

APPENDIX I

Ch. 99-225 vs. CS/SB 874 (1998) vs. HB 2117 (1997)

The issues appear in the order in which they appear in ch. 99-225. The numbers correspond to the sections in the Act. Issues present in the earlier bills that do not appear in ch. 99-225 are at the end of the table and are unnumbered.

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998)¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997)² (Died)
A. Issues in the 1999 Bill		
1. Jury Reform		
<ul style="list-style-type: none"> Provides a series of jury reform measures to inform and instruct jurors. 	<ul style="list-style-type: none"> Provides a series of jury reform measures to inform and instruct jurors, allow greater participation by the jurors in civil trials, to include the provision of juror notebooks in civil trials likely to exceed 5 days, and allow jurors to direct written questions to witnesses. 	<ul style="list-style-type: none"> Not addressed.
2. Mediation		
<ul style="list-style-type: none"> Provides for mandatory mediation in most types of civil actions for damages (provides certain exceptions). 	<ul style="list-style-type: none"> Provides for mandatory mediation in most types of civil actions for damages (provides certain exceptions). 	<ul style="list-style-type: none"> Not addressed.
3. Voluntary Trial Resolution		
<ul style="list-style-type: none"> Provides that by mutual agreement parties may submit matter in dispute to voluntary trial resolution by a private judge. Specifies procedures for voluntary trial resolution proceedings. Provides for submission of final decision to circuit court for rendition of a final judgment. Provides for appeal subject to the "harmless error 	<ul style="list-style-type: none"> Provides that by mutual agreement parties may submit matter in dispute to voluntary trial resolution by a private judge. Specifies procedures for voluntary trial resolution proceedings. Provides for submission of final decision to circuit court for rendition of a final judgment. Provides for appeal subject 	<ul style="list-style-type: none"> Not addressed.

1. Enrolled; as passed by the Legislature and vetoed by Gov. Chiles.

2. As introduced by the House Committee on Financial Services and Reps. Safley and Bainter; carried over to the 1998 Session; not heard.

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998)¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997)² (Died)
<p>doctrine."</p> <p>Provides for enforcement of judgments.</p>	<p>to the "harmless error doctrine."</p> <p>Provides for enforcement of judgments.</p>	

4. Frivolous Claims & Defenses

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> • Revises standards applicable to what constitutes a frivolous claim or defense subject to sanction under § 57.105. • Provides sanctions for acts taken primarily for the purpose of unreasonable delay. | <ul style="list-style-type: none"> • Revises standards applicable to what constitutes a frivolous claim or defense subject to sanction under § 57.105. • Provides sanctions for acts taken primarily for the purpose of unreasonable delay. | <ul style="list-style-type: none"> • Not addressed. |
|---|---|--|

5. Expert Witnesses

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> • Prohibits taxing expert witness costs under § 57.071 unless certain information is provided to the opposing party. • Requires party retaining the expert to furnish a report summarizing the opinions and the factual basis therefor to the opposing party at 5 days prior to the deposition or at least 20 days prior to discovery cut-off, whichever is sooner, or as determined by the court. | <ul style="list-style-type: none"> • Prohibits taxing expert witness costs under § 57.071 unless certain information is provided to the opposing party. • Requires the party retaining the expert to provide information about the expert's expertise and compensation within 30 days after entry of the order setting the trial date. • Requires party retaining the expert to furnish a report summarizing the opinions and the factual basis therefor to the opposing party at least 10 days prior to discovery cut-off, 45 days prior to trial, or as determined by the court. | <ul style="list-style-type: none"> • Not addressed. |
|---|---|--|

6. Expedited Trials

- | | | |
|--|--|--|
| <ul style="list-style-type: none"> • Provides a procedure for expedited resolution of civil actions upon joint stipulation of the parties. • Specifies shortened time frames, limitations on discovery, and limitations on conducting the trial. • Prohibits continuances absent extraordinary circumstances. | <ul style="list-style-type: none"> • Provides a procedure for expedited resolution of civil actions upon joint stipulation of the parties. • Specifies shortened time frames, limitations on discovery, and limitations on conducting the trial. • Prohibits continuances absent extraordinary circumstances. | <ul style="list-style-type: none"> • Not addressed. |
|--|--|--|

