

By the Committee on Banking and Insurance; and Senator Hutson

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1 A bill to be entitled
2 An act relating to civil remedies; amending s. 57.104,
3 F.S.; creating a rebuttable presumption that a
4 lodestar fee is a sufficient and reasonable attorney
5 fee in most civil actions; providing an exception;
6 amending s. 95.11, F.S.; reducing the statute of
7 limitations for negligence actions; amending s.
8 624.155, F.S.; providing standards for bad faith
9 actions; providing for the distribution of proceeds
10 when two or more third-party claims arising out of a
11 single occurrence exceed policy limits; creating s.
12 768.0427, F.S.; providing definitions; providing
13 standards for the admissibility of evidence to prove
14 the cost of damages for medical expenses in certain
15 civil actions; requiring certain disclosures with
16 respect to claims for medical expenses for treatment
17 rendered under letters of protection; specifying the
18 damages that may be recovered by a claimant for the
19 reasonable and necessary cost of medical care;
20 creating s. 768.0701, F.S.; requiring the trier of
21 fact to consider the fault of certain persons who
22 contribute to an injury; amending s. 768.79, F.S.;
23 providing for the applicability of that section;
24 amending s. 768.81, F.S.; providing that a party in a
25 negligence action who is at fault by a specified
26 amount may not recover damages under a comparative
27 negligence action; providing applicability; repealing
28 ss. 626.9373 and 627.428, F.S., relating to attorney
29 fees payable to insureds filing actions against

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30 insurers; amending ss. 624.123, 624.488, 627.062,
31 627.401, 627.727, 627.736, 627.756, and 628.6016,
32 F.S.; conforming provisions to changes made by the
33 act; repealing ss. 631.70 and 631.926, F.S., relating
34 to awards of attorney fees; amending ss. 475.01,
35 475.611, 517.191, 627.441, and 632.638, F.S.;
36 conforming provisions to changes made by the act;
37 providing a directive to the Division of Law Revision;
38 providing applicability and construction; providing an
39 effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Section 57.104, Florida Statutes, is amended to
44 read:

45 57.104 Computation of attorney ~~attorneys'~~ fees.—

46 (1) In any action in which attorney ~~attorneys'~~ fees are to
47 be determined or awarded by the court, the court shall consider,
48 among other things, time and labor of any legal assistants who
49 contributed nonclerical, meaningful legal support to the matter
50 involved and who are working under the supervision of an
51 attorney. For purposes of this section "legal assistant" means a
52 person, who under the supervision and direction of a licensed
53 attorney engages in legal research, and case development or
54 planning in relation to modifications or initial proceedings,
55 services, processes, or applications; or who prepares or
56 interprets legal documents or selects, compiles, and uses
57 technical information from references such as digests,
58 encyclopedias, or practice manuals and analyzes and follows

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59 procedural problems that involve independent decisions.

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

65 Section 2. Subsections (3), (4), and (10) of section 95.11,
66 Florida Statutes, are amended to read:

67 95.11 Limitations other than for the recovery of real
68 property.—Actions other than for recovery of real property shall
69 be commenced as follows:

70 (3) WITHIN FOUR YEARS.—

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

72 ~~(b)~~ An action relating to the determination of paternity,
73 with the time running from the date the child reaches the age of
74 majority.

75 (b)(e) An action founded on the design, planning, or
76 construction of an improvement to real property, with the time
77 running from the date of actual possession by the owner, the
78 date of the issuance of a certificate of occupancy, the date of
79 abandonment of construction if not completed, or the date of
80 completion of the contract or termination of the contract
81 between the professional engineer, registered architect, or
82 licensed contractor and his or her employer, whichever date is
83 latest; except that, when the action involves a latent defect,
84 the time runs from the time the defect is discovered or should
85 have been discovered with the exercise of due diligence. In any
86 event, the action must be commenced within 10 years after the
87 date of actual possession by the owner, the date of the issuance

