

By the Committees on Fiscal Policy; and Banking and Insurance;
and Senator Hutson

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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 creating s. 86.121, F.S.; authorizing a court to award
7 attorney fees in certain declaratory actions;
8 prohibiting the transfer, assignment, or acquisition
9 of the right to such attorney fees except by specified
10 persons; amending s. 95.11, F.S.; reducing the statute
11 of limitations for negligence actions; providing
12 applicability of certain provisions to actions
13 involving servicemembers; amending s. 624.155, F.S.;
14 providing standards for bad faith actions; providing
15 for the distribution of proceeds when two or more
16 third-party claims arising out of a single occurrence
17 exceed policy limits; creating s. 624.1552, F.S.;
18 providing for applicability of specified offer of
19 judgment provisions to civil actions involving
20 insurance contracts; creating s. 768.0427, F.S.;
21 providing definitions; providing standards for the
22 admissibility of evidence to prove the cost of damages
23 for medical expenses in certain civil actions;
24 requiring certain disclosures with respect to claims
25 for medical expenses for treatment rendered under
26 letters of protection; specifying the damages that may
27 be recovered by a claimant for the reasonable and
28 necessary cost of medical care; creating s. 768.0701,
29 F.S.; requiring the trier of fact to consider the

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30 fault of certain persons who contribute to an injury;
31 creating s. 768.0706, F.S.; providing definitions;
32 providing that the owner or principal operator of a
33 multifamily residential property which substantially
34 implements specified security measures on that
35 property has a presumption against liability for
36 negligence in connection with certain criminal acts
37 that occur on the premises; requiring the Florida
38 Crime Prevention Training Institute of the Department
39 of Legal Affairs to develop a proposed curriculum or
40 best practices for owners or principal operators;
41 providing construction; amending s. 768.81, F.S.;
42 providing that a party in a negligence action who is
43 at fault by a specified amount may not recover damages
44 under a comparative negligence action; providing
45 applicability; repealing ss. 626.9373 and 627.428,
46 F.S., relating to attorney fees awarded against
47 surplus lines insurers and insurers, respectively;
48 amending s. 627.756, F.S.; providing for the award of
49 costs and attorney fees in certain actions; amending
50 ss. 475.01, 475.611, 517.191, 624.123, 624.488,
51 627.062, 627.401, 627.441, 627.727, 627.736, and
52 628.6016, F.S.; conforming provisions to changes made
53 by the act; repealing ss. 631.70 and 631.926, F.S.,
54 relating to attorney fees; amending s. 632.638, F.S.;
55 conforming provisions to changes made by the act;
56 providing a directive to the Division of Law Revision;
57 providing applicability and construction; providing an
58 effective date.

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

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

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

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

86.121 Attorney fees; actions for declaratory relief to determine insurance coverage after total coverage denial of

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88 claim.-

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

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

95 (b) The court shall award reasonable attorney fees to the
96 named insured, omnibus insured, or named beneficiary under a
97 policy issued by the insurer upon rendition of a declaratory
98 judgment in favor of the named insured, omnibus insured, or
99 named beneficiary. This right may not be transferred to,
100 assigned to, or acquired in any other manner by anyone other
101 than a named or omnibus insured or a named beneficiary. A
102 defense offered by an insurer pursuant to a reservation of
103 rights does not constitute a coverage denial of a claim. Such
104 fees are limited to those incurred in the action brought under
105 this chapter for declaratory relief to determine coverage of
106 insurance issued under the Florida Insurance Code.

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

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

112 95.11 Limitations other than for the recovery of real
113 property.—Actions other than for recovery of real property shall
114 be commenced as follows:

115 (3) WITHIN FOUR YEARS.—

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

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

120 (b)~~(c)~~ An action founded on the design, planning, or
121 construction of an improvement to real property, with the time
122 running from the date of actual possession by the owner, the
123 date of the issuance of a certificate of occupancy, the date of
124 abandonment of construction if not completed, or the date of
125 completion of the contract or termination of the contract
126 between the professional engineer, registered architect, or
127 licensed contractor and his or her employer, whichever date is
128 latest; except that, when the action involves a latent defect,
129 the time runs from the time the defect is discovered or should
130 have been discovered with the exercise of due diligence. In any
131 event, the action must be commenced within 10 years after the
132 date of actual possession by the owner, the date of the issuance
133 of a certificate of occupancy, the date of abandonment of
134 construction if not completed, or the date of completion of the
135 contract or termination of the contract between the professional
136 engineer, registered architect, or licensed contractor and his
137 or her employer, whichever date is latest. However,
138 counterclaims, cross-claims, and third-party claims that arise
139 out of the conduct, transaction, or occurrence set out or
140 attempted to be set out in a pleading may be commenced up to 1
141 year after the pleading to which such claims relate is served,
142 even if such claims would otherwise be time barred. With respect
143 to actions founded on the design, planning, or construction of
144 an improvement to real property, if such construction is
145 performed pursuant to a duly issued building permit and if a

