

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Gregory offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

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

(1) In any action in which attorney ~~attorneys'~~ fees are to be determined or awarded by the court, the court shall consider, among other things, time and labor of any legal assistants who contributed nonclerical, meaningful legal support to the matter involved and who are working under the supervision of an attorney. For purposes of this section "legal assistant" means a

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14 person, who under the supervision and direction of a licensed
15 attorney engages in legal research, and case development or
16 planning in relation to modifications or initial proceedings,
17 services, processes, or applications; or who prepares or
18 interprets legal documents or selects, compiles, and uses
19 technical information from references such as digests,
20 encyclopedias, or practice manuals and analyzes and follows
21 procedural problems that involve independent decisions.

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

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

29 86.121 Attorney fees; actions for declaratory relief to
30 determine insurance coverage after total coverage denial of
31 claim.—In an action brought for declaratory relief in state or
32 federal court to determine insurance coverage after the insurer
33 has made a total coverage denial of a claim:

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

37 (2) The court shall award reasonable attorney fees to the
38 named insured, omnibus insured, or named beneficiary under a

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

49 Section 3. Subsections (3), (4), and (10) of section
50 95.11, Florida Statutes, are amended, and subsection (12) is
51 added to that section, to read:

52 95.11 Limitations other than for the recovery of real
53 property.—Actions other than for recovery of real property shall
54 be commenced as follows:

55 (3) WITHIN FOUR YEARS.—

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

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

60 (b) ~~(e)~~ An action founded on the design, planning, or
61 construction of an improvement to real property, with the time
62 running from the date of actual possession by the owner, the
63 date of the issuance of a certificate of occupancy, the date of

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64 abandonment of construction if not completed, or the date of
65 completion of the contract or termination of the contract
66 between the professional engineer, registered architect, or
67 licensed contractor and his or her employer, whichever date is
68 latest; except that, when the action involves a latent defect,
69 the time runs from the time the defect is discovered or should
70 have been discovered with the exercise of due diligence. In any
71 event, the action must be commenced within 10 years after the
72 date of actual possession by the owner, the date of the issuance
73 of a certificate of occupancy, the date of abandonment of
74 construction if not completed, or the date of completion of the
75 contract or termination of the contract between the professional
76 engineer, registered architect, or licensed contractor and his
77 or her employer, whichever date is latest. However,
78 counterclaims, cross-claims, and third-party claims that arise
79 out of the conduct, transaction, or occurrence set out or
80 attempted to be set out in a pleading may be commenced up to 1
81 year after the pleading to which such claims relate is served,
82 even if such claims would otherwise be time barred. With respect
83 to actions founded on the design, planning, or construction of
84 an improvement to real property, if such construction is
85 performed pursuant to a duly issued building permit and if a
86 local enforcement agency, state enforcement agency, or special
87 inspector, as those terms are defined in s. 553.71, has issued a
88 final certificate of occupancy or certificate of completion,

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89 then as to the construction which is within the scope of such
90 building permit and certificate, the correction of defects to
91 completed work or repair of completed work, whether performed
92 under warranty or otherwise, does not extend the period of time
93 within which an action must be commenced. Completion of the
94 contract means the later of the date of final performance of all
95 the contracted services or the date that final payment for such
96 services becomes due without regard to the date final payment is
97 made.

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

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

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

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

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

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

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

112 ~~(j)~~(k) A legal or equitable action on a contract,
113 obligation, or liability not founded on a written instrument,

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114 including an action for the sale and delivery of goods, wares,
115 and merchandise, and on store accounts.

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

117 ~~(l)-(m)~~ An action for money paid to any governmental
118 authority by mistake or inadvertence.

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

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

124 ~~(o)-(p)~~ Any action not specifically provided for in these
125 statutes.

126 ~~(p)-(q)~~ An action alleging a violation, other than a
127 willful violation, of s. 448.110.

128 (4) WITHIN TWO YEARS.—

129 (a) An action founded on negligence.

