

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Jacques offered the following:

Amendment (with title amendment)

Between lines 97 and 98, insert:

Section 5. Section 624.1552, Florida Statutes, is amended to read:

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

Section 6. Section 626.9375, Florida Statutes, is created to read:

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626.9375 Attorney fees.—

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

(a) In an action for declaratory relief to determine insurance coverage:

1. The prevailing party is the insured or the beneficiary if the court enters a declaratory judgment in favor of such party.

2. The prevailing party is the insurer if the court enters a declaratory judgment in favor of such party.

(b) In an action for damages:

1. The prevailing party is the insured or named beneficiary if such party obtains a judgment that is greater than the highest written, good faith settlement offer previously made by the insurer.

2. The prevailing party is the insurer if the insured or named beneficiary does not obtain a judgment that is greater than the highest written, good faith settlement offer previously made by the insurer.

(c) For purposes of paragraph (b):

1. The term "judgment" includes damages and any reasonable

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attorney fees, taxable costs, and prejudgment interest that the insured had incurred when the highest written, good faith settlement offer was previously made by the insurer.

2. A settlement offer made by the insurer which is not kept open for at least 5 business days is not a good faith settlement offer. If the insurer fails to make any good faith settlement offer, then the settlement offer amount is deemed to be zero for purposes of this subsection.

(d) Notwithstanding any other provision in this section, the prevailing party in an action for damages is the insurer if the insured or a named beneficiary is not awarded any damages.

(e) This section does not apply to any action governed by s. 86.121.

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

Section 7. Section 627.4275, Florida Statutes, is created to read:

627.4275 Attorney fees.—

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

(a) In an action for declaratory relief to determine insurance coverage:

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64 1. The prevailing party is the insured or the beneficiary
65 if the court enters a declaratory judgment in favor of such
66 party.

67 2. The prevailing party is the insurer if the court enters
68 a declaratory judgment in favor of such party.

69 (b) In an action for damages:

70 1. The prevailing party is the insured or named
71 beneficiary if such party obtains a judgment that is greater
72 than the highest written, good faith settlement offer previously
73 made by the insurer.

74 2. The prevailing party is the insurer if the insured or
75 named beneficiary does not obtain a judgment that is greater
76 than the highest written, good faith settlement offer previously
77 made by the insurer.

78 (c) For purposes of paragraph (b):

79 1. The term "judgment" includes damages and any reasonable
80 attorney fees, taxable costs, and prejudgment interest that the
81 insured had incurred when the highest written, good faith
82 settlement offer was previously made by the insurer.

83 2. A settlement offer made by the insurer which is not
84 kept open for at least 5 business days is not a good faith
85 settlement offer. If the insurer fails to make any good faith
86 settlement offer, then the settlement offer amount is deemed to
87 be zero for purposes of this subsection.

88 (d) Notwithstanding any other provision in this section,

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the prevailing party in an action for damages is the insurer if the insured or a named beneficiary is not awarded any damages.

(e) This section does not apply to any action governed by s. 86.121.

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

Section 8. Subsection (4) of section 624.123, Florida Statutes, is amended to read:

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

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

Section 9. Subsection (4) of section 624.488, Florida Statutes, is amended to read:

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

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

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627.913, and 627.918;

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

Section 10. Paragraph (b) of subsection (3) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(3)

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

Section 11. Subsections (3), (4), and (5) of section 627.401, Florida Statutes, are amended to read:

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

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

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

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

Section 12. Subsection (10) is added to section 627.727, Florida Statutes, to read:

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

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

Section 13. Subsection (8) of section 627.736, Florida Statutes, is amended to read:

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

(8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—
With respect to any dispute under ~~the provisions of ss. 627.730-627.7405~~ between the insured and the insurer, or between an assignee of an insured's rights and the insurer, s. 627.4275 applies ~~the provisions of s. 768.79 apply~~, except as provided in subsections (10) and (15), and except that any attorney fees recovered must:

