil actions pending on October 1, 1998, in which the initial trial or retrial of the action has not commenced and to all civil actions commenced on or after that date.

Section 24 creates s. 768.735, F.S., to exempt certain abuse actions or actions arising under ch. 400, F.S., relating to nursing homes and other health related facilities, from a number of the

new punitive damages provisions. Any civil action based upon child abuse, abuse of an elderly person, or abuse of a developmentally disabled, or any civil action arising under ch. 400, F.S., are exempt from the new provisions in s. 768.72(2)-(4), F.S. (relating to types of conduct necessary for an award of punitive damages, and vicarious liability by employers), s. 768.725, F.S., (relating to caps on punitive damages), and s. 768.73, F.S. (relating to the burden of proof required for an award of punitive damages).

The term "developmentally disabled" is not defined. A definition exists for the term "disabled adult" that is defined in ch. 415, F.S., to mean any person 18 years or older who suffers from physical or mental incapacitation due to a developmental disability organic brain damage, or mental illness, or who has one or more physical or mental limitations substantially affecting the performance of normal activities. In addition, actions based upon neglect or exploitation of a child, an elderly person, or a disabled adult (as defined in ch. 415, F.S.) would not likely be covered by the term "abuse" and thus, would not be exempt from the new limitations on punitive damages provisions.

Section 25 creates s. 768.736, F.S., to prohibit application of ss. 768.725 and 768.73, F.S., to preclude the recovery of punitive damages by any defendant who, at the time of the act or omission was under the influence of any alcoholic beverage or drug to the extent that the defendant's normal faculties were impaired, or who had a blood or breath alcohol level of 0.08 percent or higher. This would mean that the provisions on burden of proof and limitation of punitive damages would not apply.

Joint and Several Liability

Section 26 amends s. 768.81, F.S., relating to comparative fault and apportionment of damages by eliminating automatic application of joint and several liability for actions with total damages of $25,000 or less. This repeal has the effect of eliminating joint and several liability for all non-economic damages. Subsection (3) is amended to add that in order for joint and several liability to apply instead of comparative fault, the defendant's percentage fault must not only equal or exceed the claimant's percentage fault, but the defendant's percentage fault must also exceed 20 percent. Subsection (3) also provides a cap of $300,000, on that portion of the economic damages for which joint and several liability would only apply. It is clarified that the doctrine of comparative fault would be applied to the remainder of the economic damages, if any, based on the defendant's percentage fault, and that a claimant is not entitled to recover more from the defendant(s) than the total amount awarded to that claimant.

This section also codifies in part, *Fabre* and *Nash*, to require a defendant who alleges a non-party to be at fault, to affirmatively plead that defense, and absent a showing of good cause, identify that non-party or describe as specifically as practicable, in a motion or in an initial pleading, subject to amendment any time before trial in accordance with the rules of court. Additionally, in order to

include the non-party on the verdict form, the defendant must prove at trial the non-party's fault in causing the claimant's injuries by a preponderance of the evidence.

Vicarious Liability

Section 27 amends s. 324.021, F.S., relating to the financial responsibility of an operator or owner of a motor vehicle. This section limits the vicarious liability of a motor vehicle owner or a rental company that rents or leases motor vehicles. Subsection (9)(b)2. is added to provide that unless there is a showing of negligence or intentional misconduct on part of a motor vehicle owner or rental company that rents or leases motor vehicles for a period less than 1 year, the vicarious liability of the lessor to a third party for injury or damage to a third party due to the operation of the vehicle by an operator or lessee is limited to $100,000 per person and $300,000 per occurrence for bodily injury and $50,000 for property damage. If the lessee or operator of the motor vehicle is uninsured or has less than $500,000 combined property and bodily injury liability insurance), then the lessor is liable for an additional cap of $500,000 in economic damages which shall be reduced by amount actually recovered from the less, the operator or insurance of the lessee or operator.

Subsection (9)(b)3. is added to apply the same vicarious liability limitations to owners (who are natural persons) who lend their motor vehicles to permissive users other than relatives residing in the same household. Subsection (9)(c) is added to exclude owners of motor vehicles that are used for commercial activity, other than rental companies that rent or lease motor vehicles, from the limits on vicarious liability in subsections (9)(b)2. and (9)(b)3. The term "rental company" is defined to include an entity that is engaged in the business of renting or leasing motor vehicles to the general public and rents or leases a majority of its vehicles to persons with no direct or indirect affiliation with the rental company, and a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days.

This section has the effect of limiting the amount of damages that may be awarded under Florida's common law dangerous instrumentality doctrine, which currently allows a motor vehicle owner to be held liable for injuries caused by the negligence of someone entrusted to use the motor vehicle.

Civil Enforcement/Nursing Home Residents

Section 28 amends s. 400.023, F.S., relating to civil enforcement of rights of nursing home residents. This section adds subsection (6) to require mediation by the parties in actions based upon this section as prerequisite to recovery of attorney's fees. Mediation must be held within 120 days of filing a responsive complaint or defense motion in response to a complaint. This section details the procedure for setting and conducting the mediation. If no settlement is reached, then the last offer made by the defendant at the mediation is reduced to writing to include the

amount of the offer, the date of the written offer, and the date of the offer's rejection. If the amount awarded in damages, exclusive of attorney's fees, is equal to or less than the last written offer, then the plaintiff is not entitled to recover any attorney's fees. The mediation provisions apply to all causes of action, with the exception of actions for injunctive relief, accruing on or after October 1, 1998.

