



209768

LEGISLATIVE ACTION

Senate

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House

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The Committee on Judiciary (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 57.104, Florida Statutes, is amended to  
read:

57.104 Computation of attorney ~~attorneys'~~ fees.-

(1) In any action in which attorney ~~attorneys'~~ fees are to  
be determined or awarded by the court, the court shall consider,  
among other things, time and labor of any legal assistants who  
contributed nonclerical, meaningful legal support to the matter



209768

12 involved and who are working under the supervision of an  
13 attorney. For purposes of this section "legal assistant" means a  
14 person, who under the supervision and direction of a licensed  
15 attorney engages in legal research, and case development or  
16 planning in relation to modifications or initial proceedings,  
17 services, processes, or applications; or who prepares or  
18 interprets legal documents or selects, compiles, and uses  
19 technical information from references such as digests,  
20 encyclopedias, or practice manuals and analyzes and follows  
21 procedural problems that involve independent decisions.

22 (2) In any action in which attorney fees are determined or  
23 awarded by the court, there is a strong presumption that a  
24 lodestar fee is sufficient and reasonable. This presumption may  
25 be overcome only in a rare and exceptional circumstance with  
26 evidence that competent counsel could not otherwise be retained.

27 Section 2. Section 86.121, Florida Statutes, is created to  
28 read:

29 86.121 Attorney fees; actions for declaratory relief to  
30 determine insurance coverage after denial of claim.—In an action  
31 brought under this chapter for declaratory relief to determine  
32 insurance coverage after the insurer has made a denial of a  
33 claim:

34 (1) Either party is entitled to the summary procedure  
35 provided in s. 51.011, and the court shall advance the cause on  
36 the calendar.

37 (2) The court shall award reasonable attorney fees to the  
38 named insured, omnibus insured, or named beneficiary under a  
39 policy issued by the insurer, upon rendition of a declaratory  
40 judgment in favor of the named insured, omnibus insured, or



209768

41 named beneficiary. This right may not be transferred to,  
42 assigned to, or acquired in any other manner by anyone other  
43 than a named or omnibus insured or a named beneficiary. A  
44 defense offered by an insurer pursuant to a reservation of  
45 rights does not constitute a denial of a claim. Such fees are  
46 limited to those incurred in the action brought under this  
47 chapter for declaratory relief to determine coverage of  
48 insurance issued under the Florida Insurance Code.

49 Section 3. Subsections (3), (4), and (10) of section 95.11,  
50 Florida Statutes, are amended, and subsection (12) is added to  
51 that section, to read:

52 95.11 Limitations other than for the recovery of real  
53 property.—Actions other than for recovery of real property shall  
54 be commenced as follows:

55 (3) WITHIN FOUR YEARS.—

56 (a) ~~An action founded on negligence.~~

57 ~~(b)~~ An action relating to the determination of paternity,  
58 with the time running from the date the child reaches the age of  
59 majority.

60 (b)~~(e)~~ An action founded on the design, planning, or  
61 construction of an improvement to real property, with the time  
62 running from the date of actual possession by the owner, the  
63 date of the issuance of a certificate of occupancy, the date of  
64 abandonment of construction if not completed, or the date of  
65 completion of the contract or termination of the contract  
66 between the professional engineer, registered architect, or  
67 licensed contractor and his or her employer, whichever date is  
68 latest; except that, when the action involves a latent defect,  
69 the time runs from the time the defect is discovered or should



209768

70 have been discovered with the exercise of due diligence. In any  
71 event, the action must be commenced within 10 years after the  
72 date of actual possession by the owner, the date of the issuance  
73 of a certificate of occupancy, the date of abandonment of  
74 construction if not completed, or the date of completion of the  
75 contract or termination of the contract between the professional  
76 engineer, registered architect, or licensed contractor and his  
77 or her employer, whichever date is latest. However,  
78 counterclaims, cross-claims, and third-party claims that arise  
79 out of the conduct, transaction, or occurrence set out or  
80 attempted to be set out in a pleading may be commenced up to 1  
81 year after the pleading to which such claims relate is served,  
82 even if such claims would otherwise be time barred. With respect  
83 to actions founded on the design, planning, or construction of  
84 an improvement to real property, if such construction is  
85 performed pursuant to a duly issued building permit and if a  
86 local enforcement agency, state enforcement agency, or special  
87 inspector, as those terms are defined in s. 553.71, has issued a  
88 final certificate of occupancy or certificate of completion,  
89 then as to the construction which is within the scope of such  
90 building permit and certificate, the correction of defects to  
91 completed work or repair of completed work, whether performed  
92 under warranty or otherwise, does not extend the period of time  
93 within which an action must be commenced. Completion of the  
94 contract means the later of the date of final performance of all  
95 the contracted services or the date that final payment for such  
96 services becomes due without regard to the date final payment is  
97 made.

98 (c)~~(d)~~ An action to recover public money or property held



209768

99 by a public officer or employee, or former public officer or  
100 employee, and obtained during, or as a result of, his or her  
101 public office or employment.

102 (d)~~(e)~~ An action for injury to a person founded on the  
103 design, manufacture, distribution, or sale of personal property  
104 that is not permanently incorporated in an improvement to real  
105 property, including fixtures.

106 (e)~~(f)~~ An action founded on a statutory liability.

107 (f)~~(g)~~ An action for trespass on real property.

108 (g)~~(h)~~ An action for taking, detaining, or injuring  
109 personal property.

110 (h)~~(i)~~ An action to recover specific personal property.

111 (i)~~(j)~~ A legal or equitable action founded on fraud.

112 (j)~~(k)~~ A legal or equitable action on a contract,  
113 obligation, or liability not founded on a written instrument,  
114 including an action for the sale and delivery of goods, wares,  
115 and merchandise, and on store accounts.

116 (k)~~(l)~~ An action to rescind a contract.

117 (l)~~(m)~~ An action for money paid to any governmental  
118 authority by mistake or inadvertence.

119 (m)~~(n)~~ An action for a statutory penalty or forfeiture.

120 (n)~~(o)~~ An action for assault, battery, false arrest,  
121 malicious prosecution, malicious interference, false  
122 imprisonment, or any other intentional tort, except as provided  
123 in subsections (4), (5), and (7).