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998)¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997)² (Died)
7. Itemized Verdicts		
<ul style="list-style-type: none"> Repeals current re-requirement in § 768.77(2) that verdict form include itemization of past and future damages. 	<ul style="list-style-type: none"> Repeals current re-requirement in § 768.77(2) that verdict form include itemization of past and future damages. 	<ul style="list-style-type: none"> Not addressed.
8. Periodic Payments		
<ul style="list-style-type: none"> Provides that periodic payment provisions of § 768.78 apply when the court (rather than the trier of fact) determines that an award by the jury includes future economic losses in excess of \$250,000. 	<ul style="list-style-type: none"> Provides that periodic payment provisions of § 768.78 apply when the court (rather than the trier of fact) determines that an award by the jury includes future economic losses in excess of \$250,000. 	<ul style="list-style-type: none"> Not addressed.
9. Venue		
<ul style="list-style-type: none"> Declares as void any provision in a real property improvement contract that requires an action against a resident contractor be brought outside the state. 	<ul style="list-style-type: none"> Declares as void any provision in a real property improvement contract that requires an action against a resident contractor be brought outside the state. 	<ul style="list-style-type: none"> Not addressed.
10. Case Data Collection		
<ul style="list-style-type: none"> Requires the Office of the State Court Administrator to collect information on settlements, jury verdicts, and final judgments in negligence cases. 	<ul style="list-style-type: none"> Requires the Office of the State Court Administrator to collect information on settlements, jury verdicts, and final judgments in negligence cases. 	<ul style="list-style-type: none"> Not addressed.
11. Products Liability—Statute of Repose		
<ul style="list-style-type: none"> Creates a products liability statute of repose running 12 years from the date of sale unless manufacturer has represented that the product has an expected useful life of longer than 10 years in which case the repose period runs to the end of the expected useful life. Contains conflicting provisions regarding aircraft in commercial or contract service that state there is either no repose period or a 20-year repose period (unless the manufacturer warrants a longer expected useful 	<ul style="list-style-type: none"> Creates in § 95.031 a products liability statute of repose running 12 years from date of delivery of the product to the first purchaser. Provides an exception for concealment of known defects by the manufacturer and for latent defects where the exposure occurs within the 12-year period, but the injury does not manifest itself until after the period has run. 	<ul style="list-style-type: none"> Creates in § 95.031 a products liability statute of repose running 12 years from date of delivery of the product to the first purchaser. No exceptions.

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998)¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997)² (Died)
<p>life).</p> <ul style="list-style-type: none"> • Exception for escalators, elevators, and improvements to real property, and 20-year repose period for vessels. • Provides that there is no repose period for a product if exposure to the product occurs within 12-years of sale, but the injury does not manifest itself until after the repose period. • Provides for tolling during concealment of defects by a manufacturer but requires proof of the manufacturer's actual knowledge of defect and affirmative steps to conceal. • Effective July 1, 1999. 		
12. Statute of Repose – Barred Actions		
<ul style="list-style-type: none"> • Actions that would not have been barred under prior law (i.e., involving products already on the market) must be brought by July 1, 2003. 	<ul style="list-style-type: none"> • Actions that would not have been barred under prior law (i.e., involving products already on the market) must be brought by July 1, 2003. 	<ul style="list-style-type: none"> • Actions that would not have been barred under prior law (i.e., involving products already on the market) must be brought by July 1, 1998.
13. Products Liability – Defenses		
<ul style="list-style-type: none"> • Expands the prohibition against the use of evidence of subsequent remedial measures to prove negligence. 	<ul style="list-style-type: none"> • Not addressed. 	<ul style="list-style-type: none"> • Not addressed.
14. Products Liability – Defenses		
<ul style="list-style-type: none"> • Requires the finder of fact to consider the state of the art of scientific and technical knowledge at the time of manufacture, not at the time of injury. 	<ul style="list-style-type: none"> • Not addressed. 	<ul style="list-style-type: none"> • Not addressed.
15. Products Liability – Defenses		
<ul style="list-style-type: none"> • Provides for a rebuttable presumption of no liability based upon compliance with government rules at time of manufacture. • Provides for a rebuttable presumption that a product is defective if it 	<ul style="list-style-type: none"> • Provides for a rebuttable presumption of no liability based upon compliance with government rules at time of manufacture. • Broad language encompasses medical devices and drugs subject to 	<ul style="list-style-type: none"> • Not addressed.