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88 of a certificate of occupancy, the date of abandonment of
89 construction if not completed, or the date of completion of the
90 contract or termination of the contract between the professional
91 engineer, registered architect, or licensed contractor and his
92 or her employer, whichever date is latest. However,
93 counterclaims, cross-claims, and third-party claims that arise
94 out of the conduct, transaction, or occurrence set out or
95 attempted to be set out in a pleading may be commenced up to 1
96 year after the pleading to which such claims relate is served,
97 even if such claims would otherwise be time barred. With respect
98 to actions founded on the design, planning, or construction of
99 an improvement to real property, if such construction is
100 performed pursuant to a duly issued building permit and if a
101 local enforcement agency, state enforcement agency, or special
102 inspector, as those terms are defined in s. 553.71, has issued a
103 final certificate of occupancy or certificate of completion,
104 then as to the construction which is within the scope of such
105 building permit and certificate, the correction of defects to
106 completed work or repair of completed work, whether performed
107 under warranty or otherwise, does not extend the period of time
108 within which an action must be commenced. Completion of the
109 contract means the later of the date of final performance of all
110 the contracted services or the date that final payment for such
111 services becomes due without regard to the date final payment is
112 made.

113 (c)~~(d)~~ An action to recover public money or property held
114 by a public officer or employee, or former public officer or
115 employee, and obtained during, or as a result of, his or her
116 public office or employment.

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

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

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

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

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

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

127 (j)~~(k)~~ A legal or equitable action on a contract,
128 obligation, or liability not founded on a written instrument,
129 including an action for the sale and delivery of goods, wares,
130 and merchandise, and on store accounts.

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

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

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

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

139 (o)~~(p)~~ Any action not specifically provided for in these
140 statutes.

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

143 (4) WITHIN TWO YEARS.—

144 (a) An action founded on negligence.

145 (b)~~(a)~~ An action for professional malpractice, other than

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146 medical malpractice, whether founded on contract or tort;
147 provided that the period of limitations shall run from the time
148 the cause of action is discovered or should have been discovered
149 with the exercise of due diligence. However, the limitation of
150 actions herein for professional malpractice shall be limited to
151 persons in privity with the professional.

152 (c)~~(b)~~ An action for medical malpractice shall be commenced
153 within 2 years from the time the incident giving rise to the
154 action occurred or within 2 years from the time the incident is
155 discovered, or should have been discovered with the exercise of
156 due diligence; however, in no event shall the action be
157 commenced later than 4 years from the date of the incident or
158 occurrence out of which the cause of action accrued, except that
159 this 4-year period shall not bar an action brought on behalf of
160 a minor on or before the child's eighth birthday. An "action for
161 medical malpractice" is defined as a claim in tort or in
162 contract for damages because of the death, injury, or monetary
163 loss to any person arising out of any medical, dental, or
164 surgical diagnosis, treatment, or care by any provider of health
165 care. The limitation of actions within this subsection shall be
166 limited to the health care provider and persons in privity with
167 the provider of health care. In those actions covered by this
168 paragraph in which it can be shown that fraud, concealment, or
169 intentional misrepresentation of fact prevented the discovery of
170 the injury the period of limitations is extended forward 2 years
171 from the time that the injury is discovered or should have been
172 discovered with the exercise of due diligence, but in no event
173 to exceed 7 years from the date the incident giving rise to the
174 injury occurred, except that this 7-year period shall not bar an

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175 action brought on behalf of a minor on or before the child's
176 eighth birthday. This paragraph shall not apply to actions for
177 which ss. 766.301-766.316 provide the exclusive remedy.

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

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

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

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

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

194 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
195 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
196 (4) (e) ~~(4) (d)~~, an action for wrongful death seeking damages
197 authorized under s. 768.21 brought against a natural person for
198 an intentional tort resulting in death from acts described in s.
199 782.04 or s. 782.07 may be commenced at any time. This
200 subsection shall not be construed to require an arrest, the
201 filing of formal criminal charges, or a conviction for a
202 violation of s. 782.04 or s. 782.07 as a condition for filing a
203 civil action.

