

1                   A bill to be entitled  
2           An act relating to attorney fee awards in insurance  
3           actions; repealing s. 86.121, F.S., relating to  
4           attorney fees in specified actions for declaratory  
5           relief to determine insurance coverage after total  
6           coverage denial of claims; amending s. 624.1552, F.S.;  
7           revising the applicability of the offer of judgment  
8           and demand for judgment provisions to civil actions  
9           involving an insurance contract; creating s. 626.9375,  
10          F.S.; requiring the award of prevailing party attorney  
11          fees in certain civil actions brought against surplus  
12          lines insurers; providing guidelines to determine  
13          prevailing parties; defining the term "judgment";  
14          providing a specified circumstance under which a  
15          settlement offer is not a good faith settlement offer;  
16          specifying the applicability of the offer of judgment  
17          and demand for judgment provisions if prevailing party  
18          attorney fees apply; creating s. 627.4275, F.S.;  
19          requiring the award of prevailing party attorney fees  
20          in certain civil actions brought against insurers;  
21          providing guidelines to determine prevailing parties;  
22          defining the term "judgment"; providing a specified  
23          circumstance under which a settlement offer is not a  
24          good faith settlement offer; specifying the  
25          applicability of the offer of judgment and demand for

26 judgment provisions if prevailing party attorney fees  
27 apply; amending ss. 624.123, 624.488, 627.062,  
28 627.401, 627.727, and 627.736, F.S.; providing for the  
29 applicability of the prevailing party attorney fee  
30 provision to specified insurers, insurance policies or  
31 coverage types, and rate standards; amending s.  
32 627.756, F.S.; providing for the applicability of the  
33 prevailing party attorney fee provision to suits  
34 brought by certain entities against surety insurers  
35 under certain circumstances; providing that such  
36 entities are deemed insureds or beneficiaries for  
37 specified purposes; amending ss. 628.6016 and 632.638,  
38 F.S.; providing for the applicability of the  
39 prevailing party attorney fee provision to assessable  
40 mutual insurers and fraternal benefit societies,  
41 respectively; creating ss. 631.696 and 631.9245, F.S.;  
42 providing for the applicability of the prevailing  
43 party attorney fee provision to claims presented to  
44 specified guaranty associations; providing general  
45 applicability and construction; providing a directive  
46 to the Division of Law Revision; providing an  
47 effective date.

48  
49 Be It Enacted by the Legislature of the State of Florida:  
50

51 **Section 1.** Section 86.121, Florida Statutes, is repealed.

52 **Section 2. Section 624.1552, Florida Statutes, is amended**  
 53 **to read:**

54 624.1552 Civil actions involving an insurance contract;  
 55 applicability of offer of judgment provisions.—Section 768.79  
 56 applies ~~The provisions of s. 768.79 apply~~ to any civil action  
 57 involving an insurance contract, except a civil action to which  
 58 s. 626.9375 or s. 627.4275 applies.

59 **Section 3. Section 626.9375, Florida Statutes, is created**  
 60 **to read:**

61 626.9375 Attorney fees.—

62 (1) Except as otherwise provided by law, in any civil  
 63 action brought against a surplus lines insurer by a named or  
 64 omnibus insured or the named beneficiary under an insurance  
 65 policy or contract executed by the insurer, the court shall  
 66 award reasonable attorney fees to the prevailing party. For  
 67 purposes of this subsection:

68 (a) The insured or named beneficiary is the prevailing  
 69 party when such person obtains a judgment greater than the  
 70 highest written, good faith settlement offer previously tendered  
 71 by the insurer.

72 (b) The insurer is the prevailing party when the insured  
 73 or named beneficiary does not obtain a judgment greater than the  
 74 highest written, good faith settlement offer previously tendered  
 75 by the insurer.

76        (c) The term "judgment" includes damages and any  
77 reasonable attorney fees, taxable costs, and prejudgment  
78 interest that the insured had incurred when the highest written,  
79 good faith settlement offer previously tendered by the insurer  
80 was made.

81        (d) A settlement offer tendered by the insurer which is  
82 not kept open for at least 5 business days is not a good faith  
83 settlement offer.

84        (2) If subsection (1) applies to a civil action involving  
85 an insurance policy or contract, s. 768.79 does not apply.