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998)¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997)² (Died)
<p>is not in compliance with government rules at time of manufacture.</p> <ul style="list-style-type: none"> Broad language encompasses medical devices and drugs subject to FDA approval. 	<p>FDA approval.</p>	
16. Negligent Hiring		
<ul style="list-style-type: none"> Provides that an employer is presumed not negligent in hiring an employee who commits an intentional tort causing death or injury if the employer conducted a pre-employment background check that did not reveal information demonstrating the employee's unsuitability for the work. Specifies required elements of the background check. Specifies that the failure to conduct a background check does not raise a presumption. 	<ul style="list-style-type: none"> Provides that an employer is presumed not negligent in hiring an employee who commits an intentional tort causing death or injury if the employer conducted a pre-employment background check that did not reveal information demonstrating the employee's unsuitability for the work. Specifies required elements of the background check. Specifies that the failure to conduct a background check does not raise a presumption. 	<ul style="list-style-type: none"> Not addressed.
17. Job Reference Information		
<ul style="list-style-type: none"> Extends current immunity provision in § 768.095 with regard to employer disclosure of information to include current as well as former employees. Provides for immunity unless it is shown by clear and convincing evidence that the information was knowingly false. 	<ul style="list-style-type: none"> Extends current immunity provision in § 768.095 with regard to employer disclosure of information to include current as well as former employees. Provides for immunity unless it is shown by clear and convincing evidence that the information was knowingly false. 	<ul style="list-style-type: none"> Not addressed.
18. Business Premises Liability		
<ul style="list-style-type: none"> Gives owners of convenience stores a presumption against liability if they comply with the statutorily required security measures specified in §§ 812.173 and 812.174. 	<ul style="list-style-type: none"> Specifies nine types of security measures applying to commercial real property and gives a business property owner who implements any six of same a presumption that it has fulfilled any duty to provide adequate security for invitees with respect to criminal acts 	<ul style="list-style-type: none"> Not addressed.

**Ch. 99-225, Laws of
Fla.
(Became Law)**

**CS/SB 874 (1998)¹
(Enacted/Vetoed)**

**HB 2117 "FAIR"
(1997)²
(Died)**

committed by non-employees against such persons in common areas, parking areas and portions of the premises not occupied by buildings or structures.

- Specifies that failure to implement the specified security measures does not raise a presumption of liability.
- Also includes presumption regarding convenience stores that implements existing statutory security measures.

19. Premises Liability – Trespassers

- Revises the blood alcohol threshold relating to landowner immunity with regard to intoxicated trespassers in § 768.075 and broadens the acts to which such immunity applies.
 - Defines and distinguishes discovered versus undiscovered trespassers and specifies that: 1) with regard to undiscovered trespassers, a landowner has only to refrain from intentional misconduct and has no duty to warn of dangerous conditions; 2) with regard to discovered trespassers, a landowner must refrain from gross negligence or intentional misconduct and must warn the trespasser of known concealed dangerous conditions.
 - Includes within the category of "discovered trespassers" persons detected by the landowner, or about whose presence the landowner was alerted, within 24 hours preceding the accident.
 - Immunizes a landowner from any liability for
- Revises the blood alcohol threshold relating to landowner immunity with regard to intoxicated trespassers in § 768.075 and broadens the acts to which such immunity applies.
 - Defines and distinguishes discovered versus undiscovered trespassers and specifies that: 1) with regard to undiscovered trespassers, a landowner has only to refrain from intentional misconduct and has no duty to warn of dangerous conditions; 2) with regard to discovered trespassers, a landowner must refrain from gross negligence or intentional misconduct and must warn the trespasser of known concealed dangerous conditions.
 - Includes within the category of "discovered trespassers" persons detected by the landowner, or about whose presence the landowner was alerted, within 24 hours preceding the accident.
 - Immunizes a landowner from any liability for
- Specifies that any person who trespasses or enters the property of another without *actual* consent, any person who commits a crime against a person or property of another, or any person who enters the property of another while legally intoxicated, may not recover damages for property loss or personal injury unless that person can "prove by clear and convincing evidence that his or her culpability was less than the person from whom recovery is sought."