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204 Section 3. Section 624.155, Florida Statutes, is amended to
205 read:

206 624.155 Civil remedy.—

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

209 (a) By a violation of any of the following provisions by
210 the insurer:

211 1. Section 626.9541(1)(i), (o), or (x);

212 2. Section 626.9551;

213 3. Section 626.9705;

214 4. Section 626.9706;

215 5. Section 626.9707; or

216 6. Section 627.7283.

217 (b) By the commission of any of the following acts by the
218 insurer:

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

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

226 3. Except as to liability coverages, failing to promptly
227 settle claims, when the obligation to settle a claim has become
228 reasonably clear, under one portion of the insurance policy
229 coverage in order to influence settlements under other portions
230 of the insurance policy coverage.

231
232 Notwithstanding the provisions of the above to the contrary, a

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233 person pursuing a remedy under this section need not prove that
234 such act was committed or performed with such frequency as to
235 indicate a general business practice.

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

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

244 (b) The notice shall be on a form provided by the
245 department and shall state with specificity the following
246 information, and such other information as the department may
247 require:

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

250 2. The facts and circumstances giving rise to the
251 violation.

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

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

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

261 (c) No action shall lie if, within 60 days after the

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262 insurer receives notice from the department in accordance with
263 this subsection, the damages are paid or the circumstances
264 giving rise to the violation are corrected.

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

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

270 1. Sixty days after the insurer receives from the
271 department the notice required by this subsection.

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

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

277 (4) An action for bad faith involving a failure to settle a
278 liability insurance claim, including any such action brought
279 under the common law, shall not lie if the insurer tenders the
280 lesser of the policy limits or the amount demanded by the
281 claimant either:

282 (a) Before a complaint asserting such claim, accompanied by
283 sufficient evidence to support the amount of the claim, is
284 filed; or

285 (b) Within 90 days after service of such complaint upon the
286 insurer.

287
288 Failure of an insurer to offer payment pursuant to this
289 subsection shall not constitute bad faith and is inadmissible as
290 evidence in any action seeking to establish bad faith on the

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291 part of the insurer.

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

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

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

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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 to
327 by the insurer and the third-party claimants, the insurer makes
328 the entire amount of the policy limits available for payment to
329 the competing third-party claimants before a qualified
330 arbitrator selected by the insurer at the expense of the
331 insurer. The third-party claimants are entitled to a prorated
332 share of the policy limits as determined by the arbitrator, who
333 must consider the comparative fault, if any, of each third-party
334 claimant, and the total likely outcome at trial based upon the
335 total of the economic and noneconomic damages submitted to the
336 arbitrator for consideration. A third-party claimant whose claim
337 is resolved by the arbitrator must execute and deliver a general
338 release to the insured party whose claim is resolved by the
339 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;

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

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

352

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

357 (9)~~(6)~~ This section does shall not be construed to
358 authorize a class action suit against an authorized insurer or a
359 civil action against the commission, the office, or the
360 department or any of their employees, or ~~to~~ create a cause of
361 action when an authorized health insurer refuses to pay a claim
362 for reimbursement on the ground that the charge for a service
363 was unreasonably high or that the service provided was not
364 medically necessary.

365 (10)~~(7)~~ In the absence of expressed language to the
366 contrary, this section shall not be construed to authorize a
367 civil action or create a cause of action against an authorized
368 insurer or its employees who, in good faith, release information
369 about an insured or an insurance policy to a law enforcement
370 agency in furtherance of an investigation of a criminal or
371 fraudulent act relating to a motor vehicle theft or a motor
372 vehicle insurance claim.