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

137 ~~(c)-(b)~~ An action for medical malpractice shall be
138 commenced within 2 years from the time the incident giving rise

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139 to the action occurred or within 2 years from the time the
140 incident is discovered, or should have been discovered with the
141 exercise of due diligence; however, in no event shall the action
142 be commenced later than 4 years from the date of the incident or
143 occurrence out of which the cause of action accrued, except that
144 this 4-year period shall not bar an action brought on behalf of
145 a minor on or before the child's eighth birthday. An "action for
146 medical malpractice" is defined as a claim in tort or in
147 contract for damages because of the death, injury, or monetary
148 loss to any person arising out of any medical, dental, or
149 surgical diagnosis, treatment, or care by any provider of health
150 care. The limitation of actions within this subsection shall be
151 limited to the health care provider and persons in privity with
152 the provider of health care. In those actions covered by this
153 paragraph in which it can be shown that fraud, concealment, or
154 intentional misrepresentation of fact prevented the discovery of
155 the injury the period of limitations is extended forward 2 years
156 from the time that the injury is discovered or should have been
157 discovered with the exercise of due diligence, but in no event
158 to exceed 7 years from the date the incident giving rise to the
159 injury occurred, except that this 7-year period shall not bar an
160 action brought on behalf of a minor on or before the child's
161 eighth birthday. This paragraph shall not apply to actions for
162 which ss. 766.301-766.316 provide the exclusive remedy.

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

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

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

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

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

179 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
180 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
181 ~~(4)(e) (4)(d)~~, an action for wrongful death seeking damages
182 authorized under s. 768.21 brought against a natural person for
183 an intentional tort resulting in death from acts described in s.
184 782.04 or s. 782.07 may be commenced at any time. This
185 subsection shall not be construed to require an arrest, the
186 filing of formal criminal charges, or a conviction for a

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187 violation of s. 782.04 or s. 782.07 as a condition for filing a
188 civil action.

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

198 Section 4. Section 624.155, Florida Statutes, is amended
199 to read:

200 624.155 Civil remedy.—

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

203 (a) By a violation of any of the following provisions by
204 the insurer:

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

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211 (b) By the commission of any of the following acts by the
212 insurer:

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

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

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

225
226 Notwithstanding the provisions of the above to the contrary, a
227 person pursuing a remedy under this section need not prove that
228 such act was committed or performed with such frequency as to
229 indicate a general business practice.

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

233 (3) (a) As a condition precedent to bringing an action
234 under this section, the department and the authorized insurer
235 must have been given 60 days' written notice of the violation.

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236 Notice to the authorized insurer must be provided by the
237 department to the e-mail address designated by the insurer under
238 s. 624.422.

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

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

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

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

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

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

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

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260 this subsection, the damages are paid or the circumstances
261 giving rise to the violation are corrected.

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

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

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

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

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

274 (4) (a) An action for bad faith involving a liability
275 insurance claim, including any such action brought under the
276 common law, shall not lie if the insurer tenders the lesser of
277 the policy limits or the amount demanded by the claimant within
278 90 days after receiving actual notice of a claim which is
279 accompanied by sufficient evidence to support the amount of the
280 claim.

281 (b) If an insurer does not tender the lesser of the policy
282 limits or the amount demanded by the claimant within the 90-day
283 period provided in paragraph (a), the existence of the 90-day
284 period and that no bad faith action could lie had the insurer

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285 tendered the lesser of policy limits or the amount demanded by
286 the claimant pursuant to paragraph (a) is inadmissible in any
287 action seeking to establish bad faith on the part of the
288 insurer.

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

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

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

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

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

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

319 (a) The insurer files an interpleader action under the
320 Florida Rules of Civil Procedure. If the claims of the competing
321 third-party claimants are found to be in excess of the policy
322 limits, the third-party claimants are entitled to a prorated
323 share of the policy limits as determined by the trier of fact.
324 An insurer's interpleader action does not alter or amend the
325 insurer's obligation to defend its insured.

326 (b) Pursuant to binding arbitration that has been agreed
327 to by the insurer and the third-party claimants, the insurer
328 makes the entire amount of the policy limits available for
329 payment to the competing third-party claimants before a
330 qualified arbitrator agreed to by the insurer and such third-
331 party claimants at the expense of the insurer. The third-party
332 claimants are entitled to a prorated share of the policy limits
333 as determined by the arbitrator, who must consider the

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334 comparative fault, if any, of each third-party claimant, and the
335 total likely outcome at trial based upon the total of the
336 economic and noneconomic damages submitted to the arbitrator for
337 consideration. A third-party claimant whose claim is resolved by
338 the arbitrator must execute and deliver a general release to the
339 insured party whose claim is resolved by the proceeding.