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146 local enforcement agency, state enforcement agency, or special
147 inspector, as those terms are defined in s. 553.71, has issued a
148 final certificate of occupancy or certificate of completion,
149 then as to the construction which is within the scope of such
150 building permit and certificate, the correction of defects to
151 completed work or repair of completed work, whether performed
152 under warranty or otherwise, does not extend the period of time
153 within which an action must be commenced. Completion of the
154 contract means the later of the date of final performance of all
155 the contracted services or the date that final payment for such
156 services becomes due without regard to the date final payment is
157 made.

158 (c)~~(d)~~ An action to recover public money or property held
159 by a public officer or employee, or former public officer or
160 employee, and obtained during, or as a result of, his or her
161 public office or employment.

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

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

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

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

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

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

172 (j)~~(k)~~ A legal or equitable action on a contract,
173 obligation, or liability not founded on a written instrument,
174 including an action for the sale and delivery of goods, wares,

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175 and merchandise, and on store accounts.

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

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

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

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

184 (o)~~(p)~~ Any action not specifically provided for in these
185 statutes.

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

188 (4) WITHIN TWO YEARS.—

189 (a) An action founded on negligence.

190 (b)~~(a)~~ An action for professional malpractice, other than
191 medical malpractice, whether founded on contract or tort;
192 provided that the period of limitations shall run from the time
193 the cause of action is discovered or should have been discovered
194 with the exercise of due diligence. However, the limitation of
195 actions herein for professional malpractice shall be limited to
196 persons in privity with the professional.

197 (c)~~(b)~~ An action for medical malpractice shall be commenced
198 within 2 years from the time the incident giving rise to the
199 action occurred or within 2 years from the time the incident is
200 discovered, or should have been discovered with the exercise of
201 due diligence; however, in no event shall the action be
202 commenced later than 4 years from the date of the incident or
203 occurrence out of which the cause of action accrued, except that

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204 this 4-year period shall not bar an action brought on behalf of
205 a minor on or before the child's eighth birthday. An "action for
206 medical malpractice" is defined as a claim in tort or in
207 contract for damages because of the death, injury, or monetary
208 loss to any person arising out of any medical, dental, or
209 surgical diagnosis, treatment, or care by any provider of health
210 care. The limitation of actions within this subsection shall be
211 limited to the health care provider and persons in privity with
212 the provider of health care. In those actions covered by this
213 paragraph in which it can be shown that fraud, concealment, or
214 intentional misrepresentation of fact prevented the discovery of
215 the injury the period of limitations is extended forward 2 years
216 from the time that the injury is discovered or should have been
217 discovered with the exercise of due diligence, but in no event
218 to exceed 7 years from the date the incident giving rise to the
219 injury occurred, except that this 7-year period shall not bar an
220 action brought on behalf of a minor on or before the child's
221 eighth birthday. This paragraph shall not apply to actions for
222 which ss. 766.301-766.316 provide the exclusive remedy.

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

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

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

231 (g)~~(f)~~ An action for personal injury caused by contact with
232 or exposure to phenoxy herbicides while serving either as a

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233 civilian or as a member of the Armed Forces of the United States
234 during the period January 1, 1962, through May 7, 1975; the
235 period of limitations shall run from the time the cause of
236 action is discovered or should have been discovered with the
237 exercise of due diligence.

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

239 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
240 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
241 (4) (e) ~~(4) (d)~~, an action for wrongful death seeking damages
242 authorized under s. 768.21 brought against a natural person for
243 an intentional tort resulting in death from acts described in s.
244 782.04 or s. 782.07 may be commenced at any time. This
245 subsection shall not be construed to require an arrest, the
246 filing of formal criminal charges, or a conviction for a
247 violation of s. 782.04 or s. 782.07 as a condition for filing a
248 civil action.