373 (11)~~(8)~~ The civil remedy specified in this section does not
374 preempt any other remedy or cause of action provided for
375 pursuant to any other statute or pursuant to the common law of
376 this state. Any person may obtain a judgment under either the
377 common-law remedy of bad faith or this statutory remedy, but is

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378 ~~shall not be~~ entitled to a judgment under both remedies. This
379 section does ~~shall not be construed to~~ create a common-law cause
380 of action. The damages recoverable pursuant to this section
381 shall include those damages which are a reasonably foreseeable
382 result of a specified violation of this section by the
383 authorized insurer and may include an award or judgment in an
384 amount that exceeds the policy limits.

385 (12)~~(9)~~ A surety issuing a payment or performance bond on
386 the construction or maintenance of a building or roadway project
387 is not an insurer for purposes of subsection (1).

388 Section 4. Section 768.0427, Florida Statutes, is created
389 to read:

390 768.0427 Admissibility of evidence to prove medical
391 expenses in personal injury or wrongful death actions;
392 disclosure of letters of protection; recovery of past and future
393 medical expenses damages.—

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

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

398 (b) "Health care coverage" means any third-party health
399 care or disability services financing arrangement, including,
400 but not limited to, arrangements with entities certified or
401 authorized under federal law or under the Florida Insurance
402 Code; state or federal health care benefit programs; workers'
403 compensation; and personal injury protection.

404 (c) "Health care provider" means any of the following
405 professionals and entities, and professionals and entities
406 similarly licensed in another jurisdiction:

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

408 2. A clinical laboratory providing services in this state
409 or services to health care providers in this state, if the
410 clinical laboratory is certified by the Centers for Medicare and
411 Medicaid Services under the federal Clinical Laboratory
412 Improvement Amendments and the federal rules adopted thereunder.

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

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

417 5. A health care professional licensed under part IV of
418 chapter 468.

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

420 7. A provider licensed under chapter 394 or chapter 397 and
421 its clinical and nonclinical staff providing inpatient or
422 outpatient services.

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

424 9. A pharmacy permitted under chapter 465.

425 (d) "Letter of Protection" means any arrangement by which a
426 health care provider renders treatment in exchange for a promise
427 of payment for the claimant's medical expenses from any judgment
428 or settlement of a personal injury or wrongful death action. The
429 term includes any such arrangement, regardless of whether
430 referred to as a letter of protection.

431 (2) ADMISSIBLE EVIDENCE OF MEDICAL TREATMENT OR SERVICE
432 EXPENSES.—Evidence offered to prove the amount of damages for
433 past or future medical treatment or services in a personal
434 injury or wrongful death action is admissible only as provided
435 in this subsection.

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436 (a) Evidence offered to prove the amount of damages for
437 past medical treatment or services that have been satisfied is
438 limited to evidence of the amount actually paid, regardless of
439 the source of payment.

440 (b) Evidence offered to prove the amount necessary to
441 satisfy unpaid charges for incurred medical treatment or
442 services is limited to evidence as provided in this paragraph.

443 1. If the claimant has health care coverage, evidence of
444 the amount which such health care coverage is obligated to pay
445 the health care provider to satisfy the charges for the
446 claimant's incurred medical treatment or services, plus the
447 claimant's share of medical expenses under the insurance
448 contract or regulation.

449 2. If the claimant has health care coverage but obtains
450 treatment under a letter of protection or otherwise does not
451 submit charges for any health care provider's medical treatment
452 or services to health care coverage, evidence of the amount the
453 claimant's health care coverage would pay the health care
454 provider to satisfy the past unpaid medical charges under the
455 insurance contract or regulation, plus the claimant's share of
456 medical expenses under the insurance contract or regulation, had
457 the claimant obtained medical services or treatment pursuant to
458 the health care coverage.

459 3. If the claimant does not have health care coverage,
460 evidence of 120 percent of the Medicare reimbursement rate in
461 effect at the time of trial for the claimant's incurred medical
462 treatment or services, or, if there is no applicable Medicare
463 rate for a service, 170 percent of the applicable state Medicaid
464 rate.