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

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

348 (a) Willful, wanton, and malicious;

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

350 or

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

353

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

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

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

374 (11)~~(8)~~ The civil remedy specified in this section does
375 not preempt any other remedy or cause of action provided for
376 pursuant to any other statute or pursuant to the common law of
377 this state. Any person may obtain a judgment under either the
378 common-law remedy of bad faith or this statutory remedy, but is
379 ~~shall~~ not be entitled to a judgment under both remedies. This
380 section does ~~shall~~ not be construed to create a common-law cause
381 of action. The damages recoverable pursuant to this section
382 shall include those damages which are a reasonably foreseeable

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383 result of a specified violation of this section by the
384 authorized insurer and may include an award or judgment in an
385 amount that exceeds the policy limits.

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

389 Section 5. Section 624.1552, Florida Statutes, is created
390 to read:

391 624.1552 Civil actions involving an insurance contract;
392 applicability of offer of judgment provisions.-The provisions of
393 s. 768.79 apply to any civil action involving an insurance
394 contract.

395 Section 6. Section 768.0427, Florida Statutes, is created
396 to read:

397 768.0427 Admissibility of evidence to prove medical
398 expenses in personal injury or wrongful death actions;
399 disclosure of letters of protection; recovery of past and future
400 medical expenses damages.-

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

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

405 (b) "Health care coverage" means any third-party health
406 care or disability services financing arrangement, including,
407 but not limited to, arrangements with entities certified or

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408 authorized under federal law or under the Florida Insurance
409 Code; state or federal health care benefit programs; workers'
410 compensation; and personal injury protection.

411 (c) "Health care provider" means any of the following
412 professionals and entities, and professionals and entities
413 similarly licensed in another jurisdiction:

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

415 2. A clinical laboratory providing services in this state
416 or services to health care providers in this state, if the
417 clinical laboratory is certified by the Centers for Medicare and
418 Medicaid Services under the federal Clinical Laboratory
419 Improvement Amendments and the federal rules adopted thereunder.

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

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

424 5. A health care professional licensed under part IV of
425 chapter 468.

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

427 7. A provider licensed under chapter 394 or chapter 397
428 and its clinical and nonclinical staff providing inpatient or
429 outpatient services.

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

431 9. A pharmacy permitted under chapter 465.

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

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

443 (a) Evidence offered to prove the amount of damages for
444 past medical treatment or services that have been satisfied is
445 limited to evidence of the amount actually paid, regardless of
446 the source of payment.

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

451 1. If the claimant has health care coverage other than
452 Medicare or Medicaid, evidence of the amount which such health
453 care coverage is obligated to pay the health care provider to
454 satisfy the charges for the claimant's incurred medical
455 treatment or services, plus the claimant's share of medical
456 expenses under the insurance contract or regulation.

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457 2. If the claimant has health care coverage but obtains
458 treatment under a letter of protection or otherwise does not
459 submit charges for any health care provider's medical treatment
460 or services to health care coverage, evidence of the amount the
461 claimant's health care coverage would pay the health care
462 provider to satisfy the past unpaid medical charges under the
463 insurance contract or regulation, plus the claimant's share of
464 medical expenses under the insurance contract or regulation, had
465 the claimant obtained medical services or treatment pursuant to
466 the health care coverage.

467 3. If the claimant does not have health care coverage or
468 has health care coverage through Medicare or Medicaid, evidence
469 of 120 percent of the Medicare reimbursement rate in effect on
470 the date of the claimant's incurred medical treatment or
471 services, or, if there is no applicable Medicare rate for a
472 service, 170 percent of the applicable state Medicaid rate.

473 4. If the claimant obtains medical treatment or services
474 under a letter of protection and the health care provider
475 subsequently transfers the right to receive payment under the
476 letter of protection to a third party, evidence of the amount
477 the third party paid or agreed to pay the health care provider
478 in exchange for the right to receive payment pursuant to the
479 letter of protection.

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480 5. Any evidence of reasonable amounts billed to the
481 claimant for medically necessary treatment or medically
482 necessary services provided to the claimant.

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

487 1. If the claimant has health care coverage other than
488 Medicare or Medicaid, or is eligible for any such health care
489 coverage, evidence of the amount for which the future charges of
490 health care providers could be satisfied if submitted to such
491 health care coverage, plus the claimant's share of medical
492 expenses under the insurance contract or regulation.

