



522644

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

Senator Grall moved 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



522644

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 total coverage denial of
31 claim.—

32 (1) In an action brought for declaratory relief in state or
33 federal court to determine insurance coverage after the insurer
34 has made a total coverage denial of a claim:

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

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



522644

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

50 (2) This section does not apply to any action arising under
51 a residential or commercial property insurance policy.

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

55 95.11 Limitations other than for the recovery of real
56 property.—Actions other than for recovery of real property shall
57 be commenced as follows:

58 (3) WITHIN FOUR YEARS.—

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

60 (a)~~(b)~~ An action relating to the determination of
61 paternity, with the time running from the date the child reaches
62 the age of majority.

63 (b)~~(c)~~ An action founded on the design, planning, or
64 construction of an improvement to real property, with the time
65 running from the date of actual possession by the owner, the
66 date of the issuance of a certificate of occupancy, the date of
67 abandonment of construction if not completed, or the date of
68 completion of the contract or termination of the contract
69 between the professional engineer, registered architect, or



522644

70 licensed contractor and his or her employer, whichever date is
71 latest; except that, when the action involves a latent defect,
72 the time runs from the time the defect is discovered or should
73 have been discovered with the exercise of due diligence. In any
74 event, the action must be commenced within 10 years after the
75 date of actual possession by the owner, the date of the issuance
76 of a certificate of occupancy, the date of abandonment of
77 construction if not completed, or the date of completion of the
78 contract or termination of the contract between the professional
79 engineer, registered architect, or licensed contractor and his
80 or her employer, whichever date is latest. However,
81 counterclaims, cross-claims, and third-party claims that arise
82 out of the conduct, transaction, or occurrence set out or
83 attempted to be set out in a pleading may be commenced up to 1
84 year after the pleading to which such claims relate is served,
85 even if such claims would otherwise be time barred. With respect
86 to actions founded on the design, planning, or construction of
87 an improvement to real property, if such construction is
88 performed pursuant to a duly issued building permit and if a
89 local enforcement agency, state enforcement agency, or special
90 inspector, as those terms are defined in s. 553.71, has issued a
91 final certificate of occupancy or certificate of completion,
92 then as to the construction which is within the scope of such
93 building permit and certificate, the correction of defects to
94 completed work or repair of completed work, whether performed
95 under warranty or otherwise, does not extend the period of time
96 within which an action must be commenced. Completion of the
97 contract means the later of the date of final performance of all
98 the contracted services or the date that final payment for such



522644

99 services becomes due without regard to the date final payment is
100 made.

101 (c)~~(d)~~ An action to recover public money or property held
102 by a public officer or employee, or former public officer or
103 employee, and obtained during, or as a result of, his or her
104 public office or employment.

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

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

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

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

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

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

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

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

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

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

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

127 (o)~~(p)~~ Any action not specifically provided for in these



522644

128 statutes.

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

131 (4) WITHIN TWO YEARS.—

132 (a) An action founded on negligence.

133 (b)~~(a)~~ An action for professional malpractice, other than
134 medical malpractice, whether founded on contract or tort;
135 provided that the period of limitations shall run from the time
136 the cause of action is discovered or should have been discovered
137 with the exercise of due diligence. However, the limitation of
138 actions herein for professional malpractice shall be limited to
139 persons in privity with the professional.

140 (c)~~(b)~~ An action for medical malpractice shall be commenced
141 within 2 years from the time the incident giving rise to the
142 action occurred or within 2 years from the time the incident is
143 discovered, or should have been discovered with the exercise of
144 due diligence; however, in no event shall the action be
145 commenced later than 4 years from the date of the incident or
146 occurrence out of which the cause of action accrued, except that
147 this 4-year period shall not bar an action brought on behalf of
148 a minor on or before the child's eighth birthday. An "action for
149 medical malpractice" is defined as a claim in tort or in
150 contract for damages because of the death, injury, or monetary
151 loss to any person arising out of any medical, dental, or
152 surgical diagnosis, treatment, or care by any provider of health
153 care. The limitation of actions within this subsection shall be
154 limited to the health care provider and persons in privity with
155 the provider of health care. In those actions covered by this
156 paragraph in which it can be shown that fraud, concealment, or



522644

157 intentional misrepresentation of fact prevented the discovery of
158 the injury the period of limitations is extended forward 2 years
159 from the time that the injury is discovered or should have been
160 discovered with the exercise of due diligence, but in no event
161 to exceed 7 years from the date the incident giving rise to the
162 injury occurred, except that this 7-year period shall not bar an
163 action brought on behalf of a minor on or before the child's
164 eighth birthday. This paragraph shall not apply to actions for
165 which ss. 766.301-766.316 provide the exclusive remedy.