124 (o)~~(p)~~ Any action not specifically provided for in these  
125 statutes.

126 (p)~~(q)~~ An action alleging a violation, other than a willful  
127 violation, of s. 448.110.



209768

128           (4) WITHIN TWO YEARS.—  
129           (a) An action founded on negligence.  
130           (b)~~(a)~~ An action for professional malpractice, other than  
131 medical malpractice, whether founded on contract or tort;  
132 provided that the period of limitations shall run from the time  
133 the cause of action is discovered or should have been discovered  
134 with the exercise of due diligence. However, the limitation of  
135 actions herein for professional malpractice shall be limited to  
136 persons in privity with the professional.  
137           (c)~~(b)~~ An action for medical malpractice shall be commenced  
138 within 2 years from the time the incident giving rise to the  
139 action occurred or within 2 years from the time the incident is  
140 discovered, or should have been discovered with the exercise of  
141 due diligence; however, in no event shall the action be  
142 commenced later than 4 years from the date of the incident or  
143 occurrence out of which the cause of action accrued, except that  
144 this 4-year period shall not bar an action brought on behalf of  
145 a minor on or before the child's eighth birthday. An "action for  
146 medical malpractice" is defined as a claim in tort or in  
147 contract for damages because of the death, injury, or monetary  
148 loss to any person arising out of any medical, dental, or  
149 surgical diagnosis, treatment, or care by any provider of health  
150 care. The limitation of actions within this subsection shall be  
151 limited to the health care provider and persons in privity with  
152 the provider of health care. In those actions covered by this  
153 paragraph in which it can be shown that fraud, concealment, or  
154 intentional misrepresentation of fact prevented the discovery of  
155 the injury the period of limitations is extended forward 2 years  
156 from the time that the injury is discovered or should have been



209768

157 discovered with the exercise of due diligence, but in no event  
158 to exceed 7 years from the date the incident giving rise to the  
159 injury occurred, except that this 7-year period shall not bar an  
160 action brought on behalf of a minor on or before the child's  
161 eighth birthday. This paragraph shall not apply to actions for  
162 which ss. 766.301-766.316 provide the exclusive remedy.

163 (d)~~(e)~~ An action to recover wages or overtime or damages or  
164 penalties concerning payment of wages and overtime.

165 (e)~~(d)~~ An action for wrongful death.

166 (f)~~(e)~~ An action founded upon a violation of any provision  
167 of chapter 517, with the period running from the time the facts  
168 giving rise to the cause of action were discovered or should  
169 have been discovered with the exercise of due diligence, but not  
170 more than 5 years from the date such violation occurred.

171 (g)~~(f)~~ An action for personal injury caused by contact with  
172 or exposure to phenoxy herbicides while serving either as a  
173 civilian or as a member of the Armed Forces of the United States  
174 during the period January 1, 1962, through May 7, 1975; the  
175 period of limitations shall run from the time the cause of  
176 action is discovered or should have been discovered with the  
177 exercise of due diligence.

178 (h)~~(g)~~ An action for libel or slander.

179 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS  
180 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph  
181 (4) (e) ~~(4) (d)~~, an action for wrongful death seeking damages  
182 authorized under s. 768.21 brought against a natural person for  
183 an intentional tort resulting in death from acts described in s.  
184 782.04 or s. 782.07 may be commenced at any time. This  
185 subsection shall not be construed to require an arrest, the



209768

186 filing of formal criminal charges, or a conviction for a  
187 violation of s. 782.04 or s. 782.07 as a condition for filing a  
188 civil action.

189 (12) FOR ACTIONS INVOLVING SERVICEMEMBERS.—Any action  
190 involving a servicemember as defined in s. 250.01 is subject to  
191 the provisions of s. 250.5201 and part IV of chapter 250, which  
192 includes the Servicemembers Civil Relief Act, 50 U.S.C. ss. 501  
193 et seq., providing for protections to members of the United  
194 States Armed Forces, the United States Reserve Forces, or the  
195 National Guard during terms of federal or state active duty  
196 which materially affect the servicemember's ability to appear.

197 Section 4. Section 624.155, Florida Statutes, is amended to  
198 read:

199 624.155 Civil remedy.—

200 (1) Any person may bring a civil action against an insurer  
201 when such person is damaged:

202 (a) By a violation of any of the following provisions by  
203 the insurer:

- 204 1. Section 626.9541(1) (i), (o), or (x);
- 205 2. Section 626.9551;
- 206 3. Section 626.9705;
- 207 4. Section 626.9706;
- 208 5. Section 626.9707; or
- 209 6. Section 627.7283.

210 (b) By the commission of any of the following acts by the  
211 insurer:

- 212 1. Not attempting in good faith to settle claims when,  
213 under all the circumstances, it could and should have done so,  
214 had it acted fairly and honestly toward its insured and with due





209768

215 regard for her or his interests;

216       2. Making claims payments to insureds or beneficiaries not  
217 accompanied by a statement setting forth the coverage under  
218 which payments are being made; or

219       3. Except as to liability coverages, failing to promptly  
220 settle claims, when the obligation to settle a claim has become  
221 reasonably clear, under one portion of the insurance policy  
222 coverage in order to influence settlements under other portions  
223 of the insurance policy coverage.

224

225 Notwithstanding the provisions of the above to the contrary, a  
226 person pursuing a remedy under this section need not prove that  
227 such act was committed or performed with such frequency as to  
228 indicate a general business practice.

229       (2) Any party may bring a civil action against an  
230 unauthorized insurer if such party is damaged by a violation of  
231 s. 624.401 by the unauthorized insurer.

232       (3) (a) As a condition precedent to bringing an action under  
233 this section, the department and the authorized insurer must  
234 have been given 60 days' written notice of the violation. Notice  
235 to the authorized insurer must be provided by the department to  
236 the e-mail address designated by the insurer under s. 624.422.

237       (b) The notice shall be on a form provided by the  
238 department and shall state with specificity the following  
239 information, and such other information as the department may  
240 require:

241       1. The statutory provision, including the specific language  
242 of the statute, which the authorized insurer allegedly violated.