493 2. If the claimant does not have health care coverage or
494 has health care coverage through Medicare or Medicaid, or is
495 eligible for such health care coverage, evidence of 120 percent
496 of the Medicare reimbursement rate in effect at the time of
497 trial for the medical treatment or services the claimant will
498 receive, or, if there is no applicable Medicare rate for a
499 service, 170 percent of the applicable state Medicaid rate.

500 3. Any evidence of reasonable future amounts to be billed
501 to the claimant for medically necessary treatment or medically
502 necessary services.

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

506 (e) Individual contracts between providers and authorized
507 commercial insurers or authorized health maintenance
508 organizations are not subject to discovery or disclosure and are
509 not admissible into evidence.

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

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

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

519 1. For health care providers billing at the provider
520 level, the American Medical Association's Current Procedural
521 Terminology (CPT), or the Healthcare Common Procedure Coding
522 System (HCPCS), in effect on the date the services were
523 rendered.

524 2. For health care providers billing at the facility level
525 for expenses incurred in a clinical or outpatient setting,
526 including when billing through an Ambulatory Payment
527 Classification (APC) or Enhanced Ambulatory Patient Grouping

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528 (EAPG), the International Classification of Diseases (ICD)
529 diagnosis code and, if applicable, the American Medical
530 Association's Current Procedural Terminology (CPT), in effect on
531 the date the services were rendered.

532 3. For health care providers billing at the facility level
533 for expenses incurred in an inpatient setting, including when
534 billing through a Diagnosis Related Group (DRG), the
535 International Classification of Diseases (ICD) diagnosis and
536 procedure codes in effect on the date in which the claimant is
537 discharged.

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

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

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

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

549 (e) Whether the claimant was referred for treatment under
550 a letter of protection and, if so, the identity of the person
551 who made the referral. If the referral is made by the claimant's
552 attorney, disclosure of the referral is permitted, and evidence

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553 of such referral is admissible notwithstanding s. 90.502.
554 Moreover, in such situation, the financial relationship between
555 a law firm and a medical provider, including the number of
556 referrals, frequency, and financial benefit obtained, is
557 relevant to the issue of the bias of a testifying medical
558 provider.

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

566 (a) Amounts actually paid by or on behalf of the claimant
567 to a health care provider who rendered medical treatment or
568 services;

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

572 (c) Amounts necessary to provide for any reasonable and
573 necessary medical treatment or services the claimant will
574 receive in the future.

575 Section 7. Section 768.0701, Florida Statutes, is created
576 to read:

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577 768.0701 Premises liability for criminal acts of third
578 parties.—Notwithstanding s. 768.81(4), in an action for damages
579 against the owner, lessor, operator, or manager of commercial or
580 real property brought by a person lawfully on the property who
581 was injured by the criminal act of a third party, the trier of
582 fact must consider the fault of all persons who contributed to
583 the injury.

584 Section 8. Section 768.0706, Florida Statutes, is created
585 to read:

586 768.0706 Multifamily residential property safety and
587 security; presumption against liability.—

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

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

591 (b) "Multifamily residential property" means a residential
592 building, or group of residential buildings, such as apartments,
593 townhouses, or condominiums, consisting of at least five
594 dwelling units on a particular parcel.

595 (c) "Parcel" means real property for which a distinct
596 parcel identification number is assigned to the property by the
597 property appraiser for the county in which the property is
598 located.

599 (2) The owner or principal operator of a multifamily
600 residential property which substantially implements the
601 following security measures on that property has a presumption

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602 against liability in connection with criminal acts that occur on
603 the premises which are committed by third parties who are not
604 employees or agents of the owner or operator:

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

609 2. A lighted parking lot illuminated at an intensity of at
610 least an average of 1.8 foot-candles per square foot at 18
611 inches above the surface from dusk until dawn or controlled by
612 photocell or any similar electronic device that provides light
613 from dusk until dawn.

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

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

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

621 6. Locked gates with key or fob access along pool fence
622 areas.

623 7. A peephole or door viewer on each dwelling unit door
624 that does not include a window or that does not have a window
625 next to the door.

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626 (b) By January 1, 2025, the owner or principal operator of
627 a multifamily residential property has a crime prevention
628 through environmental design assessment that is no more than 3
629 years old completed for the property. Such assessment must be
630 performed by a law enforcement agency or a Florida Crime
631 Prevention Through Environmental Design Practitioner designated
632 by the Florida Crime Prevention Training Institute of the
633 Department of Legal Affairs. The owner or principal operator
634 must remain in substantial compliance with the assessment for
635 purposes of this paragraph.