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465 4. If the claimant obtains medical treatment or services
466 under a letter of protection and the health care provider
467 subsequently transfers the right to receive payment under the
468 letter of protection to a third party, evidence of the amount
469 the third party paid or agreed to pay the health care provider
470 in exchange for the right to receive payment pursuant to the
471 letter of protection.

472 5. Any evidence disclosed under subsection (3) related to a
473 letter of protection.

474 (c) Evidence offered to prove the amount of damages for any
475 future medical treatment or services the claimant will receive
476 is limited to evidence as provided in this paragraph.

477 1. If the claimant has health care coverage or is eligible
478 for any health care coverage, evidence of the amount for which
479 the future charges of health care providers could be satisfied
480 if submitted to such health care coverage, plus the claimant's
481 share of medical expenses under the insurance contract or
482 regulation.

483 2. If the claimant does not have health care coverage,
484 evidence of 120 percent of the Medicare reimbursement rate in
485 effect at the time of trial for the medical treatment or
486 services the claimant will receive, or, if there is no
487 applicable Medicare rate for a service, 170 percent of the
488 applicable state Medicaid rate.

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

492 (e) Individual contracts between providers and authorized
493 commercial insurers or authorized health maintenance

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494 organizations are not subject to discovery or disclosure and are
495 not admissible into evidence.

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

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

502 (b) All billings for the claimant's medical expenses, which
503 must be itemized and, to the extent applicable, coded according
504 to the American Medical Association's Current Procedural
505 Terminology (CPT), or the Healthcare Common Procedure Coding
506 System (HCPCS), in effect for the year in which services are
507 rendered.

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

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

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

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

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

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523 of such referral is admissible notwithstanding any provision
524 within s. 90.502. Moreover, in such situation, the financial
525 relationship between a law firm and a medical provider,
526 including the number of referrals, frequency, and financial
527 benefit obtained, is relevant to the issue of the bias of a
528 testifying medical provider.

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

536 (a) Amounts actually paid by or on behalf of the claimant
537 to a health care provider who rendered medical treatment or
538 services;

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

542 (c) Amounts necessary to provide for any reasonable and
543 necessary medical treatment or services the claimant will
544 receive in the future.

545 Section 5. Section 768.0701, Florida Statutes, is created
546 to read:

547 768.0701 Premises liability for criminal acts of third
548 parties.—Notwithstanding s. 768.81(4), in an action for damages
549 against the owner, lessor, operator, or manager of commercial or
550 real property brought by a person lawfully on the property who
551 was injured by the criminal act of a third party, the trier of

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552 fact must consider the fault of all persons who contributed to
553 the injury.

554 Section 6. Subsection (1) of section 768.79, Florida
555 Statutes, is amended to read:

556 768.79 Offer of judgment and demand for judgment.—

557 (1) In any civil action for damages and in any civil action
558 involving an insurance contract filed in the courts of this
559 state, if a defendant files an offer of judgment which is not
560 accepted by the plaintiff within 30 days, the defendant shall be
561 entitled to recover reasonable costs and attorney's fees
562 incurred by her or him or on the defendant's behalf pursuant to
563 a policy of liability insurance or other contract from the date
564 of filing of the offer if the judgment is one of no liability or
565 the judgment obtained by the plaintiff is at least 25 percent
566 less than such offer, and the court shall set off such costs and
567 attorney's fees against the award. Where such costs and
568 attorney's fees total more than the judgment, the court shall
569 enter judgment for the defendant against the plaintiff for the
570 amount of the costs and fees, less the amount of the plaintiff's
571 award. If a plaintiff files a demand for judgment which is not
572 accepted by the defendant within 30 days and the plaintiff
573 recovers a judgment in an amount at least 25 percent greater
574 than the offer, she or he shall be entitled to recover
575 reasonable costs and attorney's fees incurred from the date of
576 the filing of the demand. If rejected, neither an offer nor
577 demand is admissible in subsequent litigation, except for
578 pursuing the penalties of this section.