86        **Section 4. Section 627.4275, Florida Statutes, is created**  
87 **to read:**

88        627.4275 Attorney fees.—

89        (1) Except as otherwise provided by law, in any civil  
90 action brought against an insurer by a named or omnibus insured  
91 or the named beneficiary under an insurance policy or contract  
92 executed by the insurer, the court shall award reasonable  
93 attorney fees to the prevailing party. For purposes of this  
94 subsection:

95        (a) The insured or named beneficiary is the prevailing  
96 party when such person obtains a judgment greater than the  
97 highest written, good faith settlement offer previously tendered  
98 by the insurer.

99        (b) The insurer is the prevailing party when the insured  
100 or named beneficiary does not obtain a judgment greater than the

101 highest written, good faith settlement offer previously tendered  
 102 by the insurer.

103 (c) The term "judgment" includes damages and any  
 104 reasonable attorney fees, taxable costs, and prejudgment  
 105 interest that the insured had incurred when the highest written,  
 106 good faith settlement offer previously tendered by the insurer  
 107 was made.

108 (d) A settlement offer tendered by the insurer which is  
 109 not kept open for at least 5 business days is not a good faith  
 110 settlement offer.

111 (2) If subsection (1) applies to a civil action involving  
 112 an insurance policy or contract, s. 768.79 does not apply.

113 **Section 5. Subsection (4) of section 624.123, Florida**  
 114 **Statutes, is amended to read:**

115 624.123 Certain international health insurance policies;  
 116 exemption from code.—

117 (4) Any international health insurance policy or  
 118 application solicited, provided, entered into, issued, or  
 119 delivered pursuant to this subsection is exempt from all  
 120 provisions of the insurance code, except that such policy,  
 121 contract, or agreement is subject to ~~the provisions of~~ ss.  
 122 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521,  
 123 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591,  
 124 626.9601, 627.413, 627.4145, 627.4275, and 627.6043.

125 **Section 6. Subsection (4) of section 624.488, Florida**

126 **Statutes, is amended to read:**

127       624.488 Applicability of related laws.—In addition to  
128 other provisions of the code cited in ss. 624.460-624.488:

129       (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,  
130 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, 627.4275,  
131 627.702, and 627.706; part XI of chapter 627; ss. 627.912,  
132 627.913, and 627.918;

133

134 apply to self-insurance funds. Only those sections of the code  
135 that are expressly and specifically cited in ss. 624.460-624.489  
136 apply to self-insurance funds.

137       **Section 7. Paragraph (b) of subsection (3) of section**  
138 **627.062, Florida Statutes, is amended to read:**

139       627.062 Rate standards.—

140       (3)

141       (b) Individual risk rates and modifications to existing  
142 approved forms are not subject to this part or part II, except  
143 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,  
144 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,  
145 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,  
146 627.4265, ~~and~~ 627.427, and 627.4275, but are subject to all  
147 other applicable provisions of this code and rules adopted  
148 thereunder.

149       **Section 8. Subsections (3), (4), and (5) of section**  
150 **627.401, Florida Statutes, are amended to read:**

151           627.401 Scope of this part.—No provision of this part of  
152 this chapter applies to:

153           (3) Wet marine and transportation insurance, except ss.  
154 627.409, ~~and~~ 627.420, and 627.4275.

155           (4) Title insurance, except ss. 627.406, 627.415, 627.416,  
156 627.419, ~~and~~ 627.427, and 627.4275.

157           (5) Credit life or credit disability insurance, except ss.  
158 627.419(5) and 627.4275 s. ~~627.419(5).~~

159           **Section 9. Subsection (10) is added to section 627.727,**  
160 **Florida Statutes, to read:**

161           627.727 Motor vehicle insurance; uninsured and  
162 underinsured vehicle coverage; insolvent insurer protection.—

163           (10) Section 627.4275 does not apply to any action brought  
164 pursuant to this section against the uninsured motorist insurer  
165 unless there is a dispute over whether the policy provides  
166 coverage for an uninsured motorist proven to be liable for the  
167 accident.