636 (c)1. By January 1, 2025, the owner or principal operator
637 of a multifamily residential property provides proper crime
638 deterrence and safety training to its current employees. After
639 January 1, 2025, the owner or principal operator must provide
640 such training to an employee within 60 days after his or her
641 hire date for purposes of this paragraph.

642 2. For purposes of this paragraph, "proper crime
643 deterrence and safety training" means training which trains and
644 familiarizes employees with the security principles, devices,
645 measures, and standards set forth under paragraph (a), and which
646 is reviewed at least every 3 years and updated as necessary. The
647 owner or principal operator may request a law enforcement agency
648 or the Florida Crime Prevention Through Environmental Design
649 Practitioner performing the assessment under paragraph (b) to
650 review the training curriculum.

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651 (3) For purposes of establishing the presumption against
652 liability under subsection (2), the burden of proof is on the
653 owner or principal operator to demonstrate that the owner or
654 principal operator has substantially implemented the security
655 measures specified in subsection (2).

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

661 (5) This section does not establish a private cause of
662 action.

663 Section 9. Subsection (2) of section 768.81, Florida
664 Statutes, is amended, and subsection (6) is added to that
665 section, to read:

666 768.81 Comparative fault.—

667 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence action,
668 contributory fault chargeable to the claimant diminishes
669 proportionately the amount awarded as economic and noneconomic
670 damages for an injury attributable to the claimant's
671 contributory fault, but does not bar recovery, subject to
672 subsection (6).

673 (6) GREATER PERCENTAGE OF FAULT.—In a negligence action to
674 which this section applies, any party found to be greater than
675 50 percent at fault for his or her own harm may not recover any

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676 damages. This subsection does not apply to an action for damages
677 for personal injury or wrongful death arising out of medical
678 negligence pursuant to chapter 766.

679 Section 10. Section 626.9373, Florida Statutes, is
680 repealed.

681 Section 11. Section 627.428, Florida Statutes, is
682 repealed.

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

685 627.756 Bonds for construction contracts; attorney fees in
686 case of suit.—

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

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701 materialman a reasonable sum as fees or compensation for the
702 attorney prosecuting the suit in which the recovery is had.
703 ~~Owners, contractors, subcontractors, laborers, and materialmen~~
704 ~~shall be deemed to be insureds or beneficiaries for the purposes~~
705 ~~of this section.~~

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

708 475.01 Definitions.—

709 (1) As used in this part:

710 (a) "Broker" means a person who, for another, and for a
711 compensation or valuable consideration directly or indirectly
712 paid or promised, expressly or impliedly, or with an intent to
713 collect or receive a compensation or valuable consideration
714 therefor, appraises, auctions, sells, exchanges, buys, rents, or
715 offers, attempts or agrees to appraise, auction, or negotiate
716 the sale, exchange, purchase, or rental of business enterprises
717 or business opportunities or any real property or any interest
718 in or concerning the same, including mineral rights or leases,
719 or who advertises or holds out to the public by any oral or
720 printed solicitation or representation that she or he is engaged
721 in the business of appraising, auctioning, buying, selling,
722 exchanging, leasing, or renting business enterprises or business
723 opportunities or real property of others or interests therein,
724 including mineral rights, or who takes any part in the procuring
725 of sellers, purchasers, lessors, or lessees of business

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726 enterprises or business opportunities or the real property of
727 another, or leases, or interest therein, including mineral
728 rights, or who directs or assists in the procuring of prospects
729 or in the negotiation or closing of any transaction which does,
730 or is calculated to, result in a sale, exchange, or leasing
731 thereof, and who receives, expects, or is promised any
732 compensation or valuable consideration, directly or indirectly
733 therefor; and all persons who advertise rental property
734 information or lists. A broker renders a professional service
735 and is a professional within the meaning of s. 95.11(4) (b) ~~s.~~
736 ~~95.11(4) (a)~~. Where the term "appraise" or "appraising" appears
737 in the definition of the term "broker," it specifically excludes
738 those appraisal services which must be performed only by a
739 state-licensed or state-certified appraiser, and those appraisal
740 services which may be performed by a registered trainee
741 appraiser as defined in part II. The term "broker" also includes
742 any person who is a general partner, officer, or director of a
743 partnership or corporation which acts as a broker. The term
744 "broker" also includes any person or entity who undertakes to
745 list or sell one or more timeshare periods per year in one or
746 more timeshare plans on behalf of any number of persons, except
747 as provided in ss. 475.011 and 721.20.