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

258 Section 4. Section 624.155, Florida Statutes, is amended to
259 read:

260 624.155 Civil remedy.—

261 (1) Any person may bring a civil action against an insurer

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262 when such person is damaged:

263 (a) By a violation of any of the following provisions by
264 the insurer:

- 265 1. Section 626.9541(1)(i), (o), or (x);
- 266 2. Section 626.9551;
- 267 3. Section 626.9705;
- 268 4. Section 626.9706;
- 269 5. Section 626.9707; or
- 270 6. Section 627.7283.

271 (b) By the commission of any of the following acts by the
272 insurer:

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

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

280 3. Except as to liability coverages, failing to promptly
281 settle claims, when the obligation to settle a claim has become
282 reasonably clear, under one portion of the insurance policy
283 coverage in order to influence settlements under other portions
284 of the insurance policy coverage.

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

290 (2) Any party may bring a civil action against an

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291 unauthorized insurer if such party is damaged by a violation of
292 s. 624.401 by the unauthorized insurer.

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

298 (b) The notice shall be on a form provided by the
299 department and shall state with specificity the following
300 information, and such other information as the department may
301 require:

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

304 2. The facts and circumstances giving rise to the
305 violation.

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

307 4. Reference to specific policy language that is relevant
308 to the violation, if any. If the person bringing the civil
309 action is a third party claimant, she or he shall not be
310 required to reference the specific policy language if the
311 authorized insurer has not provided a copy of the policy to the
312 third party claimant pursuant to written request.

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

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

319 (d) The authorized insurer that is the recipient of a

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320 notice filed pursuant to this section shall report to the
321 department on the disposition of the alleged violation.

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

324 1. Sixty days after the insurer receives from the
325 department the notice required by this subsection.

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

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

331 (4) (a) An action for bad faith involving a liability
332 insurance claim, including any such action brought under the
333 common law, shall not lie if the insurer tenders the lesser of
334 the policy limits or the amount demanded by the claimant within
335 90 days after receiving actual notice of a claim which is
336 accompanied by sufficient evidence to support the amount of the
337 claim.

338 (b) If an insurer does not tender the lesser of the policy
339 limits or the amount demanded by the claimant within the 90-day
340 period provided in paragraph (a), the existence of the 90-day
341 period and that no bad faith action could lie had the insurer
342 tendered the lesser of policy limits or the amount demanded by
343 the claimant pursuant to paragraph (a) is inadmissible in any
344 action seeking to establish bad faith on the part of the
345 insurer.

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

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

352 (a) Mere negligence alone is insufficient to constitute bad
353 faith.

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

360 2. In any action for bad faith against an insurer, the
361 trier of fact may consider whether the insured, claimant, or
362 representative of the insured or claimant did not act in good
363 faith pursuant to this paragraph, in which case the trier of
364 fact may reasonably reduce the amount of damages awarded against
365 the insurer.

366 (6) If two or more third-party claimants have competing
367 claims arising out of a single occurrence, which in total may
368 exceed the available policy limits of one or more of the insured
369 parties who may be liable to the third-party claimants, an
370 insurer is not liable beyond the available policy limits for
371 failure to pay all or any portion of the available policy limits
372 to one or more of the third-party claimants if, within 90 days
373 after receiving notice of the competing claims in excess of the
374 available policy limits, the insurer complies with either
375 paragraph (a) or paragraph (b).

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

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

383 (b) Pursuant to binding arbitration that has been agreed to
384 by the insurer and the third-party claimants, the insurer makes
385 the entire amount of the policy limits available for payment to
386 the competing third-party claimants before a qualified
387 arbitrator agreed to by the insurer and such third-party
388 claimants at the expense of the insurer. The third-party
389 claimants are entitled to a prorated share of the policy limits
390 as determined by the arbitrator, who must consider the
391 comparative fault, if any, of each third-party claimant, and the
392 total likely outcome at trial based upon the total of the
393 economic and noneconomic damages submitted to the arbitrator for
394 consideration. A third-party claimant whose claim is resolved by
395 the arbitrator must execute and deliver a general release to the
396 insured party whose claim is resolved by the proceeding.

397 (7)(4) Upon adverse adjudication at trial or upon appeal,
398 the authorized insurer shall be liable for damages, together
399 with court costs and reasonable attorney ~~attorney's~~ fees
400 incurred by the plaintiff.