579 Section 7. Subsection (2) of section 768.81, Florida
580 Statutes, is amended, and subsection (6) is added to that

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581 section, to read:

582 768.81 Comparative fault.—

583 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence action,
584 contributory fault chargeable to the claimant diminishes
585 proportionately the amount awarded as economic and noneconomic
586 damages for an injury attributable to the claimant's
587 contributory fault, but does not bar recovery, subject to
588 subsection (6).

589 (6) GREATER PERCENTAGE OF FAULT.—In a negligence action to
590 which this section applies, any party found to be greater than
591 50 percent at fault for his or her own harm may not recover any
592 damages. This subsection does not apply to an action for damages
593 for personal injury or wrongful death arising out of medical
594 negligence pursuant to chapter 766.

595 Section 8. Section 626.9373, Florida Statutes, is repealed.

596 Section 9. Section 627.428, Florida Statutes, is repealed.

597 Section 10. Subsection (4) of section 624.123, Florida
598 Statutes, is amended to read:

599 624.123 Certain international health insurance policies;
600 exemption from code.—

601 (4) Any international health insurance policy or
602 application solicited, provided, entered into, issued, or
603 delivered pursuant to this subsection is exempt from all
604 provisions of the insurance code, except that such policy,
605 contract, or agreement is subject to the provisions of ss.
606 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521,
607 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591,
608 626.9601, 627.413, 627.4145, ~~627.428~~, and 627.6043.

609 Section 11. Subsection (4) of section 624.488, Florida

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610 Statutes, is amended to read:

611 624.488 Applicability of related laws.—In addition to other
612 provisions of the code cited in ss. 624.460-624.488:

613 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
614 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~
615 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
616 627.913, and 627.918;

617

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

621 Section 12. Paragraph (b) of subsection (3) of section
622 627.062, Florida Statutes, is amended to read:

623 627.062 Rate standards.—

624 (3)

625 (b) Individual risk rates and modifications to existing
626 approved forms are not subject to this part or part II, except
627 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,
628 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,
629 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,
630 627.4265, and 627.427, ~~and 627.428,~~ but are subject to all other
631 applicable provisions of this code and rules adopted thereunder.

632 Section 13. Section 627.401, Florida Statutes, is amended
633 to read:

634 627.401 Scope of this part.—No provision of this part of
635 this chapter applies to:

636 (1) Reinsurance.

637 (2) Policies or contracts not issued for delivery in this
638 state nor delivered in this state, except as otherwise provided

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639 in this code.

640 (3) Wet marine and transportation insurance, except ss.
641 627.409 and, 627.420, ~~and 627.428~~.

642 (4) Title insurance, except ss. 627.406, 627.415, 627.416,
643 627.419, and 627.427, ~~and 627.428~~.

644 (5) Credit life or credit disability insurance, except s.
645 627.419(5) ~~ss. 627.419(5) and 627.428~~.

646 Section 14. Subsection (8) of section 627.727, Florida
647 Statutes, is amended to read:

648 627.727 Motor vehicle insurance; uninsured and underinsured
649 vehicle coverage; insolvent insurer protection.—

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

655 Section 15. Subsection (8) of section 627.736, Florida
656 Statutes, is amended to read:

657 627.736 Required personal injury protection benefits;
658 exclusions; priority; claims.—

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

660 With respect to any dispute under the provisions of ss. 627.730-
661 627.7405 between the insured and the insurer, or between an
662 assignee of an insured's rights and the insurer, the provisions
663 of s. 768.79 ~~ss. 627.428 and 768.79~~ apply, except as provided in
664 subsections (10) and (15), and except that any attorney fees
665 recovered must:

666 (a) Comply with prevailing professional standards;

667 (b) Not overstate or inflate the number of hours reasonably

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668 necessary for a case of comparable skill or complexity; and

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

671
672 Upon request by either party, a judge must make written
673 findings, substantiated by evidence presented at trial or any
674 hearings associated therewith, that any award of attorney fees
675 complies with this subsection. ~~Notwithstanding s. 627.428,~~
676 Attorney fees recovered under ss. 627.730-627.7405 must be
677 calculated without regard to a contingency risk multiplier.

