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LEGISLATIVE ACTION

Senate

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House

Senator Stewart moved the following:

1 **Senate Amendment to Amendment (522644) (with title**
2 **amendment)**

3
4 Delete lines 688 - 897

5 and insert:

6 Section 9. Subsection (1) of section 626.9373, Florida
7 Statutes, is amended to read:

8 626.9373 Attorney fees.—

9 (1) (a) Except as provided in subsection (3), upon the
10 rendition of a judgment or decree by any court of this state
11 against a surplus lines insurer in favor of any named or omnibus



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12 insured or the named beneficiary under a policy or contract
13 executed by the insurer on or after the effective date of this
14 act, the trial court or, if the insured or beneficiary prevails
15 on appeal, the appellate court, shall adjudge or decree against
16 the insurer in favor of the insured or beneficiary a reasonable
17 sum as fees or compensation for the insured's or beneficiary's
18 attorney prosecuting the lawsuit for which recovery is awarded.

19 (b) In any suit for benefits filed against a surplus lines
20 insurer by any named or omnibus insured or the named beneficiary
21 under a policy or contract executed by the insurer, upon the
22 rendition of a judgment by any of the courts of this state in
23 the insurer's favor and against the named or omnibus insured or
24 the named beneficiary under a policy or contract executed by the
25 insurer, the insurer is entitled to recover reasonable attorney
26 fees and court costs in the trial and appellate courts upon a
27 finding that the claimant raised a claim that was without
28 substantial fact or legal support. Any order awarding an insurer
29 attorney fees and costs under this paragraph must be supported
30 by findings of fact and conclusions of law. In awarding attorney
31 fees and costs under this paragraph, the court may not consider
32 the ability of the opposing party to pay such fees and costs.

33 Section 10. Subsection (1) of section 627.428, Florida
34 Statutes, is amended to read:

35 627.428 Attorney fees.—

36 (1) (a) Except as provided in subsection (4), upon the
37 rendition of a judgment or decree by any of the courts of this
38 state against an insurer and in favor of any named or omnibus
39 insured or the named beneficiary under a policy or contract
40 executed by the insurer, the trial court or, in the event of an



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41 appeal in which the insured or beneficiary prevails, the
42 appellate court shall adjudge or decree against the insurer and
43 in favor of the insured or beneficiary a reasonable sum as fees
44 or compensation for the insured's or beneficiary's attorney
45 prosecuting the suit in which the recovery is had.

46 (b) In any suit for benefits filed against an insurer by
47 any named or omnibus insured or the named beneficiary under a
48 policy or contract executed by the insurer, upon the rendition
49 of a judgment by any of the courts of this state in the
50 insurer's favor and against the named or omnibus insured or the
51 named beneficiary under a policy or contract executed by the
52 insurer, the insurer is entitled to recover reasonable attorney
53 fees and court costs in the trial and appellate courts upon a
54 finding that the claimant raised a claim that was without
55 substantial fact or legal support. Any order awarding an insurer
56 attorney fees and costs under this paragraph must be supported
57 by findings of fact and conclusions of law. In awarding attorney
58 fees and costs under this paragraph, the court may not consider
59 the ability of the opposing party to pay such fees and costs.

60 Section 11. Paragraphs (a) and (j) of subsection (1) of
61 section 475.01, Florida Statutes, are amended to read:

62 475.01 Definitions.—

63 (1) As used in this part:

64 (a) "Broker" means a person who, for another, and for a
65 compensation or valuable consideration directly or indirectly
66 paid or promised, expressly or impliedly, or with an intent to
67 collect or receive a compensation or valuable consideration
68 therefor, appraises, auctions, sells, exchanges, buys, rents, or
69 offers, attempts or agrees to appraise, auction, or negotiate



