

By Senator Hutson

7-00959H-23

2023236__

1 A bill to be entitled
2 An act relating to civil remedies; amending s. 57.104,
3 F.S.; creating a rebuttable presumption that a
4 lodestar fee is a sufficient and reasonable attorney
5 fee in most civil actions; providing an exception;
6 amending s. 95.11, F.S.; reducing the statute of
7 limitations for negligence actions; amending s.
8 624.155, F.S.; providing standards for bad faith
9 actions; providing for the distribution of proceeds
10 when two or more third-party claims arising out of a
11 single occurrence exceed policy limits; creating s.
12 768.0427, F.S.; providing definitions; providing
13 standards for the admissibility of evidence to prove
14 the cost of damages for medical expenses in certain
15 civil actions; requiring certain disclosures with
16 respect to claims for medical expenses for treatment
17 rendered under letters of protection; specifying the
18 damages that may be recovered by a claimant for the
19 reasonable and necessary cost of medical care;
20 creating s. 768.0701, F.S.; requiring the trier of
21 fact to consider the fault of certain persons who
22 contribute to an injury; amending s. 768.79, F.S.;
23 providing for the applicability of that section;
24 amending s. 768.81, F.S.; providing that a party in a
25 negligence action who is at fault by a specified
26 amount may not recover damages under a comparative
27 negligence action; providing applicability; repealing
28 ss. 626.9373 and 627.428, F.S., relating to attorney
29 fees payable to insureds filing actions against

7-00959H-23

2023236__

30 insurers; amending ss. 624.123, 624.488, 627.062,
31 627.401, 627.727, 627.736, 627.756, and 628.6016,
32 F.S.; conforming provisions to changes made by the
33 act; repealing ss. 631.70 and 631.926, F.S., relating
34 to awards of attorney fees; amending ss. 475.01,
35 475.611, 517.191, 627.441, and 632.638, F.S.;
36 conforming provisions to changes made by the act;
37 providing a directive to the Division of Law Revision;
38 providing applicability; providing an effective date.
39

40 Be It Enacted by the Legislature of the State of Florida:
41

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

44 57.104 Computation of attorney ~~attorneys'~~ fees.—

45 (1) In any action in which attorney ~~attorneys'~~ fees are to
46 be determined or awarded by the court, the court shall consider,
47 among other things, time and labor of any legal assistants who
48 contributed nonclerical, meaningful legal support to the matter
49 involved and who are working under the supervision of an
50 attorney. For purposes of this section "legal assistant" means a
51 person, who under the supervision and direction of a licensed
52 attorney engages in legal research, and case development or
53 planning in relation to modifications or initial proceedings,
54 services, processes, or applications; or who prepares or
55 interprets legal documents or selects, compiles, and uses
56 technical information from references such as digests,
57 encyclopedias, or practice manuals and analyzes and follows
58 procedural problems that involve independent decisions.

7-00959H-23

2023236__

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

64 Section 2. Subsections (3), (4), and (10) of section 95.11,
65 Florida Statutes, are amended to read:

66 95.11 Limitations other than for the recovery of real
67 property.—Actions other than for recovery of real property shall
68 be commenced as follows:

69 (3) WITHIN FOUR YEARS.—

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

71 ~~(b)~~ An action relating to the determination of paternity,
72 with the time running from the date the child reaches the age of
73 majority.

74 (b)~~(c)~~ An action founded on the design, planning, or
75 construction of an improvement to real property, with the time
76 running from the date of actual possession by the owner, the
77 date of the issuance of a certificate of occupancy, the date of
78 abandonment of construction if not completed, or the date of
79 completion of the contract or termination of the contract
80 between the professional engineer, registered architect, or
81 licensed contractor and his or her employer, whichever date is
82 latest; except that, when the action involves a latent defect,
83 the time runs from the time the defect is discovered or should
84 have been discovered with the exercise of due diligence. In any
85 event, the action must be commenced within 10 years after the
86 date of actual possession by the owner, the date of the issuance
87 of a certificate of occupancy, the date of abandonment of