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

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

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

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

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

182 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
183 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
184 (4) (e) ~~(4) (d)~~, an action for wrongful death seeking damages
185 authorized under s. 768.21 brought against a natural person for



522644

186 an intentional tort resulting in death from acts described in s.
187 782.04 or s. 782.07 may be commenced at any time. This
188 subsection shall not be construed to require an arrest, the
189 filing of formal criminal charges, or a conviction for a
190 violation of s. 782.04 or s. 782.07 as a condition for filing a
191 civil action.

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

201 Section 4. Section 624.155, Florida Statutes, is amended to
202 read:

203 624.155 Civil remedy.—

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

206 (a) By a violation of any of the following provisions by
207 the insurer:

- 208 1. Section 626.9541(1)(i), (o), or (x);
- 209 2. Section 626.9551;
- 210 3. Section 626.9705;
- 211 4. Section 626.9706;
- 212 5. Section 626.9707; or
- 213 6. Section 627.7283.

214 (b) By the commission of any of the following acts by the



522644

215 insurer:

216 1. Not attempting in good faith to settle claims when,
217 under all the circumstances, it could and should have done so,
218 had it acted fairly and honestly toward its insured and with due
219 regard for her or his interests;

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

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

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

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

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

241 (b) The notice shall be on a form provided by the
242 department and shall state with specificity the following
243 information, and such other information as the department may



522644

244 require:

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

247 2. The facts and circumstances giving rise to the
248 violation.

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

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

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

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

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

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

267 1. Sixty days after the insurer receives from the
268 department the notice required by this subsection.

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

271 (f) A notice required under this subsection may not be
272 filed within 60 days after appraisal is invoked by any party in



522644

273 a residential property insurance claim.

274 (4) (a) In an action for bad faith failure to settle a
275 liability insurance claim, including any such action brought
276 under the common law, if the insurer initiates settlement
277 negotiations by tendering the lesser of the policy limits or the
278 amount demanded by the claimant in exchange for a general
279 release of the insured within 90 days after receiving actual
280 notice of the loss, the failure to tender the policy limits
281 sooner does not constitute bad faith.

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

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

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

296 (a) Mere negligence alone is insufficient to constitute bad
297 faith.

298 (b) The focus of the bad faith claim is on the conduct of
299 an insurer, but in determining whether the insurer actually
300 could have settled the claim, the jury may consider the totality
301 of the circumstances, including:



522644

302 1. Whether any conditions placed on the settlement by the
303 claimant were unreasonable or impossible to perform within the
304 time permitted; and

305 2. Whether the insured failed to cooperate with the
306 insurer's efforts to meet the conditions after being fully
307 advised by the insurer about the purpose and importance of doing
308 so.

309 (6) (a) If two or more third-party claimants have competing
310 claims arising out of a single occurrence, which in total may
311 exceed the available policy limits of an insured who may be
312 liable to the third-party claimants, and the insurer initiates
313 settlement negotiations by globally tendering the applicable
314 policy limits in exchange for a general release of the insured
315 within 90 days after receiving actual notice of the loss, the
316 failure to tender policy limits sooner does not constitute bad
317 faith.

318 (b) If an insurer does not globally tender the policy
319 limits within the 90-day timeframe provided in paragraph (a),
320 the existence of the 90-day timeframe and that no bad faith
321 action could lie had the insurer tendered the lesser of policy
322 limits or the amount demanded by the claimant pursuant to
323 paragraph (a) is inadmissible in any action seeking to establish
324 bad faith on the part of the insurer.

325 (c) If two or more third-party claimants have competing
326 claims arising out of a single occurrence, which in total may
327 exceed the available policy limits of an insured who may be
328 liable to the third-party claimants, and the claimants are
329 unwilling to globally settle within the policy limits,
330 thereafter, the insurer must attempt to minimize the magnitude



522644

331 of possible excess judgments against the insured. The insurer is
332 entitled to great discretion to decide how much to offer each
333 respective claimant in its attempt to protect the insured. The
334 insurer may, in its effort to minimize the excess liability of
335 the insured, use its discretion to offer the full available
336 policy limits to one or more claimants to the exclusion of other
337 claimants and may leave the insured exposed to some liability
338 after all the policy limits are paid. An insurer does not act in
339 bad faith simply because it is unable to settle all claims in a
340 competing claimant case.