243       2. The facts and circumstances giving rise to the



209768

244 violation.

245 3. The name of any individual involved in the violation.

246 4. Reference to specific policy language that is relevant  
247 to the violation, if any. If the person bringing the civil  
248 action is a third party claimant, she or he shall not be  
249 required to reference the specific policy language if the  
250 authorized insurer has not provided a copy of the policy to the  
251 third party claimant pursuant to written request.

252 5. A statement that the notice is given in order to perfect  
253 the right to pursue the civil remedy authorized by this section.

254 (c) No action shall lie if, within 60 days after the  
255 insurer receives notice from the department in accordance with  
256 this subsection, the damages are paid or the circumstances  
257 giving rise to the violation are corrected.

258 (d) The authorized insurer that is the recipient of a  
259 notice filed pursuant to this section shall report to the  
260 department on the disposition of the alleged violation.

261 (e) The applicable statute of limitations for an action  
262 under this section shall be tolled for a period of:

263 1. Sixty days after the insurer receives from the  
264 department the notice required by this subsection.

265 2. Sixty days after the date appraisal is invoked pursuant  
266 to paragraph (f).

267 (f) A notice required under this subsection may not be  
268 filed within 60 days after appraisal is invoked by any party in  
269 a residential property insurance claim.

270 (4) (a) An action for bad faith involving a liability  
271 insurance claim, including any such action brought under the  
272 common law, shall not lie if the insurer tenders the lesser of



209768

273 the policy limits or the amount demanded by the claimant within  
274 90 days after receiving actual notice of a claim which is  
275 accompanied by sufficient evidence to support the amount of the  
276 claim.

277 (b) If an insurer does not tender the lesser of the policy  
278 limits or the amount demanded by the claimant within the 90-day  
279 timeframe provided in paragraph (a), the existence of the 90-day  
280 timeframe and that no bad faith action could lie had the insurer  
281 tendered the lesser of policy limits or the amount demanded by  
282 the claimant pursuant to paragraph (a) is inadmissible in any  
283 action seeking to establish bad faith on the part of the  
284 insurer.

285 (c) If the insurer fails to tender pursuant to paragraph  
286 (a) within the 90-day period, any applicable statute of  
287 limitations is extended for an additional 90 days.

288 (5) In any bad faith action, whether such action is brought  
289 under this section or is based on the common-law remedy for bad  
290 faith:

291 (a) Mere negligence alone is insufficient to constitute bad  
292 faith.

293 (b)1. The insured, claimant, and representative of the  
294 insured or claimant have a duty to act in good faith in  
295 furnishing information regarding the claim, in making demands of  
296 the insurer, in setting deadlines, and in attempting to settle  
297 the claim. This duty does not create a separate cause of action,  
298 but may only be considered pursuant to subparagraph 2.

299 2. In any action for bad faith against an insurer, the  
300 trier of fact may consider whether the insured, claimant, or  
301 representative of the insured or claimant did not act in good



209768

302 faith pursuant to this paragraph, in which case the trier of  
303 fact may reasonably reduce the amount of damages awarded against  
304 the insurer.

305 (6) If two or more third-party claimants have competing  
306 claims arising out of a single occurrence, which in total may  
307 exceed the available policy limits of one or more of the insured  
308 parties who may be liable to the third-party claimants, an  
309 insurer is not liable beyond the available policy limits for  
310 failure to pay all or any portion of the available policy limits  
311 to one or more of the third-party claimants if, within 90 days  
312 after receiving notice of the competing claims in excess of the  
313 available policy limits, the insurer complies with either  
314 paragraph (a) or paragraph (b).

315 (a) The insurer files an interpleader action under the  
316 Florida Rules of Civil Procedure. If the claims of the competing  
317 third-party claimants are found to be in excess of the policy  
318 limits, the third-party claimants are entitled to a prorated  
319 share of the policy limits as determined by the trier of fact.  
320 An insurer's interpleader action does not alter or amend the  
321 insurer's obligation to defend its insured.

322 (b) Pursuant to binding arbitration that has been agreed to  
323 by the insurer and the third-party claimants, the insurer makes  
324 the entire amount of the policy limits available for payment to  
325 the competing third-party claimants before a qualified  
326 arbitrator agreed to by the insurer and such third-party  
327 claimants at the expense of the insurer. The third-party  
328 claimants are entitled to a prorated share of the policy limits  
329 as determined by the arbitrator, who must consider the  
330 comparative fault, if any, of each third-party claimant, and the



209768

331 total likely outcome at trial based upon the total of the  
332 economic and noneconomic damages submitted to the arbitrator for  
333 consideration. A third-party claimant whose claim is resolved by  
334 the arbitrator must execute and deliver a general release to the  
335 insured party whose claim is resolved by the proceeding.

336 (7)~~(4)~~ Upon adverse adjudication at trial or upon appeal,  
337 the authorized insurer shall be liable for damages, together  
338 with court costs and reasonable attorney ~~attorney's~~ fees  
339 incurred by the plaintiff.

340 (8)~~(5)~~ ~~No~~ Punitive damages may not ~~shall~~ be awarded under  
341 this section unless the acts giving rise to the violation occur  
342 with such frequency as to indicate a general business practice  
343 and these acts are:

344 (a) Willful, wanton, and malicious;

345 (b) In reckless disregard for the rights of any insured; or

346 (c) In reckless disregard for the rights of a beneficiary  
347 under a life insurance contract.

348  
349 Any person who pursues a claim under this subsection shall post  
350 in advance the costs of discovery. Such costs shall be awarded  
351 to the authorized insurer if no punitive damages are awarded to  
352 the plaintiff.

353 (9)~~(6)~~ This section does ~~shall~~ not ~~be construed to~~  
354 authorize a class action suit against an authorized insurer or a  
355 civil action against the commission, the office, or the  
356 department or any of their employees, or to create a cause of  
357 action when an authorized health insurer refuses to pay a claim  
358 for reimbursement on the ground that the charge for a service  
359 was unreasonably high or that the service provided was not



209768

360 medically necessary.