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998) 1 (Enacted/Vetoed)	HB 2117 "FAIR" (1997)² (Died)
negligence causing the death of or injury to a person who is committing or attempting to commit a felony on the property.	negligence causing the death of or injury to a person who is committing or attempting to commit a felony on the property.	

20. Alcohol and Drug Defense

- Provides that a plaintiff who was under the influence of drugs or alcohol at the time of injury cannot recover any damages for property or bodily injury if the plaintiff was more than 50% at fault for his or her harm as a result of the intoxication.
- Provides that a plaintiff who was under the influence of drugs or alcohol at the time of injury cannot recover any damages for property or bodily injury if the plaintiff was more than 50% at fault for his or her harm as a result of the intoxication.
- Provides that a defendant may assert as a defense that he or she is not liable to the plaintiff if the plaintiff was under the influence of drugs or alcohol at the time of injury and as a result thereof, the plaintiff was more than 50% at fault for his or her injury.

21. Punitive Damages – Burden of Proof

- Requires plaintiff to prove entitlement to an award of punitive damages by clear and convincing evidence.
- Specifies that the greater weight of evidence burden of proof applies to the determination of the amount of damages.
- Requires plaintiff to prove entitlement to an award of punitive damages by clear and convincing evidence.
- Specifies that the greater weight of evidence burden of proof applies to the determination of the amount of damages.
- Plaintiff cannot claim punitive damages unless plaintiff proves by clear and convincing evidence that a reasonable basis exists for recovery of punitive damages.
- Provides for certiorari review of the procedure and sufficiency of the evidence considered by the trier of fact regarding the determination of reasonable basis for the punitive damages.

22. Punitive Damages – Type of Misconduct Required

- Provides definitions of "intentional misconduct" and "gross negligence" in § 768.72. Defines "gross negligence" to require "conscious disregard or indifference to the life, safety or rights" of the injured.
- Immunizes employers from liability for punitive damages based on act of an employee unless the employer actively participated in or approved the conduct or engaged in grossly negligent conduct that contributed to the loss.
- Applies changes to causes of action arising
- Provides definitions of "intentional misconduct" and "gross negligence" in § 768.72. Defines "gross negligence" to require "conscious disregard or indifference."
- Immunizes employers from liability for punitive damages based on act of an employee unless the employer actively participated in or approved the conduct or engaged in grossly negligent conduct that contributed to the loss.
- Applies changes to all civil actions pending on October 1, 1998, in which the trial or retrial
- Prohibits punitive damages if only compensatory damages are economic losses, except in cases of fraud.
- Allows punitive damages only where defendant has been found by clear and convincing evidence to have engaged in "intentional misconduct" defined as meaning that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury to the claimant would result and, despite that knowledge, intentionally pursued the course of

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998)¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997)² (Died)
after October 1, 1999.	has not commenced.	<p>conduct.</p> <ul style="list-style-type: none"> • Allows an award of punitive damages based on vicarious liability only if the person intentionally participated in the intentional misconduct or, in the case of a corporation, if the officers, directors or managers intentionally participated in, or intentionally condoned the intentional misconduct. • Provides for separate trials on issues of liability for punitive damages and amount of punitive damages. Prohibits evidence relating solely to punitive damages from being admitted until after the trier of fact has determined defendant's liability for, and the amount of compensatory damages (which must be more than nominal). • Applies changes to all civil actions filed after October 1, 1997.