168           **Section 10. Subsection (8) of section 627.736, Florida**  
169 **Statutes, is amended to read:**

170           627.736 Required personal injury protection benefits;  
171 exclusions; priority; claims.—

172           (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—  
173 With respect to any dispute under ~~the provisions of~~ ss. 627.730-  
174 627.7405 between the insured and the insurer, or between an  
175 assignee of an insured's rights and the insurer, ss. 627.4275

176 and 768.79 ~~the provisions of s. 768.79~~ apply, except as provided  
177 in subsections (10) and (15), and except that any attorney fees  
178 recovered must:

179 (a) Comply with prevailing professional standards;

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

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

185

186 Upon request by either party, a judge must make written  
187 findings, substantiated by evidence presented at trial or any  
188 hearings associated therewith, that any award of attorney fees  
189 complies with this subsection. Attorney fees recovered under ss.  
190 627.730-627.7405 must be calculated without regard to a  
191 contingency risk multiplier.

192 **Section 11. Subsection (1) of section 627.756, Florida**  
193 **Statutes, is amended to read:**

194 627.756 Bonds for construction contracts; attorney fees in  
195 case of suit.—

196 (1) Section 627.4275 applies to ~~In~~ a suit brought by an  
197 owner, a contractor, a subcontractor, a laborer, or a  
198 materialman against a surety insurer under payment or  
199 performance bonds written by the insurer under the laws of this  
200 state to indemnify against pecuniary loss by breach of a



201 building or construction contract, ~~upon the rendition of a~~  
202 ~~judgment or decree by any of the courts of this state against~~  
203 ~~the surety insurer and in favor of the owner, contractor,~~  
204 ~~subcontractor, laborer, or materialman, the trial court or, in~~  
205 ~~the event of an appeal in which the owner, contractor,~~  
206 ~~subcontractor, laborer, or materialman prevails, the appellate~~  
207 ~~court, shall adjudge or decree against the surety insurer and in~~  
208 ~~favor of the owner, contractor, subcontractor, laborer, or~~  
209 ~~materialman a reasonable sum as fees or compensation for the~~  
210 ~~attorney prosecuting the suit in which the recovery is had.~~  
211 Owners, contractors, subcontractors, laborers, and materialmen  
212 are deemed to be insureds or beneficiaries for the purposes of  
213 this section.

214 **Section 12. Subsection (4) of section 628.6016, Florida**  
215 **Statutes, is amended to read:**

216 628.6016 Applicability of related laws.—In addition to  
217 other provisions of the code cited in ss. 628.6011-628.6018:

218 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,  
219 627.420, 627.421, 627.425-627.427, 627.4275, 627.702, and  
220 627.706; part XI of chapter 627; ss. 627.912, 627.913, and  
221 627.918; and

222  
223 apply to assessable mutual insurers; however, ss. 628.255,  
224 628.411, and 628.421 do not apply. No section of the code not  
225 expressly and specifically cited in ss. 628.6011-628.6018

226 applies to assessable mutual insurers. The term "assessable  
227 mutual insurer" shall be substituted for the term "commercial  
228 self-insurer" as appropriate.

229 **Section 13. Section 631.696, Florida Statutes, is created**  
230 **to read:**

231 631.696 Attorney fees.—Section 627.4275 does not apply to  
232 any claim presented to the association under this part, unless  
233 the association denies, by affirmative action other than delay,  
234 a covered claim or a portion thereof.

235 **Section 14. Section 631.9245, Florida Statutes, is created**  
236 **to read:**

237 631.9245 Attorney fees.—Section 627.4275 does not apply to  
238 any claim presented to the corporation under this part, unless  
239 the corporation denies, by affirmative action other than delay,  
240 a covered claim or a portion thereof.

241 **Section 15. Subsections (11), (12), and (13) of section**  
242 **632.638, Florida Statutes, are renumbered as subsections (12),**  
243 **(13), and (14), respectively, and a new subsection (11) is added**  
244 **to that section, to read:**

245 632.638 Applicability of other code provisions.—In  
246 addition to other provisions contained or referred to in this  
247 chapter, the following chapters and provisions of this code  
248 apply to fraternal benefit societies, to the extent applicable  
249 and not in conflict with the express provisions of this chapter  
250 and the reasonable implications thereof:

251 (11) Section 627.4275;

252 **Section 16.** This act applies to an insurance policy or  
 253 contract issued on or after the effective date of this act and  
 254 may not be construed to impair or limit any right under an  
 255 insurance policy or contract issued before the effective date of  
 256 this act.

257 **Section 17.** The Division of Law Revision is directed to  
 258 replace the phrase "the effective date of this act" wherever it  
 259 occurs in this act with the date this act becomes a law.

260 **Section 18.** This act shall take effect upon becoming a  
 261 law.