341 (d) An insurer is not liable beyond the available policy
342 limits for failure to pay all or any portion of the available
343 policy limits to one or more of the third-party claimants if,
344 pursuant to a binding arbitration that has been agreed to by the
345 insurer and all the third-party claimants, the insurer makes the
346 entire amount of the policy limits available for payment to the
347 competing third-party claimants before a qualified arbitrator
348 agreed to by the insurer and such third-party claimants at the
349 expense of the insurer. The third-party claimants are entitled
350 to a prorated share of the policy limits as determined by the
351 arbitrator, who must consider the comparative fault, if any, of
352 each third-party claimant and the total likely outcome at trial
353 based upon the total of the economic and noneconomic damages
354 submitted to the arbitrator for consideration. A third-party
355 claimant whose claim is resolved by the arbitrator must execute
356 and deliver a general release to the insured party whose claim
357 is resolved by the proceeding.

358 (7)(4) In any insurance bad faith action, whether brought
359 under this section or the common law, upon adverse adjudication



522644

360 at trial or upon appeal, the ~~authorized~~ insurer shall be liable
361 for damages, together with court costs and reasonable attorney
362 ~~attorney's~~ fees incurred by the plaintiff.

363 (8)~~(5)~~ ~~No~~ Punitive damages may not ~~shall~~ be awarded under
364 this section unless the acts giving rise to the violation occur
365 with such frequency as to indicate a general business practice
366 and these acts are:

367 (a) Willful, wanton, and malicious;

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

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

371
372 Any person who pursues a claim under this subsection shall post
373 in advance the costs of discovery. Such costs shall be awarded
374 to the authorized insurer if no punitive damages are awarded to
375 the plaintiff.

376 (9)~~(6)~~ This section does ~~shall~~ not ~~be construed to~~
377 authorize a class action suit against an authorized insurer or a
378 civil action against the commission, the office, or the
379 department or any of their employees, or to create a cause of
380 action when an authorized health insurer refuses to pay a claim
381 for reimbursement on the ground that the charge for a service
382 was unreasonably high or that the service provided was not
383 medically necessary.

384 (10)~~(7)~~ In the absence of expressed language to the
385 contrary, this section shall not be construed to authorize a
386 civil action or create a cause of action against an authorized
387 insurer or its employees who, in good faith, release information
388 about an insured or an insurance policy to a law enforcement



522644

389 agency in furtherance of an investigation of a criminal or
390 fraudulent act relating to a motor vehicle theft or a motor
391 vehicle insurance claim.

392 (11)~~(8)~~ The civil remedy specified in this section does not
393 preempt any other remedy or cause of action provided for
394 pursuant to any other statute or pursuant to the common law of
395 this state. Any person may obtain a judgment under either the
396 common-law remedy of bad faith or this statutory remedy, but is
397 ~~shall~~ not be entitled to a judgment under both remedies. This
398 section does ~~shall~~ not be construed to create a common-law cause
399 of action. The damages recoverable pursuant to this section
400 shall include those damages which are a reasonably foreseeable
401 result of a specified violation of this section by the
402 authorized insurer and may include an award or judgment in an
403 amount that exceeds the policy limits.

404 (12)~~(9)~~ A surety issuing a payment or performance bond on
405 the construction or maintenance of a building or roadway project
406 is not an insurer for purposes of subsection (1).

407 Section 5. Section 624.1552, Florida Statutes, is created
408 to read:

409 624.1552 Civil actions involving an insurance contract;
410 applicability of offer of judgment provisions.—The provisions of
411 s. 768.79 apply to any civil action involving an insurance
412 contract.

413 Section 6. Section 768.0427, Florida Statutes, is created
414 to read:

415 768.0427 Admissibility of evidence to prove medical
416 expenses in personal injury or wrongful death actions;
417 disclosure of letters of protection; recovery of past and future



522644

418 medical expenses damages.—

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

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

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

429 (c) "Health care provider" means any of the following
430 professionals and entities, and professionals and entities
431 similarly licensed in another jurisdiction:

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

433 2. A clinical laboratory providing services in this state
434 or services to health care providers in this state, if the
435 clinical laboratory is certified by the Centers for Medicare and
436 Medicaid Services under the federal Clinical Laboratory
437 Improvement Amendments and the federal rules adopted thereunder.