23. Punitive Damages – Limitations on Damages

- Apparently applies limitations in § 768.73 to all civil actions instead of just negligence actions.
- Tiered approach to caps:
 - ◊ Punitive damages limited to greater of \$500,000 or 3 times compensatory damages;
 - ◊ If defendant's wrongful conduct was motivated solely by unreasonable financial gain and defendant had actual knowledge of the dangerous nature of the conduct, then punitive damages are limited to the greater of \$2,000,000 or 4 times compensatory damages; or
 - ◊ Where, at the time of
- Applies limitations in § 768.73 to all civil actions instead of just negligence actions.
- Absolutely limits punitive damages to \$250,000 in cases where the compensatory damages do not exceed \$50,000 and absolutely limits punitive damages to the greater of \$250,000 or three times compensatory damages in cases where the compensatory damages exceed \$50,000. Foregoing limitations do not apply if plaintiff proves by clear and convincing evidence that the defendant engaged in intentional misconduct and that the award is not excessive.
- Applies limitations in § 768.73 to all civil actions except contract actions, instead of just negligence actions.
- Requires 75% of every punitive damages award to be paid to the state to fund indigent care and the county courts.
- Provides that there can be no more than one punitive damage award for same act or single course of conduct unless the court determines by clear and convincing evidence that the prior award(s) (including any state and federal award) was *totally* insufficient to punish the defendant, in which case the court may award punitive damages, but there is a

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998)¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997)² (Died)
<p>injury, the defendant had specific intent to harm the claimant, there is no limit on punitive damages.</p> <ul style="list-style-type: none"> • Provides that there can be no more than one punitive damage award for same act or single course of conduct unless the court determines by clear and convincing evidence that the prior award(s) (including any state and federal award) was insufficient to punish the defendant, in which case the court may award punitive damages, but there is a set-off for prior awards. Allows the court to "consider" whether or not the defendant has ceased the egregious conduct. • Provides that attorney's fees are payable based on the final judgment for punitive damages. • Applies changes to causes of action arising after October 1, 1999. 	<ul style="list-style-type: none"> • Provides that there can be no more than one punitive damage award for same act or single course of conduct unless the court determines by clear and convincing evidence that the prior award(s) (including any state and federal award) was insufficient to punish the defendant, in which case the court may award punitive damages, but there is a set-off for prior awards. Allows the court to "consider" whether or not the defendant has ceased the egregious conduct. • Provides that attorney's fees are payable based on the entire punitive damages award. • Applies changes to all civil actions pending on October 1, 1998 in which the trial or retrial has not commenced. 	<p>set-off for prior awards.</p> <ul style="list-style-type: none"> • Provides that attorney's fees are payable based on only the portion of the punitive damages judgment payable to the claimant. • Applies changes to all civil actions filed after October 1, 1997.

24. Punitive Damages – Exception for Abuse Cases

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> • Exempts civil actions based on child abuse, abuse of the elderly or abuse of the developmentally disabled and all actions arising under ch. 400 (nursing homes) from §768.72(2)-(4), 768.73 and new burden of proof provisions. • Provides for a three-times presumptive punitive damages cap in such cases (restates current law). | <ul style="list-style-type: none"> • Exempts civil actions based on child abuse, abuse of the elderly or abuse of the developmentally disabled and all actions arising under ch. 400 (nursing homes) from §768.72(2)-(4), 768.73 and new burden of proof provision #21. • Provides for a three-times presumptive punitive damages cap in such cases (restates current law). | <ul style="list-style-type: none"> • Not addressed. |
|--|---|--|

25. Punitive Damages – Exception for Intoxication

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> • Provides an exemption from the new punitive damages burden of proof requirement and from the caps on punitive damages for cases where the defendant was under the influence of drugs or | <ul style="list-style-type: none"> • Provides an exemption from the new punitive damages burden of proof requirement and from the caps on punitive damages for cases where the defendant was under the influence of drugs or | <ul style="list-style-type: none"> • Not addressed. |
|---|---|--|

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998) ¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997) ² (Died)
alcohol at the time of the act.	alcohol at the time of the act.	

26. Punitive Damages – Arbitration

- Specifies that where punitive damages are available as a remedy in an arbitration proceeding, the statutory provisions on burden of proof, pleading, and caps apply; requires arbitrator to issue a written opinion.
- Not addressed.
- Not addressed.