361 ~~(10)(7)~~ In the absence of expressed language to the  
362 contrary, this section shall not be construed to authorize a  
363 civil action or create a cause of action against an authorized  
364 insurer or its employees who, in good faith, release information  
365 about an insured or an insurance policy to a law enforcement  
366 agency in furtherance of an investigation of a criminal or  
367 fraudulent act relating to a motor vehicle theft or a motor  
368 vehicle insurance claim.

369 ~~(11)(8)~~ The civil remedy specified in this section does not  
370 preempt any other remedy or cause of action provided for  
371 pursuant to any other statute or pursuant to the common law of  
372 this state. Any person may obtain a judgment under either the  
373 common-law remedy of bad faith or this statutory remedy, but is  
374 ~~shall~~ not be entitled to a judgment under both remedies. This  
375 section does ~~shall~~ not be construed to create a common-law cause  
376 of action. The damages recoverable pursuant to this section  
377 shall include those damages which are a reasonably foreseeable  
378 result of a specified violation of this section by the  
379 authorized insurer and may include an award or judgment in an  
380 amount that exceeds the policy limits.

381 ~~(12)(9)~~ A surety issuing a payment or performance bond on  
382 the construction or maintenance of a building or roadway project  
383 is not an insurer for purposes of subsection (1).

384 Section 5. Section 768.0427, Florida Statutes, is created  
385 to read:

386 768.0427 Admissibility of evidence to prove medical  
387 expenses in personal injury or wrongful death actions;  
388 disclosure of letters of protection; recovery of past and future



209768

389 medical expenses damages.—

390 (1) DEFINITIONS.—As used in this section, the term:

391 (a) "Factoring company" means a person who purchases a  
392 health care provider's accounts receivable at a discount below  
393 the invoice value of such accounts.

394 (b) "Health care coverage" means any third-party health  
395 care or disability services financing arrangement, including,  
396 but not limited to, arrangements with entities certified or  
397 authorized under federal law or under the Florida Insurance  
398 Code; state or federal health care benefit programs; workers'  
399 compensation; and personal injury protection.

400 (c) "Health care provider" means any of the following  
401 professionals and entities, and professionals and entities  
402 similarly licensed in another jurisdiction:

403 1. A provider as defined in s. 408.803.

404 2. A clinical laboratory providing services in this state  
405 or services to health care providers in this state, if the  
406 clinical laboratory is certified by the Centers for Medicare and  
407 Medicaid Services under the federal Clinical Laboratory  
408 Improvement Amendments and the federal rules adopted thereunder.

409 3. A federally qualified health center as defined in 42  
410 U.S.C. s. 1396d(1)(2)(B), as that definition existed on the  
411 effective date of this act.

412 4. A health care practitioner as defined in s. 456.001.

413 5. A health care professional licensed under part IV of  
414 chapter 468.

415 6. A home health aide as defined in s. 400.462.

416 7. A provider licensed under chapter 394 or chapter 397 and  
417 its clinical and nonclinical staff providing inpatient or



209768

418 outpatient services.

419 8. A continuing care facility licensed under chapter 651.

420 9. A pharmacy permitted under chapter 465.

421 (d) "Letter of protection" means any arrangement by which a  
422 health care provider renders treatment in exchange for a promise  
423 of payment for the claimant's medical expenses from any judgment  
424 or settlement of a personal injury or wrongful death action. The  
425 term includes any such arrangement, regardless of whether  
426 referred to as a letter of protection.

427 (2) ADMISSIBLE EVIDENCE OF MEDICAL TREATMENT OR SERVICE  
428 EXPENSES.—Evidence offered to prove the amount of damages for  
429 past or future medical treatment or services in a personal  
430 injury or wrongful death action is admissible as provided in  
431 this subsection.

432 (a) Evidence offered to prove the amount of damages for  
433 past medical treatment or services that have been satisfied is  
434 limited to evidence of the amount actually paid, regardless of  
435 the source of payment.

436 (b) Evidence offered to prove the amount necessary to  
437 satisfy unpaid charges for incurred medical treatment or  
438 services shall include, but is not limited to, evidence as  
439 provided in this paragraph.

440 1. If the claimant has health care coverage other than  
441 Medicare or Medicaid, evidence of the amount which such health  
442 care coverage is obligated to pay the health care provider to  
443 satisfy the charges for the claimant's incurred medical  
444 treatment or services, plus the claimant's share of medical  
445 expenses under the insurance contract or regulation.

446 2. If the claimant has health care coverage but obtains





447 treatment under a letter of protection or otherwise does not  
448 submit charges for any health care provider's medical treatment  
449 or services to health care coverage, evidence of the amount the  
450 claimant's health care coverage would pay the health care  
451 provider to satisfy the past unpaid medical charges under the  
452 insurance contract or regulation, plus the claimant's share of  
453 medical expenses under the insurance contract or regulation, had  
454 the claimant obtained medical services or treatment pursuant to  
455 the health care coverage.

456 3. If the claimant does not have health care coverage or  
457 has health care coverage through Medicare or Medicaid, evidence  
458 of 120 percent of the Medicare reimbursement rate in effect on  
459 the date of the claimant's incurred medical treatment or  
460 services, or, if there is no applicable Medicare rate for a  
461 service, 170 percent of the applicable state Medicaid rate.

462 4. If the claimant obtains medical treatment or services  
463 under a letter of protection and the health care provider  
464 subsequently transfers the right to receive payment under the  
465 letter of protection to a third party, evidence of the amount  
466 the third party paid or agreed to pay the health care provider  
467 in exchange for the right to receive payment pursuant to the  
468 letter of protection.

469 5. Any evidence of reasonable amounts billed to the  
470 claimant for medically necessary treatment or medically  
471 necessary services provided to the claimant.

472 (c) Evidence offered to prove the amount of damages for any  
473 future medical treatment or services the claimant will receive  
474 shall include, but is not limited to, evidence as provided in  
475 this paragraph.



209768

476 1. If the claimant has health care coverage other than  
477 Medicare or Medicaid, or is eligible for any such health care  
478 coverage, evidence of the amount for which the future charges of  
479 health care providers could be satisfied if submitted to such  
480 health care coverage, plus the claimant's share of medical  
481 expenses under the insurance contract or regulation.

