

By Senator Campbell

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A bill to be entitled
An act relating to tort actions; amending s.
627.737, F.S.; establishing criteria for the
creation of a rebuttable presumption of
permanent injury resulting from the ownership,
maintenance, or operation of a motor vehicle;
providing an effective date.

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

Section 1. Section 627.737, Florida Statutes, is
amended to read:

627.737 Tort exemption; limitation on right to
damages; punitive damages.--

(1) Every owner, registrant, operator, or occupant of
a motor vehicle with respect to which security has been
provided as required by ss. 627.730-627.7405, and every person
or organization legally responsible for her or his acts or
omissions, is hereby exempted from tort liability for damages
because of bodily injury, sickness, or disease arising out of
the ownership, operation, maintenance, or use of such motor
vehicle in this state to the extent that the benefits
described in s. 627.736(1) are payable for such injury, or
would be payable but for any exclusion authorized by ss.
627.730-627.7405, under any insurance policy or other method
of security complying with the requirements of s. 627.733, or
by an owner personally liable under s. 627.733 for the payment
of such benefits, unless a person is entitled to maintain an
action for pain, suffering, mental anguish, and inconvenience
for such injury under the provisions of subsection (2).

1 (2) In any action of tort brought against the owner,
2 registrant, operator, or occupant of a motor vehicle with
3 respect to which security has been provided as required by ss.
4 627.730-627.7405, or against any person or organization
5 legally responsible for her or his acts or omissions, a
6 plaintiff may recover damages in tort for pain, suffering,
7 mental anguish, and inconvenience because of bodily injury,
8 sickness, or disease arising out of the ownership,
9 maintenance, operation, or use of such motor vehicle only in
10 the event that the injury or disease consists in whole or in
11 part of:

12 (a) Significant and permanent loss of an important
13 bodily function.

14 (b) Permanent injury within a reasonable degree of
15 medical probability, other than scarring or disfigurement.

16 (c) Significant and permanent scarring or
17 disfigurement.

18 (d) Death.

19 (3) When a defendant, in a proceeding brought pursuant
20 to ss. 627.730-627.7405, questions whether the plaintiff has
21 met the requirements of subsection (2), then the defendant may
22 file an appropriate motion with the court, and the court
23 shall, on a one-time basis only, 30 days before the date set
24 for the trial or the pretrial hearing, whichever is first, by
25 examining the pleadings and the evidence before it, ascertain
26 whether the plaintiff will be able to submit some evidence
27 that the plaintiff will meet the requirements of subsection
28 (2). If the court finds that the plaintiff will not be able
29 to submit such evidence, then the court shall dismiss the
30 plaintiff's claim without prejudice.

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1 (4) In any action brought against an automobile
2 liability insurer for damages in excess of its policy limits,
3 no claim for punitive damages shall be allowed.

4 (5) For purposes of subsection (2), there is a
5 rebuttable presumption of permanent injury within a reasonable
6 degree of medical probability if the evidence presented shows
7 that:

8 (a) There will be a recurring need for future medical
9 treatment;

10 (b) A vocational restriction or limitation is expected
11 to be of a continuing or enduring nature;

12 (c) A symptom, including subjective pain, is marked by
13 long duration or frequent recurrence, which continues or
14 endures without fundamental or significant change;

15 (d) An injury, symptom, or condition has become
16 stabilized and is unlikely to resolve or return to its
17 preaccident status with or without medical treatment during
18 the next 6 months;

19 (e) Full recovery is unlikely and permanent injury
20 will ultimately be diagnosed;

21 (f) The existence of chronic subjective or objective
22 pain has persisted for at least 6 months; or

23 (g) Chronic pain adversely limits the ability to
24 function and carry out daily activities, whether based on
25 anatomical, physiological, or psychological effects of that
26 pain, or daily activities may be performed only intermittently
27 because resulting pain prohibits regular repetition of those
28 activities.

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1 This subsection does not prohibit other evidence establishing
2 the existence of permanent injury within a reasonable degree
3 of medical probability.

4 Section 2. This act shall take effect July 1, 1999.

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7 SENATE SUMMARY

8 Establishes criteria for the creation of a rebuttable
9 presumption of permanent injury in certain tort actions
brought as a result of motor-vehicle-related injuries.

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