27. Comparative Fault and Joint & Several Liability

- Tiered threshold/cap approach to joint and several liability for economic damages. For any defendant whose fault is greater than the plaintiff's:
 - ◊ If defendant's fault is 0-10%, no joint and several liability for economic damages (0-9% if plaintiff is faultless);
 - ◊ If defendant's fault is 11-24%, \$200,000 cap on economic damages subject to joint and several liability (10-24% and \$500,000 if plaintiff is faultless);
 - ◊ If defendant's fault is 25-50%, \$500,000 cap on economic damages subject to joint and several liability (\$1,000,000 if plaintiff is faultless); or
 - ◊ If defendant's fault is greater than 50%, \$1,000,000 cap on economic damages subject to joint and several liability (\$2,000,000 if plaintiff is faultless).
 - ◊ Specifies that joint liability is in addition to several liability for economic and noneconomic damages.
- Revises § 768.81 to eliminate application of the doctrine of joint and several liability to economic damages in excess of \$300,000.
- Eliminates application of the doctrine of joint & several liability to economic damages with respect to defendants whose fault is less than 20%.
- Eliminates application of the doctrine of joint & several to cases under \$25,000.
- Requires a party alleging the fault of a nonparty (per *Fabre*) to plead same affirmatively by motion or in the initial responsive pleading when defenses are first presented (absent a showing of good cause). In order for fault to be apportioned to the nonparty, defendant must prove the nonparty's fault by a preponderance of the evidence.
- Revises § 768.81 to eliminate the exception which provides for across-the-board application of the doctrine of joint & several to cases in which the total damages are \$25,000 or less.

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998) ¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997) ² (Died)
<ul style="list-style-type: none"> • Eliminates application of the doctrine of joint & several to cases under \$25,000. • Requires a party alleging the fault of a nonparty (per <i>Fabre</i>) to plead same affirmatively and identify the nonparty (if known) by motion or in the initial responsive pleading when defenses are first presented (absent a showing of good cause). In order for fault to be apportioned to the nonparty, defendant must prove the nonparty's fault by a preponderance of the evidence. 		

28. Vicarious Liability – Motor Vehicles

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> • Amends § 324.021 to limit vicarious liability for all types of vehicles (including rental and privately owned cars, trucks and other types of vehicles) except when used in commercial activity. • Limits vicarious liability to \$100 per person/300K per incident plus \$500K additional for economic damages if the lessee or operator has less than \$500K insurance (combined limits). Provides a set-off for all other available insurance or self-insurance covering the lessee or operator. • Limits do not apply to an owner of a motor vehicle used in the owner's ordinary course of business (except rental car businesses). • Limits do not apply to commercial vehicles being used to carry hazardous materials unless at time of lease the lessee indicates in writing that the vehicle will not be used for such trans- | <ul style="list-style-type: none"> • Amends § 324.021 to limit vicarious liability for all types of vehicles (including rental and privately owned cars, trucks and other types of vehicles) except when used in commercial activity; provides an exception for permissive use of a vehicle by a relative residing in the same household. • Limits vicarious liability to \$100 per person/300K per incident plus \$500K additional for economic damages if the lessee or operator has less than \$500K insurance (combined limits). • Provides a set-off for all other available insurance or self-insurance covering the lessee or operator. • Specifies that liability for the owner's negligence is not affected. | <ul style="list-style-type: none"> • See provision below relating to elimination of vicarious liability for use of any personal property. |
|--|---|--|

**Ch. 99-225, Laws of
Fla.
(Became Law)**

**CS/SB 874 (1998)¹
(Enacted/Vetoed)**

**HB 2117 "FAIR"
(1997)²
(Died)**

port or the lessee has \$5 million in insurance coverage.

- Specifies that liability for the owner's negligence is not affected.
- Takes effect July 1, 1999.

29. Other Issues – Joint Employment

- | | | |
|--|--|--|
| <ul style="list-style-type: none"> • Immunizes an employer in a joint employment relationship from liability for the act of a shared employee if the individual joint employer did not authorize or direct the tortfeasor to take the action that resulted in the injury. | <ul style="list-style-type: none"> • Not addressed. | <ul style="list-style-type: none"> • Not addressed. |
|--|--|--|

30. Mediation in Nursing Home Cases

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> • Revises civil enforcement provisions in § 400.023 to condition recovery of attorney's fees in actions under Part II of ch. 400 (nursing homes) upon participation in pretrial mediation. • Provides that in addition to any other standards for punitive damages, an award must be reasonable in light of the actual harm suffered by the resident and the egregiousness of the conduct. | <ul style="list-style-type: none"> • Revises civil enforcement provisions in § 400.023 to condition recovery of attorney's fees in actions under ch. 400 (nursing homes) upon participation in pretrial mediation. • Provides that in addition to any other standards for punitive damages, an award must be reasonable in light of the actual harm suffered by the resident and the egregiousness of the conduct. • Applies to causes of action accruing on or after October 1, 1998. | <ul style="list-style-type: none"> • Not addressed. |
|---|---|--|