7-00959H-23

2023236__

88 construction if not completed, or the date of completion of the
89 contract or termination of the contract between the professional
90 engineer, registered architect, or licensed contractor and his
91 or her employer, whichever date is latest. However,
92 counterclaims, cross-claims, and third-party claims that arise
93 out of the conduct, transaction, or occurrence set out or
94 attempted to be set out in a pleading may be commenced up to 1
95 year after the pleading to which such claims relate is served,
96 even if such claims would otherwise be time barred. With respect
97 to actions founded on the design, planning, or construction of
98 an improvement to real property, if such construction is
99 performed pursuant to a duly issued building permit and if a
100 local enforcement agency, state enforcement agency, or special
101 inspector, as those terms are defined in s. 553.71, has issued a
102 final certificate of occupancy or certificate of completion,
103 then as to the construction which is within the scope of such
104 building permit and certificate, the correction of defects to
105 completed work or repair of completed work, whether performed
106 under warranty or otherwise, does not extend the period of time
107 within which an action must be commenced. Completion of the
108 contract means the later of the date of final performance of all
109 the contracted services or the date that final payment for such
110 services becomes due without regard to the date final payment is
111 made.

112 (c)~~(d)~~ An action to recover public money or property held
113 by a public officer or employee, or former public officer or
114 employee, and obtained during, or as a result of, his or her
115 public office or employment.

116 (d)~~(e)~~ An action for injury to a person founded on the

7-00959H-23

2023236__

117 design, manufacture, distribution, or sale of personal property
118 that is not permanently incorporated in an improvement to real
119 property, including fixtures.

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

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

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

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

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

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

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

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

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

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

138 (o)~~(p)~~ Any action not specifically provided for in these
139 statutes.

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

142 (4) WITHIN TWO YEARS.—

143 (a) An action founded on negligence.

144 (b)~~(a)~~ An action for professional malpractice, other than
145 medical malpractice, whether founded on contract or tort;

7-00959H-23

2023236__

146 provided that the period of limitations shall run from the time
147 the cause of action is discovered or should have been discovered
148 with the exercise of due diligence. However, the limitation of
149 actions herein for professional malpractice shall be limited to
150 persons in privity with the professional.

151 (c) ~~(b)~~ An action for medical malpractice shall be commenced
152 within 2 years from the time the incident giving rise to the
153 action occurred or within 2 years from the time the incident is
154 discovered, or should have been discovered with the exercise of
155 due diligence; however, in no event shall the action be
156 commenced later than 4 years from the date of the incident or
157 occurrence out of which the cause of action accrued, except that
158 this 4-year period shall not bar an action brought on behalf of
159 a minor on or before the child's eighth birthday. An "action for
160 medical malpractice" is defined as a claim in tort or in
161 contract for damages because of the death, injury, or monetary
162 loss to any person arising out of any medical, dental, or
163 surgical diagnosis, treatment, or care by any provider of health
164 care. The limitation of actions within this subsection shall be
165 limited to the health care provider and persons in privity with
166 the provider of health care. In those actions covered by this
167 paragraph in which it can be shown that fraud, concealment, or
168 intentional misrepresentation of fact prevented the discovery of
169 the injury the period of limitations is extended forward 2 years
170 from the time that the injury is discovered or should have been
171 discovered with the exercise of due diligence, but in no event
172 to exceed 7 years from the date the incident giving rise to the
173 injury occurred, except that this 7-year period shall not bar an
174 action brought on behalf of a minor on or before the child's

7-00959H-23

2023236__

175 eighth birthday. This paragraph shall not apply to actions for
176 which ss. 766.301-766.316 provide the exclusive remedy.

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

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

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

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

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

193 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
194 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
195 (4) (e) ~~(4) (d)~~, an action for wrongful death seeking damages
196 authorized under s. 768.21 brought against a natural person for
197 an intentional tort resulting in death from acts described in s.
198 782.04 or s. 782.07 may be commenced at any time. This
199 subsection shall not be construed to require an arrest, the
200 filing of formal criminal charges, or a conviction for a
201 violation of s. 782.04 or s. 782.07 as a condition for filing a
202 civil action.

203 Section 3. Section 624.155, Florida Statutes, is amended to

7-00959H-23

2023236__

204 read:

205 624.155 Civil remedy.—

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

208 (a) By a violation of any of the following provisions by
209 the insurer:

210 1. Section 626.9541(1) (i), (o), or (x);

211 2. Section 626.9551;

212 3. Section 626.9705;

213 4. Section 626.9706;

214 5. Section 626.9707; or

215 6. Section 627.7283.