(a) Comply with prevailing professional standards;

(b) Not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or

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complexity; and

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

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

Section 14. Subsection (1) of section 627.756, Florida Statutes, is amended to read:

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

(1) Section 627.4275 applies to ~~In~~ a suit brought by an owner, a contractor, a subcontractor, a laborer, or a materialman against a surety insurer under payment or performance bonds written by the insurer under the laws of this state to indemnify against pecuniary loss by breach of a building or construction contract. Owners, contractors, subcontractors, laborers, and materialmen are deemed to be insureds or beneficiaries for the purposes of this section, ~~upon the rendition of a judgment or decree by any of the courts of this state against the surety insurer and in favor of the owner, contractor, subcontractor, laborer, or materialman, the trial~~

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~~court or, in the event of an appeal in which the owner, contractor, subcontractor, laborer, or materialman prevails, the appellate court, shall adjudge or decree against the surety insurer and in favor of the owner, contractor, subcontractor, laborer, or materialman a reasonable sum as fees or compensation for the attorney prosecuting the suit in which the recovery is had.~~

Section 15. Subsection (4) of section 628.6016, Florida Statutes, is amended to read:

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

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

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

Section 16. Section 631.696, Florida Statutes, is created to read:

631.696 Attorney fees.—Section 627.4275 does not apply to

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any claim presented to the association under this part, unless
the association denies, by affirmative action other than delay,
a covered claim or a portion thereof.

Section 17. Section 631.9245, Florida Statutes, is created to read:

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

Section 18. Subsections (11), (12), and (13) of section 632.638, Florida Statutes, are renumbered as subsections (12), (13), and (14), respectively, and a new subsection (11) is added to that section, to read:

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

(11) Section 627.4275;

Section 19. Subsection (2) of section 768.0427, Florida Statutes, is amended to read:

768.0427 Admissibility of evidence to prove medical expenses in personal injury or wrongful death actions; disclosure of letters of protection; recovery of past and future

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239 medical expenses damages.—

240 (2) ADMISSIBLE EVIDENCE OF MEDICAL TREATMENT OR SERVICE
241 EXPENSES.—Evidence offered to prove or rebut the amount of
242 damages for past or future medical treatment or services in a
243 personal injury or wrongful death action shall be ~~is~~ admissible
244 as follows: ~~provided in this subsection.~~

245 (a) Evidence offered to prove the amount of damages for
246 past medical treatment or services that have been satisfied is
247 limited to evidence of the amount actually paid, regardless of
248 the source of payment.

249 (b) Evidence any party may offer ~~offered~~ to prove or rebut
250 the amount necessary to satisfy unpaid charges for incurred
251 medical treatment or services shall include, but is not limited
252 to, evidence as provided in this paragraph.

253 1. If the claimant has health care coverage other than
254 Medicare or Medicaid, evidence of the amount which such health
255 care coverage is obligated to pay the health care provider to
256 satisfy the charges for the claimant's incurred medical
257 treatment or services, plus the claimant's share of medical
258 expenses under the insurance contract or regulation.

259 2. If the claimant has health care coverage but obtains
260 treatment under a letter of protection or otherwise does not
261 submit charges for any health care provider's medical treatment
262 or services to health care coverage, evidence of the amount the
263 claimant's health care coverage would pay the health care

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provider to satisfy the past unpaid medical charges under the insurance contract or regulation, plus the claimant's share of medical expenses under the insurance contract or regulation, had the claimant obtained medical services or treatment pursuant to the health care coverage.

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

~~3.4.~~ If the claimant obtains medical treatment or services under a letter of protection and the health care provider subsequently transfers the right to receive payment under the letter of protection to a third party, evidence of the amount the third party paid or agreed to pay the health care provider in exchange for the right to receive payment pursuant to the letter of protection.