31. Mediation in ACLF Cases

- | | | |
|--|--|--|
| <ul style="list-style-type: none"> • Applies the same new mediation requirements regarding nursing home to the civil enforcement provisions relating to assisted living facilities regulated under Part III of ch. 400. | <ul style="list-style-type: none"> • Not addressed. | <ul style="list-style-type: none"> • Not addressed. |
|--|--|--|

32. Mediation in Adult Family Care Home Cases

- | | | |
|--|--|--|
| <ul style="list-style-type: none"> • Applies the same new mediation requirements regarding nursing homes to the civil en- | <ul style="list-style-type: none"> • Not addressed. | <ul style="list-style-type: none"> • Not addressed. |
|--|--|--|

**Ch. 99-225, Laws of
Fla.
(Became Law)**

**CS/SB 874 (1998)¹
(Enacted/Vetoed)**

**HB 2117 "FAIR"
(1997)²
(Died)**

forcement provisions relating to adult family-care homes regulated under Part VII of ch. 400.

33. Actuarial Study & Rate Filing

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> • Requires OPPAGA to contract for an actuarial analysis of the expected savings from the act. • Requires the analysis to include an estimate of the percentage decrease in judgments, settlements and costs, including the time period when the savings are expected. • Report is not required to be completed until March 1, <u>2007</u>. | <ul style="list-style-type: none"> • Requires the Department of Insurance to contract for an actuarial analysis of the expected savings from the act to be completed by March 1, 2001. • Requires the Department to review insurance rates and require prospective rate modifications consistent with the report. • Does not apply to private passenger automobile insurance or personal lines residential property insurance. | <ul style="list-style-type: none"> • Not addressed. |
|--|---|--|

34. Article V. Conflict

- | | | |
|--|--|--|
| <ul style="list-style-type: none"> • Specifies that if any court finds that any provision of the act encroaches on the authority of the Florida Supreme Court to determine rules of practice and procedure, then the provision is to be considered a request to the Court to change its rule and not a mandatory legislative directive. | <ul style="list-style-type: none"> • Not addressed. | <ul style="list-style-type: none"> • Not addressed. |
|--|--|--|

35. Severability

- | | | |
|--|--|--|
| <ul style="list-style-type: none"> • Specifies that the invalidity of one provision does not affect the validity of other provisions. | <ul style="list-style-type: none"> • Specifies that the invalidity of one provision does not affect the validity of other provisions. | <ul style="list-style-type: none"> • Specifies that the invalidity of one provision does not affect the validity of other provisions. |
|--|--|--|

36. Effective Date

- | | | |
|--|--|--|
| <ul style="list-style-type: none"> • Takes effect October 1, 1999, except as otherwise provided. • See special effective date/applicability provisions relating to statute of repose, punitive damages, and motor vehicle vicarious liability. | <ul style="list-style-type: none"> • Takes effect October 1, 1998. • See special effective date/applicability provisions relating to punitive damages and motor vehicle vicarious liability. | <ul style="list-style-type: none"> • Takes effect October 1, 1997. • See special effective date/applicability provisions relating to punitive damages. |
|--|--|--|

**Ch. 99-225, Laws of
Fla.
(Became Law)**

**CS/SB 874 (1998)¹
(Enacted/Vetoed)**

**HB 2117 "FAIR"
(1997)²
(Died)**

B. 1997 and 1998 Issues that Are Not in the 1999 Bill

Hearsay Exception

- | | | |
|---|--|---|
| <ul style="list-style-type: none"> • Not addressed. (Moot—passed in 1997 and 1998 as a separate bill. See note under HB 2117.) | <ul style="list-style-type: none"> • Revises § 90.803(22) to provide for the admissibility of previous testimony given in the same or a different proceeding if the party against whom the testimony is offered, a predecessor in interest or a person with a similar interest had an opportunity to examine the witness.³ | <ul style="list-style-type: none"> • Not addressed in HB 2117; however, this provision was the subject of a separate 1997 bill that ultimately became law in 1998 after a veto override.⁴ |
|---|--|---|