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

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

442 5. A health care professional licensed under part IV of
443 chapter 468.

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

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



522644

447 outpatient services.

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

449 9. A pharmacy permitted under chapter 465.

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

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

461 (a) Evidence offered to prove the amount of damages for
462 past medical treatment or services that have been satisfied is
463 limited to evidence of the amount actually paid, regardless of
464 the source of payment.

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

469 1. If the claimant has health care coverage other than
470 Medicare or Medicaid, evidence of the amount which such health
471 care coverage is obligated to pay the health care provider to
472 satisfy the charges for the claimant's incurred medical
473 treatment or services, plus the claimant's share of medical
474 expenses under the insurance contract or regulation.

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



522644

476 treatment under a letter of protection or otherwise does not
477 submit charges for any health care provider's medical treatment
478 or services to health care coverage, evidence of the amount the
479 claimant's health care coverage would pay the health care
480 provider to satisfy the past unpaid medical charges under the
481 insurance contract or regulation, plus the claimant's share of
482 medical expenses under the insurance contract or regulation, had
483 the claimant obtained medical services or treatment pursuant to
484 the health care coverage.

485 3. If the claimant does not have health care coverage or
486 has health care coverage through Medicare or Medicaid, evidence
487 of 120 percent of the Medicare reimbursement rate in effect on
488 the date of the claimant's incurred medical treatment or
489 services, or, if there is no applicable Medicare rate for a
490 service, 170 percent of the applicable state Medicaid rate.

491 4. If the claimant obtains medical treatment or services
492 under a letter of protection and the health care provider
493 subsequently transfers the right to receive payment under the
494 letter of protection to a third party, evidence of the amount
495 the third party paid or agreed to pay the health care provider
496 in exchange for the right to receive payment pursuant to the
497 letter of protection.

498 5. Any evidence of reasonable amounts billed to the
499 claimant for medically necessary treatment or medically
500 necessary services provided to the claimant.

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



522644

505 1. If the claimant has health care coverage other than
506 Medicare or Medicaid, or is eligible for any such health care
507 coverage, evidence of the amount for which the future charges of
508 health care providers could be satisfied if submitted to such
509 health care coverage, plus the claimant's share of medical
510 expenses under the insurance contract or regulation.

511 2. If the claimant does not have health care coverage or
512 has health care coverage through Medicare or Medicaid, or is
513 eligible for such health care coverage, evidence of 120 percent
514 of the Medicare reimbursement rate in effect at the time of
515 trial for the medical treatment or services the claimant will
516 receive, or, if there is no applicable Medicare rate for a
517 service, 170 percent of the applicable state Medicaid rate.

518 3. Any evidence of reasonable future amounts to be billed
519 to the claimant for medically necessary treatment or medically
520 necessary services.

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

524 (e) Individual contracts between providers and authorized
525 commercial insurers or authorized health maintenance
526 organizations are not subject to discovery or disclosure and are
527 not admissible into evidence.

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

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



522644

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

537 1. For health care providers billing at the provider level,
538 the American Medical Association's Current Procedural
539 Terminology (CPT), or the Healthcare Common Procedure Coding
540 System (HCPCS), in effect on the date the services were
541 rendered.

542 2. For health care providers billing at the facility level
543 for expenses incurred in a clinical or outpatient setting,
544 including when billing through an Ambulatory Payment
545 Classification (APC) or Enhanced Ambulatory Patient Grouping
546 (EAPG), the International Classification of Diseases (ICD)
547 diagnosis code and, if applicable, the American Medical
548 Association's Current Procedural Terminology (CPT), in effect on
549 the date the services were rendered.

550 3. For health care providers billing at the facility level
551 for expenses incurred in an inpatient setting, including when
552 billing through a Diagnosis Related Group (DRG), the
553 International Classification of Diseases (ICD) diagnosis and
554 procedure codes in effect on the date in which the claimant is
555 discharged.

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

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

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



522644

563 discount provided below the invoice amount.

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

567 (e) Whether the claimant was referred for treatment under a
568 letter of protection and, if so, the identity of the person who
569 made the referral. If the referral is made by the claimant's
570 attorney, disclosure of the referral is permitted, and evidence
571 of such referral is admissible notwithstanding s. 90.502.
572 Moreover, in such situation, the financial relationship between
573 a law firm and a medical provider, including the number of
574 referrals, frequency, and financial benefit obtained, is
575 relevant to the issue of the bias of a testifying medical
576 provider.