216 (b) By the commission of any of the following acts by the
217 insurer:

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

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

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

230

231 Notwithstanding the provisions of the above to the contrary, a
232 person pursuing a remedy under this section need not prove that

7-00959H-23

2023236__

233 such act was committed or performed with such frequency as to
234 indicate a general business practice.

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

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

243 (b) The notice shall be on a form provided by the
244 department and shall state with specificity the following
245 information, and such other information as the department may
246 require:

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

249 2. The facts and circumstances giving rise to the
250 violation.

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

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

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

260 (c) No action shall lie if, within 60 days after the
261 insurer receives notice from the department in accordance with

7-00959H-23

2023236__

262 this subsection, the damages are paid or the circumstances
263 giving rise to the violation are corrected.

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

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

269 1. Sixty days after the insurer receives from the
270 department the notice required by this subsection.

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

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

276 (4) An action for bad faith involving a failure to settle a
277 liability insurance claim, including any such action brought
278 under the common law, shall not lie if the insurer tenders the
279 lesser of the policy limits or the amount demanded by the
280 claimant either:

281 (a) Before a complaint asserting such claim, accompanied by
282 sufficient evidence to support the amount of the claim, is
283 filed; or

284 (b) Within 90 days after service of such complaint upon the
285 insurer.

286
287 Failure of an insurer to offer payment pursuant to this
288 subsection shall not constitute bad faith and is inadmissible as
289 evidence in any action seeking to establish bad faith on the
290 part of the insurer.

7-00959H-23

2023236__

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

294 (a) Mere negligence alone is insufficient to constitute bad
295 faith.

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

302 2. In any action for bad faith against an insurer, the
303 trier of fact may consider whether the insured, claimant, or
304 representative of the insured or claimant did not act in good
305 faith pursuant to this paragraph, in which case the trier of
306 fact may reasonably reduce the amount of damages awarded against
307 the insurer.

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

318 (a) The insurer files an interpleader action under the
319 Florida Rules of Civil Procedure. If the claims of the competing

7-00959H-23

2023236__

320 third-party claimants are found to be in excess of the policy
321 limits, the third-party claimants are entitled to a prorated
322 share of the policy limits as determined by the trier of fact.
323 An insurer's interpleader action does not alter or amend the
324 insurer's obligation to defend its insured.

325 (b) Pursuant to binding arbitration that has been agreed to
326 by the insurer and the third-party claimants, the insurer makes
327 the entire amount of the policy limits available for payment to
328 the competing third-party claimants before a qualified
329 arbitrator selected by the insurer at the expense of the
330 insurer. The third-party claimants are entitled to a prorated
331 share of the policy limits as determined by the arbitrator, who
332 must consider the comparative fault, if any, of each third-party
333 claimant, and the total likely outcome at trial based upon the
334 total of the economic and noneconomic damages submitted to the
335 arbitrator for consideration. A third-party claimant whose claim
336 is resolved by the arbitrator must execute and deliver a general
337 release to the insured party whose claim is resolved by the
338 proceeding.

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

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

347 (a) Willful, wanton, and malicious;

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

7-00959H-23

2023236__

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

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

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

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

372 (11)~~(8)~~ The civil remedy specified in this section does not
373 preempt any other remedy or cause of action provided for
374 pursuant to any other statute or pursuant to the common law of
375 this state. Any person may obtain a judgment under either the
376 common-law remedy of bad faith or this statutory remedy, but is
377 ~~shall not be~~ entitled to a judgment under both remedies. This

7-00959H-23

2023236__

378 section does ~~shall not be construed to~~ create a common-law cause
379 of action. The damages recoverable pursuant to this section
380 shall include those damages which are a reasonably foreseeable
381 result of a specified violation of this section by the
382 authorized insurer and may include an award or judgment in an
383 amount that exceeds the policy limits.

384 ~~(12)(9)~~ A surety issuing a payment or performance bond on
385 the construction or maintenance of a building or roadway project
386 is not an insurer for purposes of subsection (1).