482 2. If the claimant does not have health care coverage or  
483 has health care coverage through Medicare or Medicaid, or is  
484 eligible for such health care coverage, evidence of 120 percent  
485 of the Medicare reimbursement rate in effect at the time of  
486 trial for the medical treatment or services the claimant will  
487 receive, or, if there is no applicable Medicare rate for a  
488 service, 170 percent of the applicable state Medicaid rate.

489 3. Any evidence of reasonable future amounts to be billed  
490 to the claimant for medically necessary treatment or medically  
491 necessary services.

492 (d) This subsection does not impose an affirmative duty  
493 upon any party to seek a reduction in billed charges to which  
494 the party is not contractually entitled.

495 (e) Individual contracts between providers and authorized  
496 commercial insurers or authorized health maintenance  
497 organizations are not subject to discovery or disclosure and are  
498 not admissible into evidence.

499 (3) LETTERS OF PROTECTION; REQUIRED DISCLOSURES.—In a  
500 personal injury or wrongful death action, as a condition  
501 precedent to asserting any claim for medical expenses for  
502 treatment rendered under a letter of protection, the claimant  
503 must disclose:

504 (a) A copy of the letter of protection.



209768

505 (b) All billings for the claimant's medical expenses, which  
506 must be itemized and, to the extent applicable, coded according  
507 to:

508 1. For health care providers billing at the provider level,  
509 the American Medical Association's Current Procedural  
510 Terminology (CPT), or the Healthcare Common Procedure Coding  
511 System (HCPCS), in effect on the date the services were  
512 rendered.

513 2. For health care providers billing at the facility level  
514 for expenses incurred in a clinical or outpatient setting,  
515 including when billing through an Ambulatory Payment  
516 Classification (APC) or Enhanced Ambulatory Patient Grouping  
517 (EAPG), the International Classification of Diseases (ICD)  
518 diagnosis code and, if applicable, the American Medical  
519 Association's Current Procedural Terminology (CPT), in effect on  
520 the date the services were rendered.

521 3. For health care providers billing at the facility level  
522 for expenses incurred in an inpatient setting, including when  
523 billing through a Diagnosis Related Group (DRG), the  
524 International Classification of Diseases (ICD) diagnosis and  
525 procedure codes in effect on the date in which the claimant is  
526 discharged.

527 (c) If the health care provider sells the accounts  
528 receivable for the claimant's medical expenses to a factoring  
529 company or other third party:

530 1. The name of the factoring company or other third party  
531 who purchased such accounts.

532 2. The dollar amount for which the factoring company or  
533 other third party purchased such accounts, including any



209768

534 discount provided below the invoice amount.

535 (d) Whether the claimant, at the time medical treatment was  
536 rendered, had health care coverage and, if so, the identity of  
537 such coverage.

538 (e) Whether the claimant was referred for treatment under a  
539 letter of protection and, if so, the identity of the person who  
540 made the referral. If the referral is made by the claimant's  
541 attorney, disclosure of the referral is permitted, and evidence  
542 of such referral is admissible notwithstanding s. 90.502.

543 Moreover, in such situation, the financial relationship between  
544 a law firm and a medical provider, including the number of  
545 referrals, frequency, and financial benefit obtained, is  
546 relevant to the issue of the bias of a testifying medical  
547 provider.

548 (4) DAMAGES RECOVERABLE FOR MEDICAL TREATMENT OR SERVICE  
549 EXPENSES.—The damages that may be recovered by a claimant in a  
550 personal injury or wrongful death action for the reasonable and  
551 necessary cost or value of medical care rendered may not include  
552 any amount in excess of the evidence of medical treatment and  
553 services expenses admitted pursuant to subsection (2), and also  
554 may not exceed the sum of the following:

555 (a) Amounts actually paid by or on behalf of the claimant  
556 to a health care provider who rendered medical treatment or  
557 services;

558 (b) Amounts necessary to satisfy charges for medical  
559 treatment or services that are due and owing but at the time of  
560 trial are not yet satisfied; and

561 (c) Amounts necessary to provide for any reasonable and  
562 necessary medical treatment or services the claimant will



209768

563 receive in the future.

564 Section 6. Section 768.0701, Florida Statutes, is created  
565 to read:

566 768.0701 Premises liability for criminal acts of third  
567 parties.—Notwithstanding s. 768.81(4), in an action for damages  
568 against the owner, lessor, operator, or manager of commercial or  
569 real property brought by a person lawfully on the property who  
570 was injured by the criminal act of a third party, the trier of  
571 fact must consider the fault of all persons who contributed to  
572 the injury.

573 Section 7. Section 768.0706, Florida Statutes, is created  
574 to read:

575 768.0706 Multifamily residential property safety and  
576 security; presumption against liability.—

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

578 (a) "Crime prevention through environmental design" has the  
579 same meaning as in s. 163.503(6).

580 (b) "Multifamily residential property" means a residential  
581 building, or group of residential buildings, such as apartments,  
582 townhouses, or condominiums, consisting of at least five  
583 dwelling units on a particular parcel.

584 (c) "Parcel" means real property for which a distinct  
585 parcel identification number is assigned to the property by the  
586 property appraiser for the county in which the property is  
587 located.

588 (2) The owner or principal operator of a multifamily  
589 residential property which substantially implements the  
590 following security measures on that property, and demonstrates  
591 substantial implementation, has a presumption against liability



209768

592 in connection with criminal acts that occur on the premises  
593 which are committed by third parties who are not employees or  
594 agents of the owner or operator:

595 (a)1. A security camera system at points of entry and exit  
596 which records, and maintains as retrievable for at least 30  
597 days, video footage to assist in offender identification and  
598 apprehension.

599 2. A lighted parking lot illuminated at an intensity of at  
600 least an average of 1.8 foot-candles per square foot at 18  
601 inches above the surface from dusk until dawn or controlled by  
602 photocell or any similar electronic device that provides light  
603 from dusk until dawn.

604 3. Lighting in walkways, laundry rooms, common areas, and  
605 porches. Such lighting must be illuminated from dusk until dawn  
606 or controlled by photocell or any similar electronic device that  
607 provides light from dusk until dawn.