678 Section 16. Section 627.756, Florida Statutes, is amended
679 to read:

680 627.756 Bonds for construction contracts; ~~attorney fees in~~
681 ~~ease of suit.-~~

682 ~~(1) Section 627.428 applies to suits brought by owners,~~
683 ~~contractors, subcontractors, laborers, and materialmen against a~~
684 ~~surety insurer under payment or performance bonds written by the~~
685 ~~insurer under the laws of this state to indemnify against~~
686 ~~pecuniary loss by breach of a building or construction contract.~~
687 ~~Owners, contractors, subcontractors, laborers, and materialmen~~
688 ~~shall be deemed to be insureds or beneficiaries for the purposes~~
689 ~~of this section.~~

690 ~~(2)~~ A surety who issues a bid, performance, or payment bond
691 in connection with construction activities where hazardous
692 substances exist or are discovered is liable under ss. 376.308
693 and 403.727 only to the extent provided in this section
694 subsection. In case of a default, the surety is liable only for
695 the cost of completion of the contract work in accordance with
696 the plans and specifications, less the balance of funds

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697 remaining to be paid under the contract, up to the penal sum of
698 the bond. The surety is not liable on a bond to indemnify or
699 compensate the obligee for loss or liability arising from
700 personal injury or property damage, whether or not caused by a
701 breach of the bonded contract. Further, a right of action does
702 not accrue on a bond to or for the use of any person other than
703 the obligee named in the bond.

704 Section 17. Subsection (4) of section 628.6016, Florida
705 Statutes, is amended to read:

706 628.6016 Applicability of related laws.—In addition to
707 other provisions of the code cited in ss. 628.6011–628.6018:

708 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,
709 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~
710 627.702, and 627.706; part XI of chapter 627; ss. 627.912,
711 627.913, and 627.918; and

712
713 apply to assessable mutual insurers; however, ss. 628.255,
714 628.411, and 628.421 do not apply. No section of the code not
715 expressly and specifically cited in ss. 628.6011–628.6018
716 applies to assessable mutual insurers. The term “assessable
717 mutual insurer” shall be substituted for the term “commercial
718 self-insurer” as appropriate.

719 Section 18. Section 631.70, Florida Statutes, is repealed.

720 Section 19. Section 631.926, Florida Statutes, is repealed.

721 Section 20. Paragraphs (a) and (j) of subsection (1) of
722 section 475.01, Florida Statutes, are amended to read:

723 475.01 Definitions.—

724 (1) As used in this part:

725 (a) “Broker” means a person who, for another, and for a

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726 compensation or valuable consideration directly or indirectly
727 paid or promised, expressly or impliedly, or with an intent to
728 collect or receive a compensation or valuable consideration
729 therefor, appraises, auctions, sells, exchanges, buys, rents, or
730 offers, attempts or agrees to appraise, auction, or negotiate
731 the sale, exchange, purchase, or rental of business enterprises
732 or business opportunities or any real property or any interest
733 in or concerning the same, including mineral rights or leases,
734 or who advertises or holds out to the public by any oral or
735 printed solicitation or representation that she or he is engaged
736 in the business of appraising, auctioning, buying, selling,
737 exchanging, leasing, or renting business enterprises or business
738 opportunities or real property of others or interests therein,
739 including mineral rights, or who takes any part in the procuring
740 of sellers, purchasers, lessors, or lessees of business
741 enterprises or business opportunities or the real property of
742 another, or leases, or interest therein, including mineral
743 rights, or who directs or assists in the procuring of prospects
744 or in the negotiation or closing of any transaction which does,
745 or is calculated to, result in a sale, exchange, or leasing
746 thereof, and who receives, expects, or is promised any
747 compensation or valuable consideration, directly or indirectly
748 therefor; and all persons who advertise rental property
749 information or lists. A broker renders a professional service
750 and is a professional within the meaning of s. 95.11(4)(b) ~~s.~~
751 ~~95.11(4)(a)~~. Where the term "appraise" or "appraising" appears
752 in the definition of the term "broker," it specifically excludes
753 those appraisal services which must be performed only by a
754 state-licensed or state-certified appraiser, and those appraisal