401 (8)(5) ~~No~~ Punitive damages may not ~~shall~~ be awarded under
402 this section unless the acts giving rise to the violation occur
403 with such frequency as to indicate a general business practice
404 and these acts are:

405 (a) Willful, wanton, and malicious;

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

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

409
410 Any person who pursues a claim under this subsection shall post
411 in advance the costs of discovery. Such costs shall be awarded
412 to the authorized insurer if no punitive damages are awarded to
413 the plaintiff.

414 (9)~~(6)~~ This section does ~~shall not be construed to~~
415 authorize a class action suit against an authorized insurer or a
416 civil action against the commission, the office, or the
417 department or any of their employees, or to create a cause of
418 action when an authorized health insurer refuses to pay a claim
419 for reimbursement on the ground that the charge for a service
420 was unreasonably high or that the service provided was not
421 medically necessary.

422 (10)~~(7)~~ In the absence of expressed language to the
423 contrary, this section shall not be construed to authorize a
424 civil action or create a cause of action against an authorized
425 insurer or its employees who, in good faith, release information
426 about an insured or an insurance policy to a law enforcement
427 agency in furtherance of an investigation of a criminal or
428 fraudulent act relating to a motor vehicle theft or a motor
429 vehicle insurance claim.

430 (11)~~(8)~~ The civil remedy specified in this section does not
431 preempt any other remedy or cause of action provided for
432 pursuant to any other statute or pursuant to the common law of
433 this state. Any person may obtain a judgment under either the
434 common-law remedy of bad faith or this statutory remedy, but is
435 ~~shall not be~~ entitled to a judgment under both remedies. This

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436 section does ~~shall not be construed to~~ create a common-law cause
437 of action. The damages recoverable pursuant to this section
438 shall include those damages which are a reasonably foreseeable
439 result of a specified violation of this section by the
440 authorized insurer and may include an award or judgment in an
441 amount that exceeds the policy limits.

442 ~~(12)(9)~~ A surety issuing a payment or performance bond on
443 the construction or maintenance of a building or roadway project
444 is not an insurer for purposes of subsection (1).

445 Section 5. Section 624.1552, Florida Statutes, is created
446 to read:

447 624.1552 Civil actions involving an insurance contract;
448 applicability of offer of judgment provisions.—The provisions of
449 s. 768.79 apply to any civil action involving an insurance
450 contract.

451 Section 6. Section 768.0427, Florida Statutes, is created
452 to read:

453 768.0427 Admissibility of evidence to prove medical
454 expenses in personal injury or wrongful death actions;
455 disclosure of letters of protection; recovery of past and future
456 medical expenses damages.—

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

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

461 (b) "Health care coverage" means any third-party health
462 care or disability services financing arrangement, including,
463 but not limited to, arrangements with entities certified or
464 authorized under federal law or under the Florida Insurance

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465 Code; state or federal health care benefit programs; workers'
466 compensation; and personal injury protection.

467 (c) "Health care provider" means any of the following
468 professionals and entities, and professionals and entities
469 similarly licensed in another jurisdiction:

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

471 2. A clinical laboratory providing services in this state
472 or services to health care providers in this state, if the
473 clinical laboratory is certified by the Centers for Medicare and
474 Medicaid Services under the federal Clinical Laboratory
475 Improvement Amendments and the federal rules adopted thereunder.

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

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

480 5. A health care professional licensed under part IV of
481 chapter 468.

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

483 7. A provider licensed under chapter 394 or chapter 397 and
484 its clinical and nonclinical staff providing inpatient or
485 outpatient services.

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

487 9. A pharmacy permitted under chapter 465.

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

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

499 (a) Evidence offered to prove the amount of damages for
500 past medical treatment or services that have been satisfied is
501 limited to evidence of the amount actually paid, regardless of
502 the source of payment.

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

507 1. If the claimant has health care coverage other than
508 Medicare or Medicaid, evidence of the amount which such health
509 care coverage is obligated to pay the health care provider to
510 satisfy the charges for the claimant's incurred medical
511 treatment or services, plus the claimant's share of medical
512 expenses under the insurance contract or regulation.

513 2. If the claimant has health care coverage but obtains
514 treatment under a letter of protection or otherwise does not
515 submit charges for any health care provider's medical treatment
516 or services to health care coverage, evidence of the amount the
517 claimant's health care coverage would pay the health care
518 provider to satisfy the past unpaid medical charges under the
519 insurance contract or regulation, plus the claimant's share of
520 medical expenses under the insurance contract or regulation, had
521 the claimant obtained medical services or treatment pursuant to
522 the health care coverage.