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

584 (a) Amounts actually paid by or on behalf of the claimant
585 to a health care provider who rendered medical treatment or
586 services;

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

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



522644

592 receive in the future.

593 Section 7. Section 768.0706, Florida Statutes, is created
594 to read:

595 768.0706 Multifamily residential property safety and
596 security; presumption against liability.-

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

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

600 (b) "Multifamily residential property" means a residential
601 building, or group of residential buildings, such as apartments,
602 townhouses, or condominiums, consisting of at least five
603 dwelling units on a particular parcel.

604 (c) "Parcel" means real property for which a distinct
605 parcel identification number is assigned to the property by the
606 property appraiser for the county in which the property is
607 located.

608 (2) The owner or principal operator of a multifamily
609 residential property which substantially implements the
610 following security measures on that property has a presumption
611 against liability in connection with criminal acts that occur on
612 the premises which are committed by third parties who are not
613 employees or agents of the owner or operator:

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

618 2. A lighted parking lot illuminated at an intensity of at
619 least an average of 1.8 foot-candles per square foot at 18
620 inches above the surface from dusk until dawn or controlled by



522644

621 photocell or any similar electronic device that provides light
622 from dusk until dawn.

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

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

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

630 6. Locked gates with key or fob access along pool fence
631 areas.

632 7. A peephole or door viewer on each dwelling unit door
633 that does not include a window or that does not have a window
634 next to the door.

635 (b) By January 1, 2025, the owner or principal operator of
636 a multifamily residential property has a crime prevention
637 through environmental design assessment that is no more than 3
638 years old completed for the property. Such assessment must be
639 performed by a law enforcement agency or a Florida Crime
640 Prevention Through Environmental Design Practitioner designated
641 by the Florida Crime Prevention Training Institute of the
642 Department of Legal Affairs. The owner or principal operator
643 must remain in substantial compliance with the assessment for
644 purposes of this paragraph.

645 (c)1. By January 1, 2025, the owner or principal operator
646 of a multifamily residential property provides proper crime
647 deterrence and safety training to its current employees. After
648 January 1, 2025, the owner or principal operator must provide
649 such training to an employee within 60 days after his or her



522644

650 hire date for purposes of this paragraph.

651 2. For purposes of this paragraph, "proper crime deterrence
652 and safety training" means training which trains and
653 familiarizes employees with the security principles, devices,
654 measures, and standards set forth under paragraph (a), and which
655 is reviewed at least every 3 years and updated as necessary. The
656 owner or principal operator may request a law enforcement agency
657 or the Florida Crime Prevention Through Environmental Design
658 Practitioner performing the assessment under paragraph (b) to
659 review the training curriculum.

660 (3) For purposes of establishing the presumption against
661 liability under subsection (2), the burden of proof is on the
662 owner or principal operator to demonstrate that the owner or
663 principal operator has substantially implemented the security
664 measures specified in subsection (2).

665 (4) The Florida Crime Prevention Training Institute of the
666 Department of Legal Affairs shall develop a proposed curriculum
667 or best practices for owners or principal operators to implement
668 such training. The state has no liability in connection with
669 providing a proposed training curriculum under this subsection.

670 (5) This section does not establish a private cause of
671 action.

672 Section 8. Subsection (2) of section 768.81, Florida
673 Statutes, is amended, and subsection (6) is added to that
674 section, to read:

675 768.81 Comparative fault.—

676 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence action,
677 contributory fault chargeable to the claimant diminishes
678 proportionately the amount awarded as economic and noneconomic



522644

679 damages for an injury attributable to the claimant's
680 contributory fault, but does not bar recovery, subject to
681 subsection (6).

682 (6) GREATER PERCENTAGE OF FAULT.—In a negligence action to
683 which this section applies, any party found to be greater than
684 50 percent at fault for his or her own harm may not recover any
685 damages. This subsection does not apply to an action for damages
686 for personal injury or wrongful death arising out of medical
687 negligence pursuant to chapter 766.