608 4. At least a 1-inch deadbolt in each dwelling unit door.

609 5. A locking device on each window, each exterior sliding  
610 door, and any other doors not used for community purposes.

611 6. Locked gates with key or fob access along pool fence  
612 areas.

613 7. A peephole or door viewer on each dwelling unit door  
614 that does not include a window or that does not have a window  
615 next to the door.

616 (b) By January 1, 2025, the owner or principal operator of  
617 a multifamily residential property has a crime prevention  
618 through environmental design assessment that is no more than 3  
619 years old completed for the property. Such assessment must be  
620 performed by a law enforcement agency or a Florida Crime



209768

621 Prevention Through Environmental Design Practitioner designated  
622 by the Florida Crime Prevention Training Institute of the  
623 Department of Legal Affairs. The owner or principal operator  
624 must remain in substantial compliance with the assessment for  
625 purposes of this paragraph.

626 (c)1. By January 1, 2025, the owner or principal operator  
627 of a multifamily residential property provides proper crime  
628 deterrence and safety training to its current employees. After  
629 January 1, 2025, the owner or principal operator must provide  
630 such training to an employee within 60 days after his or her  
631 hire date for purposes of this paragraph.

632 2. For purposes of this paragraph, "proper crime deterrence  
633 and safety training" means training which trains and  
634 familiarizes employees with the security principles, devices,  
635 measures, and standards set forth under paragraph (a), and which  
636 is reviewed at least every 3 years and updated as necessary. The  
637 owner or principal operator may request a law enforcement agency  
638 or the Florida Crime Prevention Through Environmental Design  
639 Practitioner performing the assessment under paragraph (b) to  
640 review the training curriculum.

641 (3) The Florida Crime Prevention Training Institute of the  
642 Department of Legal Affairs shall develop a proposed curriculum  
643 or best practices for owners or principal operators to implement  
644 such training. The state has no liability in connection with  
645 providing a proposed training curriculum under this subsection.

646 (4) This section does not establish a private cause of  
647 action.

648 Section 8. Subsection (2) of section 768.81, Florida  
649 Statutes, is amended, and subsection (6) is added to that



209768

650 section, to read:

651 768.81 Comparative fault.—

652 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence action,  
653 contributory fault chargeable to the claimant diminishes  
654 proportionately the amount awarded as economic and noneconomic  
655 damages for an injury attributable to the claimant's  
656 contributory fault, but does not bar recovery, subject to  
657 subsection (6).

658 (6) GREATER PERCENTAGE OF FAULT.—In a negligence action to  
659 which this section applies, any party found to be greater than  
660 50 percent at fault for his or her own harm may not recover any  
661 damages. This subsection does not apply to an action for damages  
662 for personal injury or wrongful death arising out of medical  
663 negligence pursuant to chapter 766.

664 Section 9. Section 626.9373, Florida Statutes, is repealed.

665 Section 10. Section 627.428, Florida Statutes, is repealed.

666 Section 11. Paragraphs (a) and (j) of subsection (1) of  
667 section 475.01, Florida Statutes, are amended to read:

668 475.01 Definitions.—

669 (1) As used in this part:

670 (a) "Broker" means a person who, for another, and for a  
671 compensation or valuable consideration directly or indirectly  
672 paid or promised, expressly or impliedly, or with an intent to  
673 collect or receive a compensation or valuable consideration  
674 therefor, appraises, auctions, sells, exchanges, buys, rents, or  
675 offers, attempts or agrees to appraise, auction, or negotiate  
676 the sale, exchange, purchase, or rental of business enterprises  
677 or business opportunities or any real property or any interest  
678 in or concerning the same, including mineral rights or leases,





209768

679 or who advertises or holds out to the public by any oral or  
680 printed solicitation or representation that she or he is engaged  
681 in the business of appraising, auctioning, buying, selling,  
682 exchanging, leasing, or renting business enterprises or business  
683 opportunities or real property of others or interests therein,  
684 including mineral rights, or who takes any part in the procuring  
685 of sellers, purchasers, lessors, or lessees of business  
686 enterprises or business opportunities or the real property of  
687 another, or leases, or interest therein, including mineral  
688 rights, or who directs or assists in the procuring of prospects  
689 or in the negotiation or closing of any transaction which does,  
690 or is calculated to, result in a sale, exchange, or leasing  
691 thereof, and who receives, expects, or is promised any  
692 compensation or valuable consideration, directly or indirectly  
693 therefor; and all persons who advertise rental property  
694 information or lists. A broker renders a professional service  
695 and is a professional within the meaning of s. 95.11(4)(b) ~~s.~~  
696 ~~95.11(4)(a)~~. Where the term "appraise" or "appraising" appears  
697 in the definition of the term "broker," it specifically excludes  
698 those appraisal services which must be performed only by a  
699 state-licensed or state-certified appraiser, and those appraisal  
700 services which may be performed by a registered trainee  
701 appraiser as defined in part II. The term "broker" also includes  
702 any person who is a general partner, officer, or director of a  
703 partnership or corporation which acts as a broker. The term  
704 "broker" also includes any person or entity who undertakes to  
705 list or sell one or more timeshare periods per year in one or  
706 more timeshare plans on behalf of any number of persons, except  
707 as provided in ss. 475.011 and 721.20.



209768

708 (j) "Sales associate" means a person who performs any act  
709 specified in the definition of "broker," but who performs such  
710 act under the direction, control, or management of another  
711 person. A sales associate renders a professional service and is  
712 a professional within the meaning of s. 95.11(4)(b) ~~s.~~  
713 ~~95.11(4)(a)~~.

714 Section 12. Paragraph (h) of subsection (1) of section  
715 475.611, Florida Statutes, is amended to read:

716 475.611 Definitions.—

717 (1) As used in this part, the term:

718 (h) "Appraiser" means any person who is a registered  
719 trainee real estate appraiser, a licensed real estate appraiser,  
720 or a certified real estate appraiser. An appraiser renders a  
721 professional service and is a professional within the meaning of  
722 s. 95.11(4)(b) ~~s. 95.11(4)(a)~~.