Offers of Judgment

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> • Not addressed. | <ul style="list-style-type: none"> • Specifies that, for purposes of § 768.79, offers in multiple party cases must specify the party to whom the offer is directed and allows party to accept or reject only the applicable offer. • Specifies that a subsequent offer voids a previous offer. • Requires a court, prior to awarding costs and fees, to determine whether the offer was reasonable under the circumstances known at the time the offer was made. | <ul style="list-style-type: none"> • Not addressed. |
|--|---|--|

Attorney Advertising

- | | | |
|--|---|---|
| <ul style="list-style-type: none"> • Not addressed. | <ul style="list-style-type: none"> • Provides a declaration of state policy and findings regarding advertising (especially electronic) by attorneys. • Requests the Florida | <ul style="list-style-type: none"> • Not addressed |
|--|---|---|

3. This provision was probably included in the bill as a backup measure since the exact same provision had already passed in 1997 but had been vetoed by Gov. Chiles. Although, ultimately, the veto was overridden, that vote could not occur until the Legislature met in the Session, long after development work on the 1998 tort reform bills had begun. See the following note.

4. CS/HB 1597 (1997), was enacted by the Legislature but then vetoed by Gov. Chiles. The veto was overridden by the Legislature at the beginning of the 1998 Session. HB 1597 was originally filed by Rep. John Thrasher, the man who was to become Speaker of the House in November, 1998. Not surprisingly, the bill came to the House floor for a vote on the override opening day of the 1998 Session. The change is now codified in § 90.803(22), Fla. Stat. (1998 Supp.).

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998) ¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997) ² (Died)
<ul style="list-style-type: none"> • Not addressed. 	<p>Supreme Court and The Florida Bar to regulate advertising in a limited manner to advance the policy.</p> <ul style="list-style-type: none"> • Requests The Florida Bar to form a task force to address the adoption of rules prohibiting advertising by members of its voluntary sections. • Requests the Florida Supreme Court to consider adopting rules to effectuate the state policy regarding attorney advertising. 	<ul style="list-style-type: none"> • Not addressed.

Vicarious Liability for Use of Personal Property

- See provision above limiting the vicarious liability of motor vehicle owners.
- See provision above limiting the vicarious liability of motor vehicle owners.
- Creates new § 768.291 to immunize the owner of *any* personal property from vicarious liability for the acts of another person using or operating the property if the use or operation is covered by insurance with limits of at least \$100,000/\$300,000 bodily injury liability and \$50,000 property damage liability or at least \$500,000 combined limits.
- Specifies that the owner does not have a duty to warn a user of the property as to either a defect that is or should be apparent to an ordinary user of the property or any defect that is not known to the owner of the property.

Vicarious Liability for Intentional Torts

- Not addressed.
- Not addressed.
- Creates § 768.37 to specify that the doctrine of vicarious liability cannot be used to impose liability against a defendant for any civil damages when the damages were caused by an intentional tort committed by a third party.

Ch. 99-225, Laws of Fla. (Became Law)	CS/SB 874 (1998)¹ (Enacted/Vetoed)	HB 2117 "FAIR" (1997)² (Died)
Drug Dealer Liability Act		
<ul style="list-style-type: none"> • Not addressed. (Moot—passed in 1997 as a separate bill. See note under HB 2117.) 	<ul style="list-style-type: none"> • Not addressed. (Moot—passed in 1997 as a separate bill. See note under HB 2117.) 	<ul style="list-style-type: none"> • Creates a cause of action for treble damages based upon a plaintiff who is injured by a defendant's actions when those actions also result in the defendant's conviction for a drug related crime. Provides for recovery from the parents of a minor if the parents were aware of or recklessly disregarded facts demonstrating that the minor intended to commit the offense. Provides for recovery of costs and attorney's fees.⁵

5. This same provision was enacted separately in CS/SBs 474 & 764 (1997); ch. 97-80, Laws of Fla.; now codified at § 772.12, FLA. STAT. (1998 Supp.).