This section adds subsection (7) to prohibit the discovery of financial information for purposes of valuing punitive damages in any civil action under this section unless the plaintiff proffers or shows evidence in the record that a reasonable basis exists to support a punitive damages claim.

This sections also adds subsection (8) to require, in addition to any other standards for punitive damages, that any award of punitive damages must also be reasonable in light of the actual harm suffered by the nursing home resident and the egregiousness of the conduct that caused the actual harm to the resident.

Attorney Advertising

Section 29 establishes legislative findings and intent with respect to the regulation of advertising of legal services by attorneys. The U.S. Supreme Court has declared that states must have a substantial governmental interest to justify regulation of truthful commercial speech, such as advertising. This section declares the Florida Legislature's interest to be in protecting citizens' privacy, ensuring that advertising provides consumers with thorough information, and ensuring that advertising does not reflect poorly on the legal profession, the legal system, or the administration of justice. This section also cites Florida Bar research and recognition by the U.S. Supreme Court as supportive of the public views that legal advertising and solicitation are intrusive, contribute to poor images of the profession and the legal system, and, in some cases, provide inadequate information. The section includes a legislative finding that electronic advertising and television advertising are not useful or factual, and diminish the public's respect for the fairness and integrity of the legal system. The Legislature requests that the Florida Supreme Court regulate attorney advertising to advance the state's public policy interests as declared, and that the Florida Bar form a task force to address the adoption of rules prohibiting advertising.

Section 30 requests the Florida Supreme Court to consider adoption of rules to effectuate the legislative expression of public policy set forth in the act.

Actuarial Analysis

Section 31 requires the Department of Insurance (DOI) to contract with a national independent actuarial firm to conduct an actuarial analysis of the expected reduction in judgment and related costs resulting from the litigation reform provisions in this act. The analysis must be based on credible loss cost data derived from settlement or adjudication of liability claims accruing after October 1, 1998, and must include an estimate of the percentage decrease in judgments, settlements and costs by type of coverage affected by the act. Liability claims insured under private passenger automobile insurance ("personal auto insurance") and personal line residential property insurance ("homeowners insurance") are excluded from the analysis. The analysis report must be submitted to DOI by March 1, 2001. The analysis report may be admitted into evidence in any proceedings if the actuary providing the report is available to testify regarding the report's preparation and validity. Each party to such proceeding shall otherwise bear its own cost.

The DOI must subsequently review rate filings of insurers, and underwriting profits or losses for Florida liability insurance businesses, and require any rate modifications deemed necessary, in accordance with applicable rating law. Liability insurers other than personal auto insurers and homeowners insurers are required to submit their first rate filing to include specific data on judgments, settlements, and costs after March 1, 2001, for the purpose of enabling DOI and the Legislature to monitor and evaluate the effects of the act.

It is clarified that the provisions of this section do not limit the authority of the DOI to order an insurer to refund excessive profits to policyholders as refunds or credits, as provided in s. 627.066, F.S., relating to motor vehicle insurance, and s. 627.215, F.S., relating workers' compensation, employer's liability, commercial property and commercial casualty insurance (Note: The refund of excessive profits provision as applied to commercial property and commercial casualty insurance ceased on January 1, 1997).

Section 32 provides a severability clause.

If approved by the Governor, these provisions take effect October 1, 1998.
Vote: Senate 24-16; House 70-46

FLORIDA'S MEDICAID THIRD-PARTY LIABILITY LAW

HB 3077 — Medicaid Provider Fraud

by Reps. Goode and Dockery (CS/SBs 1192, 628, & 1412 by Rules & Calendar Committee and Senators Clary, Williams, Dyer, Ostalkiewicz and Horne)

This bill reverses amendments made in 1994 to the Medicaid Third-Party Liability Act, essentially restoring the provisions governing third-party reimbursement of Medicaid expenses to their condition prior to the 1994 Regular Session. Among other changes, the bill has the effect of: 1) reinstating the availability of certain affirmative defenses for use by liable third parties in Medicaid recovery actions by the state, 2) removing specific authority given to the state to pursue in one proceeding reimbursement for medical services provided to multiple Medicaid recipients, and 3) eliminating the state's ability to use statistical evidence to prove causation and damages in such a consolidated proceeding.

The bill specifies that the provisions of the bill operate retroactively to July 1, 1994, with an exception for any civil actions filed prior to March 1, 1998. Any such filed action and any related matters including the enforcement of any settlement agreement would remain covered and shall proceed under the law as it existed on the date of the filing of such action. If the settlement is overturned, canceled, terminated or materially altered by subsequent court order, such action remains covered and shall proceed under the law as it existed on the date the action was filed.

This bill also specifies that any civil action or proceeding initiated on or after July 1, 1994, that seeks to pursue or establish liability under the 1994 amendments to the Medicaid Third-Party Liability Act may not be maintained, continued, or enforced.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 113-0