748 (j) "Sales associate" means a person who performs any act
749 specified in the definition of "broker," but who performs such
750 act under the direction, control, or management of another

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751 person. A sales associate renders a professional service and is
752 a professional within the meaning of s. 95.11(4)(b) ~~s.~~
753 ~~95.11(4)(a)~~.

754 Section 14. Paragraph (h) of subsection (1) of section
755 475.611, Florida Statutes, is amended to read:

756 475.611 Definitions.—

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

758 (h) "Appraiser" means any person who is a registered
759 trainee real estate appraiser, a licensed real estate appraiser,
760 or a certified real estate appraiser. An appraiser renders a
761 professional service and is a professional within the meaning of
762 s. 95.11(4)(b) ~~s. 95.11(4)(a)~~.

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

765 517.191 Injunction to restrain violations; civil
766 penalties; enforcement by Attorney General.—

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

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

777 624.123 Certain international health insurance policies;
778 exemption from code.—

779 (4) Any international health insurance policy or
780 application solicited, provided, entered into, issued, or
781 delivered pursuant to this subsection is exempt from all
782 provisions of the insurance code, except that such policy,
783 contract, or agreement is subject to the provisions of ss.
784 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521,
785 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591,
786 626.9601, 627.413, 627.4145, ~~627.428~~, and 627.6043.

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

789 624.488 Applicability of related laws.—In addition to
790 other provisions of the code cited in ss. 624.460-624.488:

791 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
792 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428~~,
793 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
794 627.913, and 627.918;

795
796 apply to self-insurance funds. Only those sections of the code
797 that are expressly and specifically cited in ss. 624.460-624.489
798 apply to self-insurance funds.

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799 Section 18. Paragraph (b) of subsection (3) of section
800 627.062, Florida Statutes, is amended to read:

801 627.062 Rate standards.—

802 (3)

803 (b) Individual risk rates and modifications to existing
804 approved forms are not subject to this part or part II, except
805 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
806 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
807 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
808 627.4265, and 627.427, ~~and 627.428~~, but are subject to all other
809 applicable provisions of this code and rules adopted thereunder.

810 Section 19. Subsections (3), (4), and (5) of section
811 627.401, Florida Statutes, are amended to read:

812 627.401 Scope of this part.—No provision of this part of
813 this chapter applies to:

814 (3) Wet marine and transportation insurance, except ss.
815 627.409 and, 627.420, ~~and 627.428~~.

816 (4) Title insurance, except ss. 627.406, 627.415, 627.416,
817 627.419, and 627.427, ~~and 627.428~~.

818 (5) Credit life or credit disability insurance, except s.
819 627.419(5) ~~ss. 627.419(5) and 627.428~~.

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

822 627.441 Commercial general liability policies; coverage to
823 contractors for completed operations.—

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824 (2) A liability insurer must offer coverage at an
825 appropriate additional premium for liability arising out of
826 current or completed operations under an owner-controlled
827 insurance program for any period beyond the period for which the
828 program provides liability coverage, as specified in s.
829 255.0517(2)(b). The period of such coverage must be sufficient
830 to protect against liability arising out of an action brought
831 within the time limits provided in s. 95.11(3)(b) ~~s.~~
832 95.11(3)(c).

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

835 627.727 Motor vehicle insurance; uninsured and
836 underinsured vehicle coverage; insolvent insurer protection.—

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

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

844 627.736 Required personal injury protection benefits;
845 exclusions; priority; claims.—

846 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—
847 With respect to any dispute under the provisions of ss. 627.730-
848 627.7405 between the insured and the insurer, or between an

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849 assignee of an insured's rights and the insurer, the provisions
850 of s. 768.79 ~~ss. 627.428 and 768.79~~ apply, except as provided in
851 subsections (10) and (15), and except that any attorney fees
852 recovered must:

853 (a) Comply with prevailing professional standards;

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

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

859
860 Upon request by either party, a judge must make written
861 findings, substantiated by evidence presented at trial or any
862 hearings associated therewith, that any award of attorney fees
863 complies with this subsection. ~~Notwithstanding s. 627.428,~~
864 Attorney fees recovered under ss. 627.730-627.7405 must be
865 calculated without regard to a contingency risk multiplier.

