

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1124/3dn
ARG:wlj:cph

June 3, 2003

As requested in the May 16, 2003, conference call, the attached draft removes the “resulting from” phrase at page 2, lines 8–9 of the “/2” draft. (This language is similar to language appearing in s. 347.48 (2m) (g), and I consider this to be a non-substantive change.) The attached draft also changes the initial applicability provision so that the bill applies to lawsuits filed after the effective date and adds a new provision to the bill specifically addressing the issue of reduction of damages by the jury. This new provision is modeled along the lines of ss. 347.48 (2m) (g) and 895.045. The change in the initial applicability provision may be subject to challenge on constitutional due process grounds and may be subject to abuse by litigants because it basically changes the rules relating to litigating a cause of action after the cause of action has already accrued. That is, under the initial applicability provision in the “/2” draft, the “time trigger” was the date of the accident. Under the initial applicability provision in the attached “/3” draft, the “time trigger” is the date that the plaintiff chooses to file suit. One of the consequences of this change is that a defendant that had a right to introduce evidence of the plaintiff’s nonuse of a helmet when the time the cause of action accrued (the date of the accident) may lose this right between the date of the accident and the date suit is filed (typically two to three years later). For these reasons, it is not customary to draft an initial applicability provision in this manner, but I have done so because it was specifically requested.

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