723 Section 13. Subsection (7) of section 517.191, Florida  
724 Statutes, is amended to read:

725 517.191 Injunction to restrain violations; civil penalties;  
726 enforcement by Attorney General.—

727 (7) Notwithstanding s. 95.11(4)(f) ~~s. 95.11(4)(e)~~, an  
728 enforcement action brought under this section based on a  
729 violation of any provision of this chapter or any rule or order  
730 issued under this chapter shall be brought within 6 years after  
731 the facts giving rise to the cause of action were discovered or  
732 should have been discovered with the exercise of due diligence,  
733 but not more than 8 years after the date such violation  
734 occurred.

735 Section 14. Subsection (2) of section 627.441, Florida  
736 Statutes, is amended to read:



209768

737           627.441 Commercial general liability policies; coverage to  
738 contractors for completed operations.—

739           (2) A liability insurer must offer coverage at an  
740 appropriate additional premium for liability arising out of  
741 current or completed operations under an owner-controlled  
742 insurance program for any period beyond the period for which the  
743 program provides liability coverage, as specified in s.  
744 255.0517(2) (b). The period of such coverage must be sufficient  
745 to protect against liability arising out of an action brought  
746 within the time limits provided in s. 95.11(3) (b) ~~s.~~  
747 ~~95.11(3) (c)~~.

748           Section 15. Subsection (4) of section 624.123, Florida  
749 Statutes, is amended to read:

750           624.123 Certain international health insurance policies;  
751 exemption from code.—

752           (4) Any international health insurance policy or  
753 application solicited, provided, entered into, issued, or  
754 delivered pursuant to this subsection is exempt from all  
755 provisions of the insurance code, except that such policy,  
756 contract, or agreement is subject to the provisions of ss.  
757 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521,  
758 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591,  
759 626.9601, 627.413, 627.4145, ~~627.428~~, and 627.6043.

760           Section 16. Subsection (4) of section 624.488, Florida  
761 Statutes, is amended to read:

762           624.488 Applicability of related laws.—In addition to other  
763 provisions of the code cited in ss. 624.460-624.488:

764           (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,  
765 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428~~,



209768

766 627.702, and 627.706; part XI of chapter 627; ss. 627.912,  
767 627.913, and 627.918;  
768  
769 apply to self-insurance funds. Only those sections of the code  
770 that are expressly and specifically cited in ss. 624.460-624.489  
771 apply to self-insurance funds.

772 Section 17. Paragraph (b) of subsection (3) of section  
773 627.062, Florida Statutes, is amended to read:

774 627.062 Rate standards.—

775 (3)

776 (b) Individual risk rates and modifications to existing  
777 approved forms are not subject to this part or part II, except  
778 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,  
779 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,  
780 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,  
781 627.4265, and 627.427, ~~and 627.428~~, but are subject to all other  
782 applicable provisions of this code and rules adopted thereunder.

783 Section 18. Section 627.401, Florida Statutes, is amended  
784 to read:

785 627.401 Scope of this part.—No provision of this part of  
786 this chapter applies to:

787 (1) Reinsurance.

788 (2) Policies or contracts not issued for delivery in this  
789 state nor delivered in this state, except as otherwise provided  
790 in this code.

791 (3) Wet marine and transportation insurance, except ss.  
792 627.409 and, ~~627.420, and 627.428~~.

793 (4) Title insurance, except ss. 627.406, 627.415, 627.416,  
794 627.419, and 627.427, ~~and 627.428~~.



209768

795 (5) Credit life or credit disability insurance, except s.  
796 627.419(5) ~~ss. 627.419(5) and 627.428.~~

797 Section 19. Subsection (8) of section 627.727, Florida  
798 Statutes, is amended to read:

799 627.727 Motor vehicle insurance; uninsured and underinsured  
800 vehicle coverage; insolvent insurer protection.—

801 ~~(8) The provisions of s. 627.428 do not apply to any action~~  
802 ~~brought pursuant to this section against the uninsured motorist~~  
803 ~~insurer unless there is a dispute over whether the policy~~  
804 ~~provides coverage for an uninsured motorist proven to be liable~~  
805 ~~for the accident.~~

806 Section 20. Subsection (8) of section 627.736, Florida  
807 Statutes, is amended to read:

808 627.736 Required personal injury protection benefits;  
809 exclusions; priority; claims.—

810 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—  
811 With respect to any dispute under the provisions of ss. 627.730-  
812 627.7405 between the insured and the insurer, or between an  
813 assignee of an insured's rights and the insurer, the provisions  
814 of s. 768.79 ~~ss. 627.428 and 768.79~~ apply, except as provided in  
815 subsections (10) and (15), and except that any attorney fees  
816 recovered must:

817 (a) Comply with prevailing professional standards;

818 (b) Not overstate or inflate the number of hours reasonably  
819 necessary for a case of comparable skill or complexity; and

820 (c) Represent legal services that are reasonable and  
821 necessary to achieve the result obtained.

822

823 Upon request by either party, a judge must make written



209768

824 findings, substantiated by evidence presented at trial or any  
825 hearings associated therewith, that any award of attorney fees  
826 complies with this subsection. ~~Notwithstanding s. 627.428,~~  
827 Attorney fees recovered under ss. 627.730-627.7405 must be  
828 calculated without regard to a contingency risk multiplier.

829 Section 21. Section 627.756, Florida Statutes, is amended  
830 to read:

831 627.756 Bonds for construction contracts; attorney fees in  
832 case of suit.—

833 (1) In a suit ~~Section 627.428~~ applies to suits brought by  
834 an owner, a contractor, a subcontractor, a laborer, or a  
835 materialman ~~owners, contractors, subcontractors, laborers, and~~  
836 ~~materialmen~~ against a surety insurer under payment or  
837 performance bonds written by the insurer under the laws of this  
838 state to indemnify against pecuniary loss by breach of a  
839 building or construction contract, upon the rendition of a  
840 judgment or decree by any of the courts of this state against  
841 the surety insurer and in favor of the owner, contractor,  
842 subcontractor, laborer, or materialman, the trial court or, in  
843 the event of an appeal in which the owner, contractor,  
844 subcontractor, laborer, or materialman prevails, the appellate  
845 court, shall adjudge or decree against the surety insurer and in  
846 favor of the owner, contractor, subcontractor, laborer, or  
847 materialman a reasonable sum as fees or compensation for the  
848 attorney prosecuting the suit in which the recovery is had.  
849 ~~Owners, contractors, subcontractors, laborers, and materialmen~~  
850 ~~shall be deemed to be insureds or beneficiaries for the purposes~~  
851 ~~of this section.~~