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

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

690 Section 11. Subsection (1) of section 627.756, Florida
691 Statutes, is amended to read:

692 627.756 Bonds for construction contracts; attorney fees in
693 case of suit.—

694 (1) In a suit ~~Section 627.428 applies to suits brought by~~
695 an owner, a contractor, a subcontractor, a laborer, or a
696 materialman ~~owners, contractors, subcontractors, laborers, and~~
697 ~~materialmen~~ against a surety insurer under payment or
698 performance bonds written by the insurer under the laws of this
699 state to indemnify against pecuniary loss by breach of a
700 building or construction contract, upon the rendition of a
701 judgment or decree by any of the courts of this state against
702 the surety insurer and in favor of the owner, contractor,
703 subcontractor, laborer, or materialman, the trial court or, in
704 the event of an appeal in which the owner, contractor,
705 subcontractor, laborer, or materialman prevails, the appellate
706 court, shall adjudge or decree against the surety insurer and in
707 favor of the owner, contractor, subcontractor, laborer, or



522644

708 materialman a reasonable sum as fees or compensation for the
709 attorney prosecuting the suit in which the recovery is had.
710 ~~Owners, contractors, subcontractors, laborers, and materialmen~~
711 ~~shall be deemed to be insureds or beneficiaries for the purposes~~
712 ~~of this section.~~

713 Section 12. Paragraphs (a) and (j) of subsection (1) of
714 section 475.01, Florida Statutes, are amended to read:

715 475.01 Definitions.—

716 (1) As used in this part:

717 (a) "Broker" means a person who, for another, and for a
718 compensation or valuable consideration directly or indirectly
719 paid or promised, expressly or impliedly, or with an intent to
720 collect or receive a compensation or valuable consideration
721 therefor, appraises, auctions, sells, exchanges, buys, rents, or
722 offers, attempts or agrees to appraise, auction, or negotiate
723 the sale, exchange, purchase, or rental of business enterprises
724 or business opportunities or any real property or any interest
725 in or concerning the same, including mineral rights or leases,
726 or who advertises or holds out to the public by any oral or
727 printed solicitation or representation that she or he is engaged
728 in the business of appraising, auctioning, buying, selling,
729 exchanging, leasing, or renting business enterprises or business
730 opportunities or real property of others or interests therein,
731 including mineral rights, or who takes any part in the procuring
732 of sellers, purchasers, lessors, or lessees of business
733 enterprises or business opportunities or the real property of
734 another, or leases, or interest therein, including mineral
735 rights, or who directs or assists in the procuring of prospects
736 or in the negotiation or closing of any transaction which does,



522644

737 or is calculated to, result in a sale, exchange, or leasing
738 thereof, and who receives, expects, or is promised any
739 compensation or valuable consideration, directly or indirectly
740 therefor; and all persons who advertise rental property
741 information or lists. A broker renders a professional service
742 and is a professional within the meaning of s. 95.11(4)(b) ~~s.~~
743 ~~95.11(4)(a)~~. Where the term "appraise" or "appraising" appears
744 in the definition of the term "broker," it specifically excludes
745 those appraisal services which must be performed only by a
746 state-licensed or state-certified appraiser, and those appraisal
747 services which may be performed by a registered trainee
748 appraiser as defined in part II. The term "broker" also includes
749 any person who is a general partner, officer, or director of a
750 partnership or corporation which acts as a broker. The term
751 "broker" also includes any person or entity who undertakes to
752 list or sell one or more timeshare periods per year in one or
753 more timeshare plans on behalf of any number of persons, except
754 as provided in ss. 475.011 and 721.20.

755 (j) "Sales associate" means a person who performs any act
756 specified in the definition of "broker," but who performs such
757 act under the direction, control, or management of another
758 person. A sales associate renders a professional service and is
759 a professional within the meaning of s. 95.11(4)(b) ~~s.~~
760 ~~95.11(4)(a)~~.

761 Section 13. Paragraph (h) of subsection (1) of section
762 475.611, Florida Statutes, is amended to read:

763 475.611 Definitions.—

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

765 (h) "Appraiser" means any person who is a registered



522644

766 trainee real estate appraiser, a licensed real estate appraiser,
767 or a certified real estate appraiser. An appraiser renders a
768 professional service and is a professional within the meaning of
769 s. 95.11(4)(b) ~~s. 95.11(4)(a)~~.

