

By Senator Campbell

33-1401-00

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A bill to be entitled  
An act relating to motor vehicle and casualty insurance; amending s. 627.737, F.S.; prescribing conditions that establish a rebuttable presumption of permanent injury within a reasonable degree of medical probability in tort actions arising out of the ownership, maintenance, operation, or use 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

1 action for pain, suffering, mental anguish, and inconvenience  
2 for such injury under the provisions of subsection (2).

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

14 (a) Significant and permanent loss of an important  
15 bodily function.

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

18 (c) Significant and permanent scarring or  
19 disfigurement.

20 (d) Death.

21 (3) For the purposes of subsection (2), there is a  
22 rebuttable presumption of permanent injury within a reasonable  
23 degree of medical probability when evidence is presented that  
24 shows that:

25 (a) There is a need for future recurring or ongoing  
26 medical treatment;

27 (b) Any vocational restriction or limitation is  
28 expected to be continuing or enduring;

29 (c) Any symptom, including subjective pain, is marked  
30 by long duration or frequent recurrence that continues or  
31 endures without fundamental or significant change;

1           (d) An injury, symptom, or condition has become  
2 stabilized and is unlikely to resolve or return to its  
3 preaccident status with or without medical treatment during  
4 the next 6 months;

5           (e) Full recovery is unlikely and permanent injury  
6 will ultimately be diagnosed;

7           (f) The existence of chronic subjective or objective  
8 pain has persisted for at least 6 months and is documented by  
9 a treating physician; or

10           (g) Chronic pain has adversely limited the plaintiff's  
11 ability to function and carry out daily activities, whether  
12 based on the anatomical, physiological, or psychological  
13 impact of that pain, or the plaintiff may perform daily  
14 activities only intermittently based on resulting pain from  
15 such activities which prohibits regular repetition of those  
16 activities.

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18 Nothing in this subsection may be construed to limit other  
19 evidence from establishing the existence of permanent injury  
20 within a reasonable degree of medical probability.

21           ~~(4)(3)~~ When a defendant, in a proceeding brought  
22 pursuant to ss. 627.730-627.7405, questions whether the  
23 plaintiff has met the requirements of subsection (2), then the  
24 defendant may file an appropriate motion with the court, and  
25 the court shall, on a one-time basis only, 30 days before the  
26 date set for the trial or the pretrial hearing, whichever is  
27 first, by examining the pleadings and the evidence before it,  
28 ascertain whether the plaintiff will be able to submit some  
29 evidence that the plaintiff will meet the requirements of  
30 subsection (2). If the court finds that the plaintiff will

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1 not be able to submit such evidence, then the court shall  
2 dismiss the plaintiff's claim without prejudice.

3 (5)~~(4)~~ In any action brought against an automobile  
4 liability insurer for damages in excess of its policy limits,  
5 no claim for punitive damages shall be allowed.

6 Section 2. This act shall take effect July 1, 2000.

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9 SENATE SUMMARY

10 Prescribes conditions that give rise to a rebuttable  
11 presumption of permanent injury within a reasonable  
12 degree of medical probability in tort actions based on  
ownership, maintenance, operation, or use of a motor  
vehicle.

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