

By Senator Martin

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1 A bill to be entitled
2 An act relating to attorney fees in insurance matters;
3 amending s. 86.121, F.S.; requiring a court to award
4 reasonable attorney fees to certain persons in certain
5 claims for declaratory relief; deleting a provision
6 relating to a defense offered by an insurer that makes
7 a total coverage denial of a claim; revising a
8 limitation on attorney fees; deleting applicability;
9 amending s. 624.155, F.S.; providing applicability
10 related to certain civil actions; creating ss.
11 626.9375 and 627.4285, F.S.; requiring the trial court
12 and appellate court to award reasonable attorney fees
13 under certain circumstances; requiring that such fees
14 be included in the judgment or decree; amending s.
15 624.123, F.S.; specifying that international health
16 insurance policies are subject to specified
17 provisions; amending s. 624.488, F.S.; specifying that
18 certain provisions are applicable to self-insurance
19 funds; amending s. 627.062, F.S.; specifying that
20 individual risk rates and modifications to existing
21 approved forms are subject to specified provisions;
22 amending s. 627.401, F.S.; specifying that certain
23 provisions apply to wet marine and transportation
24 insurance, title insurance, and credit life or credit
25 disability insurance; amending s. 627.727, F.S.;
26 authorizing attorney fees under certain disputes
27 regarding uninsured motorist coverage; providing
28 applicability; amending s. 627.736, F.S.; specifying
29 that certain provisions apply to the Florida Motor

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30 Vehicle No-Fault Law; amending s. 628.6016, F.S.;

31 specifying that certain provisions are applicable to

32 assessable mutual insurers; amending s. 632.638, F.S.;

33 specifying that certain provisions are applicable to

34 fraternal benefit societies; providing an effective

35 date.

36

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

38

39 Section 1. Section 86.121, Florida Statutes, is amended to

40 read:

41 86.121 Attorney fees; claims actions for declaratory relief

42 to determine insurance coverage ~~after total coverage denial of~~

43 ~~claim.~~-

44 ~~(1)~~ In a claim ~~an action brought~~ for declaratory relief in

45 state or federal court to determine insurance coverage after the

46 insurer has denied coverage or reserved its right to deny

47 coverage in the future, ~~made a total coverage denial of a claim:~~

48 ~~(a)~~ ~~Either party is entitled to the summary procedure~~

49 ~~provided in s. 51.011, and the court shall advance the cause on~~

50 ~~the calendar.~~

51 ~~(b)~~ the court shall award reasonable attorney fees to the

52 named insured, omnibus insured, or third-party named beneficiary

53 under a policy issued by the insurer upon rendition of a

54 declaratory judgment in favor of the named insured, omnibus

55 insured, or third-party named beneficiary, or upon the insurer's

56 voluntary dismissal of the claim with or without prejudice. This

57 right may not be transferred to, assigned to, or acquired in any

58 other manner by anyone other than a named or omnibus insured or

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59 a third-party named beneficiary. ~~A defense offered by an insurer~~
60 ~~pursuant to a reservation of rights does not constitute a~~
61 ~~coverage denial of a claim.~~ Such fees are limited to those
62 incurred in the claim ~~action brought under this chapter~~ for
63 declaratory relief to determine coverage of insurance ~~issued~~
64 ~~under the Florida Insurance Code.~~

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

67 Section 2. Subsection (13) is added to section 624.155,
68 Florida Statutes, to read:

69 624.155 Civil remedy.—

70 (13) Sections 626.9375 and 627.4285 do not apply to any
71 action brought pursuant to this section.

72 Section 3. Section 626.9375, Florida Statutes, is created
73 to read:

74 626.9375 Prevailing party attorney fees.—

75 (1) In any claim for damages, if a court in this state
76 renders a judgment or decree against an insurer and in favor of
77 a named or omnibus insured, or a third-party beneficiary under a
78 policy or contract issued by the insurer, the trial court or, in
79 the event of an appeal in which the insured or beneficiary
80 prevails, the appellate court must award reasonable attorney
81 fees against the insurer and in favor of the insured or
82 beneficiary.