852 (2) A surety who issues a bid, performance, or payment bond



209768

853 in connection with construction activities where hazardous  
854 substances exist or are discovered is liable under ss. 376.308  
855 and 403.727 only to the extent provided in this subsection. In  
856 case of a default, the surety is liable only for the cost of  
857 completion of the contract work in accordance with the plans and  
858 specifications, less the balance of funds remaining to be paid  
859 under the contract, up to the penal sum of the bond. The surety  
860 is not liable on a bond to indemnify or compensate the obligee  
861 for loss or liability arising from personal injury or property  
862 damage, whether or not caused by a breach of the bonded  
863 contract. Further, a right of action does not accrue on a bond  
864 to or for the use of any person other than the obligee named in  
865 the bond.

866 Section 22. Subsection (4) of section 628.6016, Florida  
867 Statutes, is amended to read:

868 628.6016 Applicability of related laws.—In addition to  
869 other provisions of the code cited in ss. 628.6011–628.6018:

870 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,  
871 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~  
872 627.702, and 627.706; part XI of chapter 627; ss. 627.912,  
873 627.913, and 627.918; and

874  
875 apply to assessable mutual insurers; however, ss. 628.255,  
876 628.411, and 628.421 do not apply. No section of the code not  
877 expressly and specifically cited in ss. 628.6011–628.6018  
878 applies to assessable mutual insurers. The term “assessable  
879 mutual insurer” shall be substituted for the term “commercial  
880 self-insurer” as appropriate.

881 Section 23. Section 631.70, Florida Statutes, is repealed.



209768

882           Section 24. Section 631.926, Florida Statutes, is repealed.

883           Section 25. Subsection (11) of section 632.638, Florida  
884 Statutes, is amended to read:

885           632.638 Applicability of other code provisions.—In addition  
886 to other provisions contained or referred to in this chapter,  
887 the following chapters and provisions of this code apply to  
888 fraternal benefit societies, to the extent applicable and not in  
889 conflict with the express provisions of this chapter and the  
890 reasonable implications thereof:

891           ~~(11) Section 627.428;~~

892           Section 26. The Division of Law Revision is directed to  
893 replace the phrase "the effective date of this act" wherever it  
894 occurs in this act with the date this act becomes a law.

895           Section 27. The amendments made by this act to s. 95.11,  
896 Florida Statutes, apply to causes of action accruing after the  
897 effective date of this act.

898           Section 28. This act shall not be construed to impair any  
899 right under an insurance contract in effect on or before the  
900 effective date of this act. To the extent that this act affects  
901 a right under an insurance contract, this act applies to an  
902 insurance contract issued or renewed after the effective date of  
903 this act.

904           Section 29. Except as otherwise expressly provided in this  
905 act, this act shall apply to causes of action filed after the  
906 effective date of this act.

907           Section 30. This act shall take effect upon becoming a law.

908  
909 ===== T I T L E   A M E N D M E N T =====

910 And the title is amended as follows:





911 Delete everything before the enacting clause  
912 and insert:

913 A bill to be entitled  
914 An act relating to civil remedies; amending s. 57.104,  
915 F.S.; creating a rebuttable presumption that a  
916 lodestar fee is a sufficient and reasonable attorney  
917 fee in most civil actions; providing an exception;  
918 creating s. 86.121, F.S.; authorizing a court to award  
919 attorney fees in certain declaratory actions;  
920 prohibiting the transfer, assignment, or acquisition  
921 of the right to such attorney fees except by specified  
922 persons; providing construction; amending s. 95.11,  
923 F.S.; reducing the statute of limitations for  
924 negligence actions; providing applicability of certain  
925 provisions to actions involving servicemembers;  
926 amending s. 624.155, F.S.; providing standards for bad  
927 faith actions; providing for the distribution of  
928 proceeds when two or more third-party claims arising  
929 out of a single occurrence exceed policy limits;  
930 creating s. 768.0427, F.S.; providing definitions;  
931 providing standards for the admissibility of evidence  
932 to prove the cost of damages for medical expenses in  
933 certain civil actions; requiring certain disclosures  
934 with respect to claims for medical expenses for  
935 treatment rendered under letters of protection;  
936 specifying the damages that may be recovered by a  
937 claimant for the reasonable and necessary cost of  
938 medical care; creating s. 768.0701, F.S.; requiring  
939 the trier of fact to consider the fault of certain



209768

940 persons who contribute to an injury; creating s.  
941 768.0706, F.S.; providing definitions; providing that  
942 the owner or principal operator of a multifamily  
943 residential property which substantially implements  
944 specified security measures on that property has a  
945 presumption against liability for negligence in  
946 connection with certain criminal acts that occur on  
947 the premises; requiring the Florida Crime Prevention  
948 Training Institute of the Department of Legal Affairs  
949 to develop a proposed curriculum or best practices for  
950 owners or principal operators; providing construction;  
951 amending s. 768.81, F.S.; providing that a party in a  
952 negligence action who is at fault by a specified  
953 amount may not recover damages under a comparative  
954 negligence action; providing applicability; repealing  
955 ss. 626.9373 and 627.428, F.S., relating to attorney  
956 fees awarded against surplus lines insurers and  
957 insurers, respectively; amending s. 627.756, F.S.;  
958 providing for the award of costs and attorney fees in  
959 certain actions; amending ss. 475.01, 475.611,  
960 517.191, 627.441, 624.123, 624.488, 627.062, 627.401,  
961 627.727, 627.736, 628.6016, and 632.638, F.S.;  
962 conforming cross-references and provisions to changes  
963 made by the act; repealing ss. 631.70 and 631.926,  
964 F.S., relating to attorney fees; providing a directive  
965 to the Division of Law Revision; providing  
966 applicability and construction; providing an effective  
967 date.