387 Section 4. Section 768.0427, Florida Statutes, is created
388 to read:

389 768.0427 Admissibility of evidence to prove medical
390 expenses in personal injury or wrongful death actions;
391 disclosure of letters of protection; recovery of past and future
392 medical expenses damages.-

393 (1) DEFINITIONS.-As used in this section, the term:

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

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

403 (c) "Health care provider" means any of the following
404 professionals and entities, and professionals and entities
405 similarly licensed in another jurisdiction:

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

7-00959H-23

2023236__

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

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

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

416 5. A health care professional licensed under part IV of
417 chapter 468.

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

419 7. A provider licensed under chapter 394 or chapter 397 and
420 its clinical and nonclinical staff providing inpatient or
421 outpatient services.

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

423 9. A pharmacy permitted under chapter 465.

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

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

435 (a) Evidence offered to prove the amount of damages for

7-00959H-23

2023236__

436 past medical treatment or services that have been satisfied is
437 limited to evidence of the amount actually paid, regardless of
438 the source of payment.

439 (b) Evidence offered to prove the amount necessary to
440 satisfy unpaid charges for incurred medical treatment or
441 services is limited to evidence as provided in this paragraph.

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

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

458 3. If the claimant does not have health care coverage,
459 evidence of 120 percent of the Medicare reimbursement rate in
460 effect at the time of trial for the claimant's incurred medical
461 treatment or services, or, if there is no applicable Medicare
462 rate for a service, 170 percent of the applicable state Medicaid
463 rate.

464 4. If the claimant obtains medical treatment or services

7-00959H-23

2023236__

465 under a letter of protection and the health care provider
466 subsequently transfers the right to receive payment under the
467 letter of protection to a third party, evidence of the amount
468 the third party paid or agreed to pay the health care provider
469 in exchange for the right to receive payment pursuant to the
470 letter of protection.

471 5. Any evidence disclosed under subsection (3) related to a
472 letter of protection.

473 (c) Evidence offered to prove the amount of damages for any
474 future medical treatment or services the claimant will receive
475 is limited to evidence as provided in this paragraph.

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

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

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

491 (e) Individual contracts between providers and authorized
492 commercial insurers or authorized health maintenance
493 organizations are not subject to discovery or disclosure and are

7-00959H-23

2023236__

494 not admissible into evidence.

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

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

501 (b) All billings for the claimant's medical expenses, which
502 must be itemized and, to the extent applicable, coded according
503 to the American Medical Association's Current Procedural
504 Terminology (CPT), or the Healthcare Common Procedure Coding
505 System (HCPCS), in effect for the year in which services are
506 rendered.

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

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

512 2. The dollar amount for which the factoring company or
513 other third party purchased such accounts, including any
514 discount provided below the invoice amount.

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

518 (e) Whether the claimant was referred for treatment under a
519 letter of protection and, if so, the identity of the person who
520 made the referral. If the referral is made by the claimant's
521 attorney, disclosure of the referral is permitted, and evidence
522 of such referral is admissible notwithstanding any provision

7-00959H-23

2023236__

523 within s. 90.502. Moreover, in such situation, the financial
524 relationship between a law firm and a medical provider,
525 including the number of referrals, frequency, and financial
526 benefit obtained, is relevant to the issue of the bias of a
527 testifying medical provider.

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

535 (a) Amounts actually paid by or on behalf of the claimant
536 to a health care provider who rendered medical treatment or
537 services;

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

541 (c) Amounts necessary to provide for any reasonable and
542 necessary medical treatment or services the claimant will
543 receive in the future.

544 Section 5. Section 768.0701, Florida Statutes, is created
545 to read:

546 768.0701 Premises liability for criminal acts of third
547 parties.—Notwithstanding s. 768.81(4), in an action for damages
548 against the owner, lessor, operator, or manager of commercial or
549 real property brought by a person lawfully on the property who
550 was injured by the criminal act of a third party, the trier of
551 fact must consider the fault of all persons who contributed to

7-00959H-23

2023236__

552 the injury.553 Section 6. Subsection (1) of section 768.79, Florida
554 Statutes, is amended to read:

555 768.79 Offer of judgment and demand for judgment.—

556 (1) In any civil action for damages and in any civil action
557 involving an insurance contract filed in the courts of this
558 state, if a defendant files an offer of judgment which is not
559 accepted by the plaintiff within 30 days, the defendant shall be
560 entitled to recover reasonable costs and attorney's fees
561 incurred by her or him or on the defendant's behalf pursuant to
562 a policy of liability insurance or other contract from the date
563 of filing of the offer if the judgment is one of no liability or
564 the judgment obtained by the plaintiff is at least 25 percent
565 less than such offer, and the court shall set off such costs and
566 attorney's fees against the award. Where such costs and
567 attorney's fees total more than the judgment, the court shall
568 enter judgment for the defendant against the plaintiff for the
569 amount of the costs and fees, less the amount of the plaintiff's
570 award. If a plaintiff files a demand for judgment which is not
571 accepted by the defendant within 30 days and the plaintiff
572 recovers a judgment in an amount at least 25 percent greater
573 than the offer, she or he shall be entitled to recover
574 reasonable costs and attorney's fees incurred from the date of
575 the filing of the demand. If rejected, neither an offer nor
576 demand is admissible in subsequent litigation, except for
577 pursuing the penalties of this section.

578 Section 7. Subsection (2) of section 768.81, Florida
579 Statutes, is amended, and subsection (6) is added to that
580 section, to read:

7-00959H-23

2023236__

581 768.81 Comparative fault.—

582 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence action,
 583 contributory fault chargeable to the claimant diminishes
 584 proportionately the amount awarded as economic and noneconomic
 585 damages for an injury attributable to the claimant's
 586 contributory fault, but does not bar recovery, subject to
 587 subsection (6).

588 (6) GREATER PERCENTAGE OF FAULT.—In a negligence action to
 589 which this section applies, any party found to be greater than
 590 50 percent at fault for his or her own harm may not recover any
 591 damages. This subsection does not apply to an action for damages
 592 for personal injury or wrongful death arising out of medical
 593 negligence pursuant to chapter 766.

594 Section 8. Section 626.9373, Florida Statutes, is repealed.

595 Section 9. Section 627.428, Florida Statutes, is repealed.

596 Section 10. Subsection (4) of section 624.123, Florida
 597 Statutes, is amended to read:

598 624.123 Certain international health insurance policies;
 599 exemption from code.—

600 (4) Any international health insurance policy or
 601 application solicited, provided, entered into, issued, or
 602 delivered pursuant to this subsection is exempt from all
 603 provisions of the insurance code, except that such policy,
 604 contract, or agreement is subject to the provisions of ss.
 605 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521,
 606 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591,
 607 626.9601, 627.413, 627.4145, ~~627.428~~, and 627.6043.

608 Section 11. Subsection (4) of section 624.488, Florida
 609 Statutes, is amended to read:

7-00959H-23

2023236__

610 624.488 Applicability of related laws.—In addition to other
611 provisions of the code cited in ss. 624.460-624.488:

612 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
613 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~
614 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
615 627.913, and 627.918;

616

617 apply to self-insurance funds. Only those sections of the code
618 that are expressly and specifically cited in ss. 624.460-624.489
619 apply to self-insurance funds.

620 Section 12. Paragraph (b) of subsection (3) of section
621 627.062, Florida Statutes, is amended to read:

622 627.062 Rate standards.—

623 (3)

624 (b) Individual risk rates and modifications to existing
625 approved forms are not subject to this part or part II, except
626 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
627 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
628 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
629 627.4265, and 627.427, ~~and 627.428,~~ but are subject to all other
630 applicable provisions of this code and rules adopted thereunder.

631 Section 13. Section 627.401, Florida Statutes, is amended
632 to read:

633 627.401 Scope of this part.—No provision of this part of
634 this chapter applies to:

635 (1) Reinsurance.

636 (2) Policies or contracts not issued for delivery in this
637 state nor delivered in this state, except as otherwise provided
638 in this code.

7-00959H-23

2023236__

639 (3) Wet marine and transportation insurance, except ss.
640 627.409 and, ~~627.420, and 627.428.~~

641 (4) Title insurance, except ss. 627.406, 627.415, 627.416,
642 627.419, and ~~627.427, and 627.428.~~

643 (5) Credit life or credit disability insurance, except s.
644 627.419(5) ~~ss. 627.419(5) and 627.428.~~

645 Section 14. Subsection (8) of section 627.727, Florida
646 Statutes, is amended to read:

647 627.727 Motor vehicle insurance; uninsured and underinsured
648 vehicle coverage; insolvent insurer protection.—