83 (2) In any claim for damages, if a court in this state
84 renders a judgment or decree in favor of an insurer and against
85 a named or omnibus insured, or a third-party beneficiary under a
86 policy or contract issued by the insurer, the trial court or, in
87 the event of an appeal in which the insurer prevails, the

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88 appellate court must award reasonable attorney fees in favor of
89 the insurer and against the insured or beneficiary.

90 (3) When awarded, attorney fees must be included in the
91 judgment or decree rendered in the case.

92 Section 4. Section 627.4285, Florida Statutes, is created
93 to read:

94 627.4285 Prevailing party attorney fees.—

95 (1) In any claim for damages, if a court in this state
96 renders a judgment or decree against an insurer and in favor of
97 a named or omnibus insured, or a third-party beneficiary under a
98 policy or contract issued by the insurer, the trial court or, in
99 the event of an appeal in which the insured or beneficiary
100 prevails, the appellate court must award reasonable attorney
101 fees against the insurer and in favor of the insured or
102 beneficiary.

103 (2) In any claim for damages, if a court in this state
104 renders a judgment or decree in favor of an insurer and against
105 a named or omnibus insured, or a third-party beneficiary under a
106 policy or contract issued by the insurer, the trial court or, in
107 the event of an appeal in which the insurer prevails, the
108 appellate court must award reasonable attorney fees in favor of
109 the insurer and against the insured or beneficiary.

110 (3) When awarded, attorney fees must be included in the
111 judgment or decree rendered in the case.

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

114 624.123 Certain international health insurance policies;
115 exemption from code.—

116 (4) Any international health insurance policy or

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117 application solicited, provided, entered into, issued, or
118 delivered pursuant to this subsection is exempt from all
119 provisions of the insurance code, except that such policy,
120 contract, or agreement is subject to the provisions of ss.
121 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521,
122 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591,
123 626.9601, 627.413, 627.4145, 627.4285, and 627.6043.

124 Section 6. Section 624.488, Florida Statutes, is amended to
125 read:

126 624.488 Applicability of related laws.—In addition to other
127 provisions of the code cited in ss. 624.460-624.488:

128 (1) Sections 624.155, 624.308, 624.414, 624.415, and
129 624.416(4); ss. 624.418-624.4211, except s. 624.418(2)(f); and
130 s. 624.501;

131 (2) Parts I, II, and III of chapter 625;

132 (3) Applicable sections of part VI of chapter 626; s.
133 626.9541(1)(a), (b), (c), (d), (e), (f), (h), (i), (j), (k),
134 (l), (m), (n), (o), (q), (u), (w), and (x); and ss. 626.9561-
135 626.9641;

136 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
137 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, 627.4285,
138 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
139 627.913, and 627.918;

140 (5) Section 628.361(2) and s. 628.6014; and

141 (6) Parts I and V of chapter 631,

142
143 apply to self-insurance funds. Only those sections of the code
144 that are expressly and specifically cited in ss. 624.460-624.489
145 apply to self-insurance funds.

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146 Section 7. Paragraph (b) of subsection (3) of section
147 627.062, Florida Statutes, is amended to read:

148 627.062 Rate standards.—

149 (3)

150 (b) Individual risk rates and modifications to existing
151 approved forms are not subject to this part or part II, except
152 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
153 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
154 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
155 627.4265, ~~and 627.427,~~ and 627.4285, but are subject to all
156 other applicable provisions of this code and rules adopted
157 thereunder.

158 Section 8. Subsections (3), (4), and (5) of section
159 627.401, Florida Statutes, are amended to read:

160 627.401 Scope of this part.—No provision of this part of
161 this chapter applies to:

162 (3) Wet marine and transportation insurance, except ss.
163 627.409, ~~and 627.420,~~ and 627.4285.