770 Section 14. Subsection (7) of section 517.191, Florida
771 Statutes, is amended to read:

772 517.191 Injunction to restrain violations; civil penalties;
773 enforcement by Attorney General.—

774 (7) Notwithstanding s. 95.11(4)(f) ~~s. 95.11(4)(e)~~, an
775 enforcement action brought under this section based on a
776 violation of any provision of this chapter or any rule or order
777 issued under this chapter shall be brought within 6 years after
778 the facts giving rise to the cause of action were discovered or
779 should have been discovered with the exercise of due diligence,
780 but not more than 8 years after the date such violation
781 occurred.

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

784 624.123 Certain international health insurance policies;
785 exemption from code.—

786 (4) Any international health insurance policy or
787 application solicited, provided, entered into, issued, or
788 delivered pursuant to this subsection is exempt from all
789 provisions of the insurance code, except that such policy,
790 contract, or agreement is subject to the provisions of ss.
791 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521,
792 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591,
793 626.9601, 627.413, 627.4145, ~~627.428~~, and 627.6043.

794 Section 16. Subsection (4) of section 624.488, Florida



522644

795 Statutes, is amended to read:

796 624.488 Applicability of related laws.—In addition to other
797 provisions of the code cited in ss. 624.460-624.488:

798 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
799 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~
800 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
801 627.913, and 627.918;

802

803 apply to self-insurance funds. Only those sections of the code
804 that are expressly and specifically cited in ss. 624.460-624.489
805 apply to self-insurance funds.

806 Section 17. Paragraph (b) of subsection (3) of section
807 627.062, Florida Statutes, is amended to read:

808 627.062 Rate standards.—

809 (3)

810 (b) Individual risk rates and modifications to existing
811 approved forms are not subject to this part or part II, except
812 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
813 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
814 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
815 627.4265, and 627.427, ~~and 627.428,~~ but are subject to all other
816 applicable provisions of this code and rules adopted thereunder.

817 Section 18. Subsections (3), (4), and (5) of section
818 627.401, Florida Statutes, are amended to read:

819 627.401 Scope of this part.—No provision of this part of
820 this chapter applies to:

821 (3) Wet marine and transportation insurance, except ss.
822 627.409 and, ~~627.420, and 627.428.~~

823 (4) Title insurance, except ss. 627.406, 627.415, 627.416,



522644

824 627.419, and 627.427, ~~and 627.428.~~

825 (5) Credit life or credit disability insurance, except s.
826 627.419(5) ~~ss. 627.419(5) and 627.428.~~

827 Section 19. Subsection (2) of section 627.441, Florida
828 Statutes, is amended to read:

829 627.441 Commercial general liability policies; coverage to
830 contractors for completed operations.—

831 (2) A liability insurer must offer coverage at an
832 appropriate additional premium for liability arising out of
833 current or completed operations under an owner-controlled
834 insurance program for any period beyond the period for which the
835 program provides liability coverage, as specified in s.
836 255.0517(2) (b). The period of such coverage must be sufficient
837 to protect against liability arising out of an action brought
838 within the time limits provided in s. 95.11(3) (b) ~~s.~~
839 ~~95.11(3) (c).~~

840 Section 20. Subsection (8) of section 627.727, Florida
841 Statutes, is amended to read:

842 627.727 Motor vehicle insurance; uninsured and underinsured
843 vehicle coverage; insolvent insurer protection.—

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

849 Section 21. Subsection (8) of section 627.736, Florida
850 Statutes, is amended to read:

851 627.736 Required personal injury protection benefits;
852 exclusions; priority; claims.—



522644

853 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—
854 With respect to any dispute under the provisions of ss. 627.730-
855 627.7405 between the insured and the insurer, or between an
856 assignee of an insured's rights and the insurer, the provisions
857 of s. 768.79 ~~ss. 627.428 and 768.79~~ apply, except as provided in
858 subsections (10) and (15), and except that any attorney fees
859 recovered must:

- 860 (a) Comply with prevailing professional standards;
861 (b) Not overstate or inflate the number of hours reasonably
862 necessary for a case of comparable skill or complexity; and
863 (c) Represent legal services that are reasonable and
864 necessary to achieve the result obtained.

865
866 Upon request by either party, a judge must make written
867 findings, substantiated by evidence presented at trial or any
868 hearings associated therewith, that any award of attorney fees
869 complies with this subsection. ~~Notwithstanding s. 627.428,~~
870 Attorney fees recovered under ss. 627.730-627.7405 must be
871 calculated without regard to a contingency risk multiplier.