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

654 Section 15. Subsection (8) of section 627.736, Florida
655 Statutes, is amended to read:

656 627.736 Required personal injury protection benefits;
657 exclusions; priority; claims.—

658 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—
659 With respect to any dispute under the provisions of ss. 627.730-
660 627.7405 between the insured and the insurer, or between an
661 assignee of an insured's rights and the insurer, the provisions
662 of s. 768.79 ~~ss. 627.428 and 768.79~~ apply, except as provided in
663 subsections (10) and (15), and except that any attorney fees
664 recovered must:

665 (a) Comply with prevailing professional standards;

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

7-00959H-23

2023236__

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

670
671 Upon request by either party, a judge must make written
672 findings, substantiated by evidence presented at trial or any
673 hearings associated therewith, that any award of attorney fees
674 complies with this subsection. ~~Notwithstanding s. 627.428,~~
675 Attorney fees recovered under ss. 627.730-627.7405 must be
676 calculated without regard to a contingency risk multiplier.

677 Section 16. Section 627.756, Florida Statutes, is amended
678 to read:

679 627.756 Bonds for construction contracts; ~~attorney fees in~~
680 ~~ease of suit.~~

681 ~~(1) Section 627.428 applies to suits brought by owners,~~
682 ~~contractors, subcontractors, laborers, and materialmen against a~~
683 ~~surety insurer under payment or performance bonds written by the~~
684 ~~insurer under the laws of this state to indemnify against~~
685 ~~pecuniary loss by breach of a building or construction contract.~~
686 ~~Owners, contractors, subcontractors, laborers, and materialmen~~
687 ~~shall be deemed to be insureds or beneficiaries for the purposes~~
688 ~~of this section.~~

689 ~~(2)~~ A surety who issues a bid, performance, or payment bond
690 in connection with construction activities where hazardous
691 substances exist or are discovered is liable under ss. 376.308
692 and 403.727 only to the extent provided in this section
693 subsection. In case of a default, the surety is liable only for
694 the cost of completion of the contract work in accordance with
695 the plans and specifications, less the balance of funds
696 remaining to be paid under the contract, up to the penal sum of

7-00959H-23

2023236__

697 the bond. The surety is not liable on a bond to indemnify or
698 compensate the obligee for loss or liability arising from
699 personal injury or property damage, whether or not caused by a
700 breach of the bonded contract. Further, a right of action does
701 not accrue on a bond to or for the use of any person other than
702 the obligee named in the bond.

703 Section 17. Subsection (4) of section 628.6016, Florida
704 Statutes, is amended to read:

705 628.6016 Applicability of related laws.—In addition to
706 other provisions of the code cited in ss. 628.6011–628.6018:

707 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
708 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~
709 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
710 627.913, and 627.918; and

711
712 apply to assessable mutual insurers; however, ss. 628.255,
713 628.411, and 628.421 do not apply. No section of the code not
714 expressly and specifically cited in ss. 628.6011–628.6018
715 applies to assessable mutual insurers. The term “assessable
716 mutual insurer” shall be substituted for the term “commercial
717 self-insurer” as appropriate.

718 Section 18. Section 631.70, Florida Statutes, is repealed.

719 Section 19. Section 631.926, Florida Statutes, is repealed.

720 Section 20. Paragraphs (a) and (j) of subsection (1) of
721 section 475.01, Florida Statutes, are amended to read:

722 475.01 Definitions.—

723 (1) As used in this part:

724 (a) “Broker” means a person who, for another, and for a
725 compensation or valuable consideration directly or indirectly