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523 3. If the claimant does not have health care coverage or
524 has health care coverage through Medicare or Medicaid, evidence
525 of 120 percent of the Medicare reimbursement rate in effect on
526 the date of the claimant's incurred medical treatment or
527 services, or, if there is no applicable Medicare rate for a
528 service, 170 percent of the applicable state Medicaid rate.

529 4. If the claimant obtains medical treatment or services
530 under a letter of protection and the health care provider
531 subsequently transfers the right to receive payment under the
532 letter of protection to a third party, evidence of the amount
533 the third party paid or agreed to pay the health care provider
534 in exchange for the right to receive payment pursuant to the
535 letter of protection.

536 5. Any evidence of reasonable amounts billed to the
537 claimant for medically necessary treatment or medically
538 necessary services provided to the claimant.

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

543 1. If the claimant has health care coverage other than
544 Medicare or Medicaid, or is eligible for any such health care
545 coverage, evidence of the amount for which the future charges of
546 health care providers could be satisfied if submitted to such
547 health care coverage, plus the claimant's share of medical
548 expenses under the insurance contract or regulation.

549 2. If the claimant does not have health care coverage or
550 has health care coverage through Medicare or Medicaid, or is
551 eligible for such health care coverage, evidence of 120 percent

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552 of the Medicare reimbursement rate in effect at the time of
553 trial for the medical treatment or services the claimant will
554 receive, or, if there is no applicable Medicare rate for a
555 service, 170 percent of the applicable state Medicaid rate.

556 3. Any evidence of reasonable future amounts to be billed
557 to the claimant for medically necessary treatment or medically
558 necessary services.

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

562 (e) Individual contracts between providers and authorized
563 commercial insurers or authorized health maintenance
564 organizations are not subject to discovery or disclosure and are
565 not admissible into evidence.

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

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

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

575 1. For health care providers billing at the provider level,
576 the American Medical Association's Current Procedural
577 Terminology (CPT), or the Healthcare Common Procedure Coding
578 System (HCPCS), in effect on the date the services were
579 rendered.

580 2. For health care providers billing at the facility level

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581 for expenses incurred in a clinical or outpatient setting,
582 including when billing through an Ambulatory Payment
583 Classification (APC) or Enhanced Ambulatory Patient Grouping
584 (EAPG), the International Classification of Diseases (ICD)
585 diagnosis code and, if applicable, the American Medical
586 Association's Current Procedural Terminology (CPT), in effect on
587 the date the services were rendered.

588 3. For health care providers billing at the facility level
589 for expenses incurred in an inpatient setting, including when
590 billing through a Diagnosis Related Group (DRG), the
591 International Classification of Diseases (ICD) diagnosis and
592 procedure codes in effect on the date in which the claimant is
593 discharged.

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

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

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

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

605 (e) Whether the claimant was referred for treatment under a
606 letter of protection and, if so, the identity of the person who
607 made the referral. If the referral is made by the claimant's
608 attorney, disclosure of the referral is permitted, and evidence
609 of such referral is admissible notwithstanding s. 90.502.

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610 Moreover, in such situation, the financial relationship between
611 a law firm and a medical provider, including the number of
612 referrals, frequency, and financial benefit obtained, is
613 relevant to the issue of the bias of a testifying medical
614 provider.

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

622 (a) Amounts actually paid by or on behalf of the claimant
623 to a health care provider who rendered medical treatment or
624 services;

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

628 (c) Amounts necessary to provide for any reasonable and
629 necessary medical treatment or services the claimant will
630 receive in the future.

631 Section 7. Section 768.0701, Florida Statutes, is created
632 to read:

633 768.0701 Premises liability for criminal acts of third
634 parties.—Notwithstanding s. 768.81(4), in an action for damages
635 against the owner, lessor, operator, or manager of commercial or
636 real property brought by a person lawfully on the property who
637 was injured by the criminal act of a third party, the trier of
638 fact must consider the fault of all persons who contributed to

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639 the injury.

640 Section 8. Section 768.0706, Florida Statutes, is created
641 to read:

642 768.0706 Multifamily residential property safety and
643 security; presumption against liability.-

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

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

647 (b) "Multifamily residential property" means a residential
648 building, or group of residential buildings, such as apartments,
649 townhouses, or condominiums, consisting of at least five
650 dwelling units on a particular parcel.

651 (c) "Parcel" means real property for which a distinct
652 parcel identification number is assigned to the property by the
653 property appraiser for the county in which the property is
654 located.