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755 services which may be performed by a registered trainee
756 appraiser as defined in part II. The term "broker" also includes
757 any person who is a general partner, officer, or director of a
758 partnership or corporation which acts as a broker. The term
759 "broker" also includes any person or entity who undertakes to
760 list or sell one or more timeshare periods per year in one or
761 more timeshare plans on behalf of any number of persons, except
762 as provided in ss. 475.011 and 721.20.

763 (j) "Sales associate" means a person who performs any act
764 specified in the definition of "broker," but who performs such
765 act under the direction, control, or management of another
766 person. A sales associate renders a professional service and is
767 a professional within the meaning of s. 95.11(4)(b) ~~s.~~
768 ~~95.11(4)(a)~~.

769 Section 21. Paragraph (h) of subsection (1) of section
770 475.611, Florida Statutes, is amended to read:

771 475.611 Definitions.—

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

773 (h) "Appraiser" means any person who is a registered
774 trainee real estate appraiser, a licensed real estate appraiser,
775 or a certified real estate appraiser. An appraiser renders a
776 professional service and is a professional within the meaning of
777 s. 95.11(4)(b) ~~s. 95.11(4)(a)~~.

778 Section 22. Subsection (7) of section 517.191, Florida
779 Statutes, is amended to read:

780 517.191 Injunction to restrain violations; civil penalties;
781 enforcement by Attorney General.—

782 (7) Notwithstanding s. 95.11(4)(f) ~~s. 95.11(4)(e)~~, an
783 enforcement action brought under this section based on a

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784 violation of any provision of this chapter or any rule or order
785 issued under this chapter shall be brought within 6 years after
786 the facts giving rise to the cause of action were discovered or
787 should have been discovered with the exercise of due diligence,
788 but not more than 8 years after the date such violation
789 occurred.

790 Section 23. Subsection (2) of section 627.441, Florida
791 Statutes, is amended to read:

792 627.441 Commercial general liability policies; coverage to
793 contractors for completed operations.-

794 (2) A liability insurer must offer coverage at an
795 appropriate additional premium for liability arising out of
796 current or completed operations under an owner-controlled
797 insurance program for any period beyond the period for which the
798 program provides liability coverage, as specified in s.

799 255.0517(2)(b). The period of such coverage must be sufficient
800 to protect against liability arising out of an action brought
801 within the time limits provided in s. 95.11(3)(b) ~~s.~~

802 ~~95.11(3)(c)~~.

803 Section 24. Subsection (11) of section 632.638, Florida
804 Statutes, is amended to read:

805 632.638 Applicability of other code provisions.-In addition
806 to other provisions contained or referred to in this chapter,
807 the following chapters and provisions of this code apply to
808 fraternal benefit societies, to the extent applicable and not in
809 conflict with the express provisions of this chapter and the
810 reasonable implications thereof:

811 ~~(11) Section 627.428;~~

812 Section 25. The Division of Law Revision is directed to

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813 replace the phrase "the effective date of this act" wherever it
814 occurs in this act with the date this act becomes a law.

815 Section 26. The amendments made by this act to s. 95.11,
816 Florida Statutes, apply to causes of action accruing after the
817 effective date of this act.

818 Section 27. This act shall not be construed to impair any
819 right under an insurance contract in effect on or before the
820 effective date of this act. To the extent that this act affects
821 a right under an insurance contract, this act applies to an
822 insurance contract issued or renewed after the effective date of
823 this act.

824 Section 28. Except as otherwise expressly provided in this
825 act, this act shall apply to causes of action filed after the
826 effective date of this act.

827 Section 29. This act shall take effect upon becoming a law.