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70 the sale, exchange, purchase, or rental of business enterprises
71 or business opportunities or any real property or any interest
72 in or concerning the same, including mineral rights or leases,
73 or who advertises or holds out to the public by any oral or
74 printed solicitation or representation that she or he is engaged
75 in the business of appraising, auctioning, buying, selling,
76 exchanging, leasing, or renting business enterprises or business
77 opportunities or real property of others or interests therein,
78 including mineral rights, or who takes any part in the procuring
79 of sellers, purchasers, lessors, or lessees of business
80 enterprises or business opportunities or the real property of
81 another, or leases, or interest therein, including mineral
82 rights, or who directs or assists in the procuring of prospects
83 or in the negotiation or closing of any transaction which does,
84 or is calculated to, result in a sale, exchange, or leasing
85 thereof, and who receives, expects, or is promised any
86 compensation or valuable consideration, directly or indirectly
87 therefor; and all persons who advertise rental property
88 information or lists. A broker renders a professional service
89 and is a professional within the meaning of s. 95.11(4)(b) ~~s.~~
90 ~~95.11(4)(a)~~. Where the term "appraise" or "appraising" appears
91 in the definition of the term "broker," it specifically excludes
92 those appraisal services which must be performed only by a
93 state-licensed or state-certified appraiser, and those appraisal
94 services which may be performed by a registered trainee
95 appraiser as defined in part II. The term "broker" also includes
96 any person who is a general partner, officer, or director of a
97 partnership or corporation which acts as a broker. The term
98 "broker" also includes any person or entity who undertakes to



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99 list or sell one or more timeshare periods per year in one or
100 more timeshare plans on behalf of any number of persons, except
101 as provided in ss. 475.011 and 721.20.

102 (j) "Sales associate" means a person who performs any act
103 specified in the definition of "broker," but who performs such
104 act under the direction, control, or management of another
105 person. A sales associate renders a professional service and is
106 a professional within the meaning of s. 95.11(4)(b) ~~s.~~
107 ~~95.11(4)(a)~~.

108 Section 12. Paragraph (h) of subsection (1) of section
109 475.611, Florida Statutes, is amended to read:

110 475.611 Definitions.—

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

112 (h) "Appraiser" means any person who is a registered
113 trainee real estate appraiser, a licensed real estate appraiser,
114 or a certified real estate appraiser. An appraiser renders a
115 professional service and is a professional within the meaning of
116 s. 95.11(4)(b) ~~s. 95.11(4)(a)~~.

117 Section 13. Subsection (7) of section 517.191, Florida
118 Statutes, is amended to read:

119 517.191 Injunction to restrain violations; civil penalties;
120 enforcement by Attorney General.—

121 (7) Notwithstanding s. 95.11(4)(f) ~~s. 95.11(4)(e)~~, an
122 enforcement action brought under this section based on a
123 violation of any provision of this chapter or any rule or order
124 issued under this chapter shall be brought within 6 years after
125 the facts giving rise to the cause of action were discovered or
126 should have been discovered with the exercise of due diligence,
127 but not more than 8 years after the date such violation



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128 occurred.

129 Section 14. Subsection (2) of section 627.441, Florida
130 Statutes, is amended to read:

131 627.441 Commercial general liability policies; coverage to
132 contractors for completed operations.-

133 (2) A liability insurer must offer coverage at an
134 appropriate additional premium for liability arising out of
135 current or completed operations under an owner-controlled
136 insurance program for any period beyond the period for which the
137 program provides liability coverage, as specified in s.
138 255.0517(2)(b). The period of such coverage must be sufficient
139 to protect against liability arising out of an action brought
140 within the time limits provided in s. 95.11(3)(b) ~~s.~~
141 ~~95.11(3)(c)~~.

142

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

144 And the title is amended as follows:

145 Delete lines 967 - 978

146 and insert:

147 applicability; amending ss. 626.9373 and 627.428,
148 F.S.; providing that, in a suit for benefits against a
149 surplus lines insurer or an insurer, respectively, in
150 which a judgment is rendered in the insurer's favor
151 and a specified finding is made, the insurer is
152 entitled to reasonable attorney fees and court costs;
153 specifying a requirement and a restriction on courts
154 in making such awards; amending ss. 475.01, 475.611,
155 517.191, and 627.441, F.S.; conforming cross-
156 references; providing a directive to the Division of