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

868 628.6016 Applicability of related laws.—In addition to
869 other provisions of the code cited in ss. 628.6011-628.6018:

870 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
871 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~
872 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
873 627.913, and 627.918; and

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874
875 apply to assessable mutual insurers; however, ss. 628.255,
876 628.411, and 628.421 do not apply. No section of the code not
877 expressly and specifically cited in ss. 628.6011-628.6018
878 applies to assessable mutual insurers. The term "assessable
879 mutual insurer" shall be substituted for the term "commercial
880 self-insurer" as appropriate.

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

882 Section 25. Section 631.926, Florida Statutes, is
883 repealed.

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

886 632.638 Applicability of other code provisions.—In
887 addition to other provisions contained or referred to in this
888 chapter, the following chapters and provisions of this code
889 apply to fraternal benefit societies, to the extent applicable
890 and not in conflict with the express provisions of this chapter
891 and the reasonable implications thereof:

892 ~~(11) Section 627.428;~~

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

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

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899 Section 29. This act shall not be construed to impair any
900 right under an insurance contract in effect on or before the
901 effective date of this act. To the extent that this act affects
902 a right under an insurance contract, this act applies to an
903 insurance contract issued or renewed after the effective date of
904 this act.

905 Section 30. Except as otherwise expressly provided in this
906 act, this act shall apply to causes of action filed after the
907 effective date of this act.

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

910 -----
911 -----

912 **T I T L E A M E N D M E N T**

913 Remove everything before the enacting clause and insert:

914 A bill to be entitled

915 An act relating to civil remedies; amending s. 57.104,
916 F.S.; creating a rebuttable presumption that a lodestar fee
917 is a sufficient and reasonable attorney fee in most civil
918 actions; providing an exception; creating s. 86.121, F.S.;
919 authorizing a court to award attorney fees in certain
920 declaratory actions; prohibiting the transfer, assignment,
921 or acquisition of the right to such attorney fees except by
922 specified persons; amending s. 95.11, F.S.; reducing the
923

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924 statute of limitations for negligence actions; providing
925 applicability of certain provisions to actions involving
926 servicemembers; amending s. 624.155, F.S.; providing
927 standards for bad faith actions; providing for the
928 distribution of proceeds when two or more third-party
929 claims arising out of a single occurrence exceed policy
930 limits; creating s. 624.1552, F.S.; providing for
931 applicability of specified offer of judgement provisions to
932 civil actions involving insurance contracts; creating s.
933 768.0427, F.S.; providing definitions; providing standards
934 for the admissibility of evidence to prove the cost of
935 damages for medical expenses in certain civil actions;
936 requiring certain disclosures with respect to claims for
937 medical expenses for treatment rendered under letters of
938 protection; specifying the damages that may be recovered by
939 a claimant for the reasonable and necessary cost of medical
940 care; creating s. 768.0701, F.S.; requiring the trier of
941 fact to consider the fault of certain persons who
942 contribute to an injury; creating s. 768.0706, F.S.;
943 providing definitions; providing that the owner or
944 principal operator of a multifamily residential property
945 which substantially implements specified security measures
946 on that property has a presumption against liability for
947 negligence in connection with certain criminal acts that
948 occur on the premises; requiring the Florida Crime

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949 Prevention Training Institute of the Department of Legal
950 Affairs to develop a proposed curriculum or best practices
951 for owners or principal operators; providing construction;
952 amending s. 768.81, F.S.; providing that a party in a
953 negligence action who is at fault by a specified amount may
954 not recover damages under a comparative negligence action;
955 providing applicability; repealing ss. 626.9373 and
956 627.428, F.S., relating to attorney fees awarded against
957 surplus lines insurers and insurers, respectively; amending
958 s. 627.756, F.S.; providing for the award of costs and
959 attorney fees in certain actions; amending ss. 475.01,
960 475.611, 517.191, 624.123, 624.488, 627.062, 627.401,
961 627.441, 627.727, 627.736, and 628.6016, F.S.; conforming
962 provisions to changes made by the act; repealing ss. 631.70
963 and 631.926, F.S., relating to attorney fees; amending s.
964 632.638, F.S.; conforming provisions to changes made by the
965 act; providing a directive to the Division of Law Revision;
966 providing applicability and construction; providing an
967 effective date.

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