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

874 628.6016 Applicability of related laws.—In addition to
875 other provisions of the code cited in ss. 628.6011-628.6018:

- 876 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
877 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~
878 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
879 627.913, and 627.918; and

880
881 apply to assessable mutual insurers; however, ss. 628.255,



522644

882 628.411, and 628.421 do not apply. No section of the code not
883 expressly and specifically cited in ss. 628.6011-628.6018
884 applies to assessable mutual insurers. The term "assessable
885 mutual insurer" shall be substituted for the term "commercial
886 self-insurer" as appropriate.

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

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

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

891 632.638 Applicability of other code provisions.—In addition
892 to other provisions contained or referred to in this chapter,
893 the following chapters and provisions of this code apply to
894 fraternal benefit societies, to the extent applicable and not in
895 conflict with the express provisions of this chapter and the
896 reasonable implications thereof:

897 ~~(11) Section 627.428;~~

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

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

904 Section 28. The amendments made by this act to s. 624.155,
905 Florida Statutes, do not apply to causes of action arising out
906 of insurance policies issued or renewed before the effective
907 date of this act.

908 Section 29. This act shall not be construed to impair any
909 right under an insurance contract in effect on or before the
910 effective date of this act. To the extent that this act affects



522644

911 a right under an insurance contract, this act applies to an
912 insurance contract issued or renewed after the effective date of
913 this act.

914 Section 30. Except as otherwise expressly provided in this
915 act, this act shall apply to causes of action which accrue after
916 the effective date of this act.

917 Section 31. This act shall take effect upon becoming a law.

918

919 ===== T I T L E A M E N D M E N T =====

920 And the title is amended as follows:

921 Delete everything before the enacting clause

922 and insert:

923

A bill to be entitled

924 An act relating to civil remedies; amending s. 57.104,

925 F.S.; creating a rebuttable presumption that a

926 lodestar fee is a sufficient and reasonable attorney

927 fee in most civil actions; providing an exception;

928 creating s. 86.121, F.S.; authorizing a court to award

929 attorney fees in certain declaratory actions;

930 prohibiting the transfer, assignment, or acquisition

931 of the right to such attorney fees except by specified

932 persons; amending s. 95.11, F.S.; reducing the statute

933 of limitations for negligence actions; providing

934 applicability of certain provisions to actions

935 involving servicemembers; amending s. 624.155, F.S.;

936 providing standards for bad faith actions; providing

937 for the distribution of proceeds when two or more

938 third-party claims arising out of a single occurrence

939 exceed policy limits; revising applicability and



522644

940 conditions for the award of damages, court costs, and
941 attorney fees in certain civil actions; creating s.
942 624.1552, F.S.; providing for applicability of
943 specified offer of judgment provisions to civil
944 actions involving insurance contracts; creating s.
945 768.0427, F.S.; providing definitions; providing
946 standards for the admissibility of evidence to prove
947 the cost of damages for medical expenses in certain
948 civil actions; requiring certain disclosures with
949 respect to claims for medical expenses for treatment
950 rendered under letters of protection; specifying the
951 damages that may be recovered by a claimant for the
952 reasonable and necessary cost of medical care;
953 creating s. 768.0706, F.S.; providing definitions;
954 providing that the owner or principal operator of a
955 multifamily residential property which substantially
956 implements specified security measures on that
957 property has a presumption against liability for
958 negligence in connection with certain criminal acts
959 that occur on the premises; requiring the Florida
960 Crime Prevention Training Institute of the Department
961 of Legal Affairs to develop a proposed curriculum or
962 best practices for owners or principal operators;
963 providing construction; amending s. 768.81, F.S.;
964 providing that a party in a negligence action who is
965 at fault by a specified amount may not recover damages
966 under a comparative negligence action; providing
967 applicability; repealing ss. 626.9373 and 627.428,
968 F.S., relating to attorney fees awarded against



522644

969 surplus lines insurers and insurers, respectively;
970 amending s. 627.756, F.S.; providing for the award of
971 costs and attorney fees in certain actions; amending
972 ss. 475.01, 475.611, 517.191, 624.123, 624.488,
973 627.062, 627.401, 627.441, 627.727, 627.736, and
974 628.6016, F.S.; conforming cross-references and
975 provisions to changes made by the act; repealing ss.
976 631.70 and 631.926, F.S., relating to attorney fees;
977 amending s. 632.638, F.S.; conforming a cross-
978 reference; providing a directive to the Division of
979 Law Revision; providing applicability and
980 construction; providing an effective date.