



344956

LEGISLATIVE ACTION

Senate

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House

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The Committee on Fiscal Policy (Hutson) recommended the following:

1           **Senate Substitute for Amendment (209768) (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

6           Section 1. Section 57.104, Florida Statutes, is amended to  
7 read:

8           57.104 Computation of attorney ~~attorneys'~~ fees.—

9           (1) In any action in which attorney ~~attorneys'~~ fees are to  
10 be determined or awarded by the court, the court shall consider,



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11 among other things, time and labor of any legal assistants who  
12 contributed nonclerical, meaningful legal support to the matter  
13 involved and who are working under the supervision of an  
14 attorney. For purposes of this section "legal assistant" means a  
15 person, who under the supervision and direction of a licensed  
16 attorney engages in legal research, and case development or  
17 planning in relation to modifications or initial proceedings,  
18 services, processes, or applications; or who prepares or  
19 interprets legal documents or selects, compiles, and uses  
20 technical information from references such as digests,  
21 encyclopedias, or practice manuals and analyzes and follows  
22 procedural problems that involve independent decisions.

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

28 Section 2. Section 86.121, Florida Statutes, is created to  
29 read:

30 86.121 Attorney fees; actions for declaratory relief to  
31 determine insurance coverage after total coverage denial of  
32 claim.-

33 (1) In an action brought for declaratory relief in state or  
34 federal court to determine insurance coverage after the insurer  
35 has made a total coverage denial of a claim:

36 (a) Either party is entitled to the summary procedure  
37 provided in s. 51.011, and the court shall advance the cause on  
38 the calendar.

39 (b) The court shall award reasonable attorney fees to the



40 named insured, omnibus insured, or named beneficiary under a  
41 policy issued by the insurer upon rendition of a declaratory  
42 judgment in favor of the named insured, omnibus insured, or  
43 named beneficiary. This right may not be transferred to,  
44 assigned to, or acquired in any other manner by anyone other  
45 than a named or omnibus insured or a named beneficiary. A  
46 defense offered by an insurer pursuant to a reservation of  
47 rights does not constitute a coverage denial of a claim. Such  
48 fees are limited to those incurred in the action brought under  
49 this chapter for declaratory relief to determine coverage of  
50 insurance issued under the Florida Insurance Code.

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

53 Section 3. Subsections (3), (4), and (10) of section 95.11,  
54 Florida Statutes, are amended, and subsection (12) is added to  
55 that section, to read:

56 95.11 Limitations other than for the recovery of real  
57 property.—Actions other than for recovery of real property shall  
58 be commenced as follows:

59 (3) WITHIN FOUR YEARS.—

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

61 (a)~~(b)~~ An action relating to the determination of  
62 paternity, with the time running from the date the child reaches  
63 the age of majority.

64 (b)~~(e)~~ An action founded on the design, planning, or  
65 construction of an improvement to real property, with the time  
66 running from the date of actual possession by the owner, the  
67 date of the issuance of a certificate of occupancy, the date of  
68 abandonment of construction if not completed, or the date of



69 completion of the contract or termination of the contract  
70 between the professional engineer, registered architect, or  
71 licensed contractor and his or her employer, whichever date is  
72 latest; except that, when the action involves a latent defect,  
73 the time runs from the time the defect is discovered or should  
74 have been discovered with the exercise of due diligence. In any  
75 event, the action must be commenced within 10 years after the  
76 date of actual possession by the owner, the date of the issuance  
77 of a certificate of occupancy, the date of abandonment of  
78 construction if not completed, or the date of completion of the  
79 contract or termination of the contract between the professional  
80 engineer, registered architect, or licensed contractor and his  
81 or her employer, whichever date is latest. However,  
82 counterclaims, cross-claims, and third-party claims that arise  
83 out of the conduct, transaction, or occurrence set out or  
84 attempted to be set out in a pleading may be commenced up to 1  
85 year after the pleading to which such claims relate is served,  
86 even if such claims would otherwise be time barred. With respect  
87 to actions founded on the design, planning, or construction of  
88 an improvement to real property, if such construction is  
89 performed pursuant to a duly issued building permit and if a  
90 local enforcement agency, state enforcement agency, or special  
91 inspector, as those terms are defined in s. 553.71, has issued a  
92 final certificate of occupancy or certificate of completion,  
93 then as to the construction which is within the scope of such  
94 building permit and certificate, the correction of defects to  
95 completed work or repair of completed work, whether performed  
96 under warranty or otherwise, does not extend the period of time  
97 within which an action must be commenced. Completion of the



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98 contract means the later of the date of final performance of all  
99 the contracted services or the date that final payment for such  
100 services becomes due without regard to the date final payment is  
101 made.

102 (c)~~(d)~~ An action to recover public money or property held  
103 by a public officer or employee, or former public officer or  
104 employee, and obtained during, or as a result of, his or her  
105 public office or employment.

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

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

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

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

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

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

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

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

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

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

124 (n)~~(o)~~ An action for assault, battery, false arrest,  
125 malicious prosecution, malicious interference, false  
126 imprisonment, or any other intentional tort, except as provided



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127 in subsections (4), (5), and (7).

128 (o)~~(p)~~ Any action not specifically provided for in these  
129 statutes.