655 (2) The owner or principal operator of a multifamily
656 residential property which substantially implements the
657 following security measures on that property has a presumption
658 against liability in connection with criminal acts that occur on
659 the premises which are committed by third parties who are not
660 employees or agents of the owner or operator:

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

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

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668 photocell or any similar electronic device that provides light
669 from dusk until dawn.

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

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

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

677 6. Locked gates with key or fob access along pool fence
678 areas.

679 7. A peephole or door viewer on each dwelling unit door
680 that does not include a window or that does not have a window
681 next to the door.

682 (b) By January 1, 2025, the owner or principal operator of
683 a multifamily residential property has a crime prevention
684 through environmental design assessment that is no more than 3
685 years old completed for the property. Such assessment must be
686 performed by a law enforcement agency or a Florida Crime
687 Prevention Through Environmental Design Practitioner designated
688 by the Florida Crime Prevention Training Institute of the
689 Department of Legal Affairs. The owner or principal operator
690 must remain in substantial compliance with the assessment for
691 purposes of this paragraph.

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

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697 hire date for purposes of this paragraph.

698 2. For purposes of this paragraph, "proper crime deterrence
699 and safety training" means training which trains and
700 familiarizes employees with the security principles, devices,
701 measures, and standards set forth under paragraph (a), and which
702 is reviewed at least every 3 years and updated as necessary. The
703 owner or principal operator may request a law enforcement agency
704 or the Florida Crime Prevention Through Environmental Design
705 Practitioner performing the assessment under paragraph (b) to
706 review the training curriculum.

707 (3) For purposes of establishing the presumption against
708 liability under subsection (2), the burden of proof is on the
709 owner or principal operator to demonstrate that the owner or
710 principal operator has substantially implemented the security
711 measures specified in subsection (2).

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

717 (5) This section does not establish a private cause of
718 action.

719 Section 9. Subsection (2) of section 768.81, Florida
720 Statutes, is amended, and subsection (6) is added to that
721 section, to read:

722 768.81 Comparative fault.—

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

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

729 (6) GREATER PERCENTAGE OF FAULT.—In a negligence action to
730 which this section applies, any party found to be greater than
731 50 percent at fault for his or her own harm may not recover any
732 damages. This subsection does not apply to an action for damages
733 for personal injury or wrongful death arising out of medical
734 negligence pursuant to chapter 766.

735 Section 10. Section 626.9373, Florida Statutes, is
736 repealed.

737 Section 11. Section 627.428, Florida Statutes, is repealed.

738 Section 12. Subsection (1) of section 627.756, Florida
739 Statutes, is amended to read:

740 627.756 Bonds for construction contracts; attorney fees in
741 case of suit.—

742 (1) In a suit ~~Section 627.428 applies to suits~~ brought by
743 an owner, a contractor, a subcontractor, a laborer, or a
744 materialman ~~owners, contractors, subcontractors, laborers, and~~
745 ~~materialmen~~ against a surety insurer under payment or
746 performance bonds written by the insurer under the laws of this
747 state to indemnify against pecuniary loss by breach of a
748 building or construction contract, upon the rendition of a
749 judgment or decree by any of the courts of this state against
750 the surety insurer and in favor of the owner, contractor,
751 subcontractor, laborer, or materialman, the trial court or, in
752 the event of an appeal in which the owner, contractor,
753 subcontractor, laborer, or materialman prevails, the appellate
754 court, shall adjudge or decree against the surety insurer and in

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755 favor of the owner, contractor, subcontractor, laborer, or
756 materialman a reasonable sum as fees or compensation for the
757 attorney prosecuting the suit in which the recovery is had.
758 ~~Owners, contractors, subcontractors, laborers, and materialmen~~
759 ~~shall be deemed to be insureds or beneficiaries for the purposes~~
760 ~~of this section.~~

761 Section 13. Paragraphs (a) and (j) of subsection (1) of
762 section 475.01, Florida Statutes, are amended to read:

763 475.01 Definitions.—

764 (1) As used in this part:

765 (a) "Broker" means a person who, for another, and for a
766 compensation or valuable consideration directly or indirectly
767 paid or promised, expressly or impliedly, or with an intent to
768 collect or receive a compensation or valuable consideration
769 therefor, appraises, auctions, sells, exchanges, buys, rents, or
770 offers, attempts or agrees to appraise, auction, or negotiate
771 the sale, exchange, purchase, or rental of business enterprises
772 or business opportunities or any real property or any interest
773 in or concerning the same, including mineral rights or leases,
774 or who advertises or holds out to the public by any oral or
775 printed solicitation or representation that she or he is engaged
776 in the business of appraising, auctioning, buying, selling,
777 exchanging, leasing, or renting business enterprises or business
778 opportunities or real property of others or interests therein,
779 including mineral rights, or who takes any part in the procuring
780 of sellers, purchasers, lessors, or lessees of business
781 enterprises or business opportunities or the real property of
782 another, or leases, or interest therein, including mineral
783 rights, or who directs or assists in the procuring of prospects

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784 or in the negotiation or closing of any transaction which does,
785 or is calculated to, result in a sale, exchange, or leasing
786 thereof, and who receives, expects, or is promised any
787 compensation or valuable consideration, directly or indirectly
788 therefor; and all persons who advertise rental property
789 information or lists. A broker renders a professional service
790 and is a professional within the meaning of s. 95.11(4)(b) ~~s.~~
791 ~~95.11(4)(a)~~. Where the term "appraise" or "appraising" appears
792 in the definition of the term "broker," it specifically excludes
793 those appraisal services which must be performed only by a
794 state-licensed or state-certified appraiser, and those appraisal
795 services which may be performed by a registered trainee
796 appraiser as defined in part II. The term "broker" also includes
797 any person who is a general partner, officer, or director of a
798 partnership or corporation which acts as a broker. The term
799 "broker" also includes any person or entity who undertakes to
800 list or sell one or more timeshare periods per year in one or
801 more timeshare plans on behalf of any number of persons, except
802 as provided in ss. 475.011 and 721.20.

803 (j) "Sales associate" means a person who performs any act
804 specified in the definition of "broker," but who performs such
805 act under the direction, control, or management of another
806 person. A sales associate renders a professional service and is
807 a professional within the meaning of s. 95.11(4)(b) ~~s.~~
808 ~~95.11(4)(a)~~.

809 Section 14. Paragraph (h) of subsection (1) of section
810 475.611, Florida Statutes, is amended to read:

811 475.611 Definitions.—

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

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813 (h) "Appraiser" means any person who is a registered
814 trainee real estate appraiser, a licensed real estate appraiser,
815 or a certified real estate appraiser. An appraiser renders a
816 professional service and is a professional within the meaning of
817 s. 95.11(4)(b) ~~s. 95.11(4)(a)~~.

818 Section 15. Subsection (7) of section 517.191, Florida
819 Statutes, is amended to read:

820 517.191 Injunction to restrain violations; civil penalties;
821 enforcement by Attorney General.—

822 (7) Notwithstanding s. 95.11(4)(f) ~~s. 95.11(4)(e)~~, an
823 enforcement action brought under this section based on a
824 violation of any provision of this chapter or any rule or order
825 issued under this chapter shall be brought within 6 years after
826 the facts giving rise to the cause of action were discovered or
827 should have been discovered with the exercise of due diligence,
828 but not more than 8 years after the date such violation
829 occurred.

830 Section 16. Subsection (4) of section 624.123, Florida
831 Statutes, is amended to read:

832 624.123 Certain international health insurance policies;
833 exemption from code.—

834 (4) Any international health insurance policy or
835 application solicited, provided, entered into, issued, or
836 delivered pursuant to this subsection is exempt from all
837 provisions of the insurance code, except that such policy,
838 contract, or agreement is subject to the provisions of ss.
839 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521,
840 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591,
841 626.9601, 627.413, 627.4145, ~~627.428~~, and 627.6043.

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842 Section 17. Subsection (4) of section 624.488, Florida
843 Statutes, is amended to read:

844 624.488 Applicability of related laws.—In addition to other
845 provisions of the code cited in ss. 624.460-624.488:

846 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
847 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~
848 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
849 627.913, and 627.918;

850

851 apply to self-insurance funds. Only those sections of the code
852 that are expressly and specifically cited in ss. 624.460-624.489
853 apply to self-insurance funds.

854 Section 18. Paragraph (b) of subsection (3) of section
855 627.062, Florida Statutes, is amended to read:

856 627.062 Rate standards.—

857 (3)

858 (b) Individual risk rates and modifications to existing
859 approved forms are not subject to this part or part II, except
860 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
861 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
862 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
863 627.4265, and 627.427, ~~and 627.428,~~ but are subject to all other
864 applicable provisions of this code and rules adopted thereunder.