4. Evidence of the reasonable and customary rates for such treatment or services rendered by a qualified provider.

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

(c) Evidence any party may offer ~~offered~~ to prove the amount of damages for any future medical treatment or services

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the claimant will receive shall include, but is not limited to, evidence as provided in this paragraph.

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

2. If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, or is eligible for such health care coverage, evidence of the reasonable and customary rates for such treatment or services rendered by a qualified provider ~~120 percent of the Medicare reimbursement rate in effect at the time of trial for the medical treatment or services the claimant will receive, or, if there is no applicable Medicare rate for a service, 170 percent of the applicable state Medicaid rate.~~

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

(d) This subsection does not impose an affirmative duty upon any party to seek a reduction in billed charges to which the party is not contractually entitled or to offer any specific evidence made admissible by this subsection.

(e) Individual contracts between providers and authorized

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commercial insurers or authorized health maintenance organizations are not subject to discovery or disclosure and are not admissible into evidence.

Section 20. The amendments to s. 768.0427, Florida Statutes, made by this act apply to all causes of action that accrued after March 24, 2023, for which a final judgment has not yet been entered by July 1, 2025.

Section 21. The amendments made by this act to ss. 624.123, 624.1552, 624.488, 626.9375, 627.062, 627.401, 627.4275, 627.727, 627.736, 627.756, 628.6016, 631.696, 631.9245, and 632.638, Florida Statutes, apply to an insurance policy or contract issued on or after July 1, 2025, and may not be construed to impair or limit any right under an insurance policy or contract issued before July 1, 2025.

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

Remove everything before the enacting clause and insert:

A bill to be entitled
An act relating to civil actions; amending s. 376.308, F.S.; providing conditions for a cause of action against certain former phosphate mine sites; creating s. 378.213, F.S.; authorizing landowners to record certain notice of former phosphate mines; specifying requirements for such notice; defining the term

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"former phosphate mine"; creating s. 404.0561, F.S.; requiring the Department of Health to conduct gamma radiation surveys of former phosphate land parcels upon petition; creating s. 768.405, F.S.; requiring that specified documentation of radiation levels be submitted in certain civil actions related to phosphate mining; amending s. 624.1552, F.S.; revising the applicability of the offer of judgment and demand for judgment provisions to civil actions involving an insurance contract; creating s. 626.9375, F.S.; requiring the award of prevailing party attorney fees in certain civil actions involving surplus lines insurers; providing guidelines to determine prevailing parties; defining the term "judgment"; providing a specified circumstance under which a settlement offer is not a good faith settlement offer; specifying the applicability of the offer of judgment and demand for judgment provisions if prevailing party attorney fees apply; creating s. 627.4275, F.S.; requiring the award of prevailing party attorney fees in certain civil actions involving insurers; providing guidelines to determine prevailing parties; defining the term "judgment"; providing a specified circumstance under which a settlement offer is not a good faith settlement offer; specifying the applicability of the

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offer of judgment and demand for judgment provisions if prevailing party attorney fees apply; amending ss. 624.123, 624.488, 627.062, 627.401, 627.727, and 627.736, F.S.; providing for the applicability of the prevailing party attorney fee provision to specified insurers, insurance policies or coverage types, and rate standards; amending s. 627.756, F.S.; providing for the applicability of the prevailing party attorney fee provision to suits brought by certain entities against surety insurers under certain circumstances; providing that such entities are deemed insureds or beneficiaries for specified purposes; amending ss. 628.6016 and 632.638, F.S.; providing for the applicability of the prevailing party attorney fee provision to assessable mutual insurers and fraternal benefit societies, respectively; creating ss. 631.696 and 631.9245, F.S.; providing for the applicability of the prevailing party attorney fee provision to claims presented to specified guaranty associations; amending s. 768.0427, F.S.; providing evidence that is admissible to demonstrate past and future medical expenses in personal injury and wrongful death actions; providing applicability and construction; providing an effective date.

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