164 (4) Title insurance, except ss. 627.406, 627.415, 627.416,
165 627.419, ~~and 627.427,~~ and 627.4285.

166 (5) Credit life or credit disability insurance, except ss.
167 627.419(5) and 627.4285 ~~s. 627.419(5).~~

168 Section 9. Present subsections (8) and (9) of section
169 627.727, Florida Statutes, are redesignated as subsections (9)
170 and (10), respectively, and a new subsection (8) is added to
171 that section, to read:

172 627.727 Motor vehicle insurance; uninsured and underinsured
173 vehicle coverage; insolvent insurer protection.—

174 (8) If a dispute arises in an action under this section

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175 regarding whether a policy provides uninsured motorist coverage
176 or the amount of coverage available under the policy, attorney
177 fees may be recovered under s. 86.121. Sections 626.9375 and
178 627.4285 do not apply to any other action brought under this
179 section against the uninsured motorist insurer.

180 Section 10. Subsection (8) of section 627.736, Florida
181 Statutes, is amended to read:

182 627.736 Required personal injury protection benefits;
183 exclusions; priority; claims.—

184 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—
185 With respect to any dispute under the provisions of ss. 627.730-
186 627.7405 between the insured and the insurer, or between an
187 assignee of an insured's rights and the insurer, the provisions
188 of ss. 627.4285 and 768.79 ~~s. 768.79~~ apply, except as provided
189 in subsections (10) and (15), and except that any attorney fees
190 recovered must:

- 191 (a) Comply with prevailing professional standards;
192 (b) Not overstate or inflate the number of hours reasonably
193 necessary for a case of comparable skill or complexity; and
194 (c) Represent legal services that are reasonable and
195 necessary to achieve the result obtained.

196

197 Upon request by either party, a judge shall ~~must~~ make written
198 findings, substantiated by evidence presented at trial or any
199 hearings associated therewith, that any award of attorney fees
200 complies with this subsection. Notwithstanding s. 627.4285,
201 attorney fees recovered under ss. 627.730-627.7405 must be
202 calculated without regard to a contingency risk multiplier.

203 Section 11. Subsection (4) of section 628.6016, Florida

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204 Statutes, is amended to read:

205 628.6016 Applicability of related laws.—In addition to
206 other provisions of the code cited in ss. 628.6011-628.6018:

207 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
208 627.420, 627.421, 627.425-627.427, 627.4285, 627.702, and
209 627.706; part XI of chapter 627; ss. 627.912, 627.913, and
210 627.918; and

211
212 apply to assessable mutual insurers; however, ss. 628.255,
213 628.411, and 628.421 do not apply. No section of the code not
214 expressly and specifically cited in ss. 628.6011-628.6018
215 applies to assessable mutual insurers. The term "assessable
216 mutual insurer" shall be substituted for the term "commercial
217 self-insurer" as appropriate.

218 Section 12. Section 632.638, Florida Statutes, is amended
219 to read:

220 632.638 Applicability of other code provisions.—In addition
221 to other provisions contained or referred to in this chapter,
222 the following chapters and provisions of this code apply to
223 fraternal benefit societies, to the extent applicable and not in
224 conflict with the express provisions of this chapter and the
225 reasonable implications thereof:

- 226 (1) Part I of chapter 624;
227 (2) Part II of chapter 624;
228 (3) Sections 624.404, 624.415, 624.416, 624.418, 624.420,
229 624.421, 624.4211, 624.422, and 624.423;
230 (4) Section 624.501;
231 (5) Part I of chapter 626;
232 (6) Part III of chapter 626;

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233 (7) Part IV of chapter 626;
234 (8) Sections 626.901-626.912;
235 (9) Part VIII of chapter 626, subject to the limitations
236 set forth in former s. 632.341;
237 (10) Section 627.424;
238 (11) Section 627.4285;
239 (12) Section 627.4301;
240 (13)~~(12)~~ Section 627.479; and
241 (14)~~(13)~~ Part I of chapter 631.
242 Section 13. This act shall take effect upon becoming a law.