865 Section 19. Subsections (3), (4), and (5) of section
866 627.401, Florida Statutes, are amended to read:

867 627.401 Scope of this part.—No provision of this part of
868 this chapter applies to:

869 (3) Wet marine and transportation insurance, except ss.
870 627.409 and ~~627.420,~~ ~~and 627.428.~~

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871 (4) Title insurance, except ss. 627.406, 627.415, 627.416,
872 627.419, and 627.427, ~~and 627.428.~~

873 (5) Credit life or credit disability insurance, except s.
874 627.419(5) ~~ss. 627.419(5) and 627.428.~~

875 Section 20. Subsection (2) of section 627.441, Florida
876 Statutes, is amended to read:

877 627.441 Commercial general liability policies; coverage to
878 contractors for completed operations.-

879 (2) A liability insurer must offer coverage at an
880 appropriate additional premium for liability arising out of
881 current or completed operations under an owner-controlled
882 insurance program for any period beyond the period for which the
883 program provides liability coverage, as specified in s.
884 255.0517(2)(b). The period of such coverage must be sufficient
885 to protect against liability arising out of an action brought
886 within the time limits provided in s. 95.11(3)(b) ~~s.~~
887 ~~95.11(3)(c).~~

888 Section 21. Subsection (8) of section 627.727, Florida
889 Statutes, is amended to read:

890 627.727 Motor vehicle insurance; uninsured and underinsured
891 vehicle coverage; insolvent insurer protection.-

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

897 Section 22. Subsection (8) of section 627.736, Florida
898 Statutes, is amended to read:

899 627.736 Required personal injury protection benefits;

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900 exclusions; priority; claims.—

901 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—

902 With respect to any dispute under the provisions of ss. 627.730-
 903 627.7405 between the insured and the insurer, or between an
 904 assignee of an insured's rights and the insurer, the provisions
 905 of s. 768.79 ~~ss. 627.428 and 768.79~~ apply, except as provided in
 906 subsections (10) and (15), and except that any attorney fees
 907 recovered must:

908 (a) Comply with prevailing professional standards;

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

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

913

914 Upon request by either party, a judge must make written
 915 findings, substantiated by evidence presented at trial or any
 916 hearings associated therewith, that any award of attorney fees
 917 complies with this subsection. ~~Notwithstanding s. 627.428,~~
 918 Attorney fees recovered under ss. 627.730-627.7405 must be
 919 calculated without regard to a contingency risk multiplier.

920 Section 23. Subsection (4) of section 628.6016, Florida
 921 Statutes, is amended to read:

922 628.6016 Applicability of related laws.—In addition to
 923 other provisions of the code cited in ss. 628.6011-628.6018:

924 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
 925 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~
 926 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
 927 627.913, and 627.918; and

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929 apply to assessable mutual insurers; however, ss. 628.255,
930 628.411, and 628.421 do not apply. No section of the code not
931 expressly and specifically cited in ss. 628.6011-628.6018
932 applies to assessable mutual insurers. The term "assessable
933 mutual insurer" shall be substituted for the term "commercial
934 self-insurer" as appropriate.

935 Section 24. Section 631.70, Florida Statutes, is repealed.

936 Section 25. Section 631.926, Florida Statutes, is repealed.

937 Section 26. Subsection (11) of section 632.638, Florida
938 Statutes, is amended to read:

939 632.638 Applicability of other code provisions.—In addition
940 to other provisions contained or referred to in this chapter,
941 the following chapters and provisions of this code apply to
942 fraternal benefit societies, to the extent applicable and not in
943 conflict with the express provisions of this chapter and the
944 reasonable implications thereof:

945 ~~(11) Section 627.428;~~

946 Section 27. The Division of Law Revision is directed to
947 replace the phrase "the effective date of this act" wherever it
948 occurs in this act with the date this act becomes a law.

949 Section 28. The amendments made by this act to s. 95.11,
950 Florida Statutes, apply to causes of action accruing after the
951 effective date of this act.

952 Section 29. This act shall not be construed to impair any
953 right under an insurance contract in effect on or before the
954 effective date of this act. To the extent that this act affects
955 a right under an insurance contract, this act applies to an
956 insurance contract issued or renewed after the effective date of
957 this act.

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958 Section 30. Except as otherwise expressly provided in this
959 act, this act shall apply to causes of action filed after the
960 effective date of this act.

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