7-00959H-23

2023236__

726 paid or promised, expressly or impliedly, or with an intent to
727 collect or receive a compensation or valuable consideration
728 therefor, appraises, auctions, sells, exchanges, buys, rents, or
729 offers, attempts or agrees to appraise, auction, or negotiate
730 the sale, exchange, purchase, or rental of business enterprises
731 or business opportunities or any real property or any interest
732 in or concerning the same, including mineral rights or leases,
733 or who advertises or holds out to the public by any oral or
734 printed solicitation or representation that she or he is engaged
735 in the business of appraising, auctioning, buying, selling,
736 exchanging, leasing, or renting business enterprises or business
737 opportunities or real property of others or interests therein,
738 including mineral rights, or who takes any part in the procuring
739 of sellers, purchasers, lessors, or lessees of business
740 enterprises or business opportunities or the real property of
741 another, or leases, or interest therein, including mineral
742 rights, or who directs or assists in the procuring of prospects
743 or in the negotiation or closing of any transaction which does,
744 or is calculated to, result in a sale, exchange, or leasing
745 thereof, and who receives, expects, or is promised any
746 compensation or valuable consideration, directly or indirectly
747 therefor; and all persons who advertise rental property
748 information or lists. A broker renders a professional service
749 and is a professional within the meaning of s. 95.11(4)(b) ~~s.~~
750 ~~95.11(4)(a)~~. Where the term "appraise" or "appraising" appears
751 in the definition of the term "broker," it specifically excludes
752 those appraisal services which must be performed only by a
753 state-licensed or state-certified appraiser, and those appraisal
754 services which may be performed by a registered trainee

7-00959H-23

2023236__

755 appraiser as defined in part II. The term "broker" also includes
756 any person who is a general partner, officer, or director of a
757 partnership or corporation which acts as a broker. The term
758 "broker" also includes any person or entity who undertakes to
759 list or sell one or more timeshare periods per year in one or
760 more timeshare plans on behalf of any number of persons, except
761 as provided in ss. 475.011 and 721.20.

762 (j) "Sales associate" means a person who performs any act
763 specified in the definition of "broker," but who performs such
764 act under the direction, control, or management of another
765 person. A sales associate renders a professional service and is
766 a professional within the meaning of s. 95.11(4)(b) ~~s.~~
767 ~~95.11(4)(a)~~.

768 Section 21. Paragraph (h) of subsection (1) of section
769 475.611, Florida Statutes, is amended to read:

770 475.611 Definitions.—

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

772 (h) "Appraiser" means any person who is a registered
773 trainee real estate appraiser, a licensed real estate appraiser,
774 or a certified real estate appraiser. An appraiser renders a
775 professional service and is a professional within the meaning of
776 s. 95.11(4)(b) ~~s. 95.11(4)(a)~~.

777 Section 22. Subsection (7) of section 517.191, Florida
778 Statutes, is amended to read:

779 517.191 Injunction to restrain violations; civil penalties;
780 enforcement by Attorney General.—

781 (7) Notwithstanding s. 95.11(4)(f) ~~s. 95.11(4)(e)~~, an
782 enforcement action brought under this section based on a
783 violation of any provision of this chapter or any rule or order

7-00959H-23

2023236__

784 issued under this chapter shall be brought within 6 years after
 785 the facts giving rise to the cause of action were discovered or
 786 should have been discovered with the exercise of due diligence,
 787 but not more than 8 years after the date such violation
 788 occurred.

789 Section 23. Subsection (2) of section 627.441, Florida
 790 Statutes, is amended to read:

791 627.441 Commercial general liability policies; coverage to
 792 contractors for completed operations.-

793 (2) A liability insurer must offer coverage at an
 794 appropriate additional premium for liability arising out of
 795 current or completed operations under an owner-controlled
 796 insurance program for any period beyond the period for which the
 797 program provides liability coverage, as specified in s.
 798 255.0517(2)(b). The period of such coverage must be sufficient
 799 to protect against liability arising out of an action brought
 800 within the time limits provided in s. 95.11(3)(b) ~~s.~~
 801 ~~95.11(3)(c)~~.

802 Section 24. Subsection (11) of section 632.638, Florida
 803 Statutes, is amended to read:

804 632.638 Applicability of other code provisions.-In addition
 805 to other provisions contained or referred to in this chapter,
 806 the following chapters and provisions of this code apply to
 807 fraternal benefit societies, to the extent applicable and not in
 808 conflict with the express provisions of this chapter and the
 809 reasonable implications thereof:

810 ~~(11) Section 627.428;~~

811 Section 25. The Division of Law Revision is directed to
 812 replace the phrase "the effective date of this act" wherever it

7-00959H-23

2023236__

813 occurs in this act with the date this act becomes a law.

814 Section 26. Section 2 of this act shall take effect upon
815 becoming a law and shall apply to causes of action accruing on
816 or after the effective date of this act. The remaining sections
817 of this act shall take effect upon becoming a law and shall
818 apply to causes of action filed on or after that date.