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

132 (4) WITHIN TWO YEARS.—

133 (a) An action founded on negligence.

134 (b)~~(a)~~ An action for professional malpractice, other than  
135 medical malpractice, whether founded on contract or tort;  
136 provided that the period of limitations shall run from the time  
137 the cause of action is discovered or should have been discovered  
138 with the exercise of due diligence. However, the limitation of  
139 actions herein for professional malpractice shall be limited to  
140 persons in privity with the professional.

141 (c)~~(b)~~ An action for medical malpractice shall be commenced  
142 within 2 years from the time the incident giving rise to the  
143 action occurred or within 2 years from the time the incident is  
144 discovered, or should have been discovered with the exercise of  
145 due diligence; however, in no event shall the action be  
146 commenced later than 4 years from the date of the incident or  
147 occurrence out of which the cause of action accrued, except that  
148 this 4-year period shall not bar an action brought on behalf of  
149 a minor on or before the child's eighth birthday. An "action for  
150 medical malpractice" is defined as a claim in tort or in  
151 contract for damages because of the death, injury, or monetary  
152 loss to any person arising out of any medical, dental, or  
153 surgical diagnosis, treatment, or care by any provider of health  
154 care. The limitation of actions within this subsection shall be  
155 limited to the health care provider and persons in privity with



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156 the provider of health care. In those actions covered by this  
157 paragraph in which it can be shown that fraud, concealment, or  
158 intentional misrepresentation of fact prevented the discovery of  
159 the injury the period of limitations is extended forward 2 years  
160 from the time that the injury is discovered or should have been  
161 discovered with the exercise of due diligence, but in no event  
162 to exceed 7 years from the date the incident giving rise to the  
163 injury occurred, except that this 7-year period shall not bar an  
164 action brought on behalf of a minor on or before the child's  
165 eighth birthday. This paragraph shall not apply to actions for  
166 which ss. 766.301-766.316 provide the exclusive remedy.

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

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

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

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

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

183 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS  
184 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph



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185 (4) (e) ~~(4) (d)~~, an action for wrongful death seeking damages  
186 authorized under s. 768.21 brought against a natural person for  
187 an intentional tort resulting in death from acts described in s.  
188 782.04 or s. 782.07 may be commenced at any time. This  
189 subsection shall not be construed to require an arrest, the  
190 filing of formal criminal charges, or a conviction for a  
191 violation of s. 782.04 or s. 782.07 as a condition for filing a  
192 civil action.

193 (12) FOR ACTIONS INVOLVING SERVICEMEMBERS.—Any action  
194 involving a servicemember as defined in s. 250.01, in which the  
195 servicemember is a party, is subject to s. 250.5201 and part IV  
196 of chapter 250, which includes the Servicemembers Civil Relief  
197 Act, 50 U.S.C. ss. 501 et seq., providing for protections to  
198 members of the United States Armed Forces, the United States  
199 Reserve Forces, or the National Guard during terms of federal or  
200 state active duty which materially affect the servicemember's  
201 ability to appear.

202 Section 4. Section 624.155, Florida Statutes, is amended to  
203 read:

204 624.155 Civil remedy.—

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

207 (a) By a violation of any of the following provisions by  
208 the insurer:

- 209 1. Section 626.9541(1) (i), (o), or (x);
- 210 2. Section 626.9551;
- 211 3. Section 626.9705;
- 212 4. Section 626.9706;
- 213 5. Section 626.9707; or





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214 6. Section 627.7283.

215 (b) By the commission of any of the following acts by the  
216 insurer:

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

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

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

229  
230 Notwithstanding the provisions of the above to the contrary, a  
231 person pursuing a remedy under this section need not prove that  
232 such act was committed or performed with such frequency as to  
233 indicate a general business practice.

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

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

242 (b) The notice shall be on a form provided by the



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243 department and shall state with specificity the following  
244 information, and such other information as the department may  
245 require:

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

248 2. The facts and circumstances giving rise to the  
249 violation.

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

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

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

259 (c) No action shall lie if, within 60 days after the  
260 insurer receives notice from the department in accordance with  
261 this subsection, the damages are paid or the circumstances  
262 giving rise to the violation are corrected.

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

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

268 1. Sixty days after the insurer receives from the  
269 department the notice required by this subsection.

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



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

275 (4) (a) An action for bad faith involving a liability  
276 insurance claim, including any such action brought under the  
277 common law, shall not lie if the insurer tenders the lesser of  
278 the policy limits or the amount demanded by the claimant within  
279 90 days after receiving actual notice of a claim which is  
280 accompanied by sufficient evidence to support the amount of the  
281 claim.

282 (b) If an insurer does not tender the lesser of the policy  
283 limits or the amount demanded by the claimant within the 90-day  
284 period provided in paragraph (a), the existence of the 90-day  
285 period and that no bad faith action could lie had the insurer  
286 tendered the lesser of policy limits or the amount demanded by  
287 the claimant pursuant to paragraph (a) is inadmissible in any  
288 action seeking to establish bad faith on the part of the  
289 insurer.

290 (c) If the insurer fails to tender pursuant to paragraph  
291 (a) within the 90-day period, any applicable statute of  
292 limitations is extended for an additional 90 days.

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

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

298 (b)1. The insured, claimant, and representative of the  
299 insured or claimant have a duty to act in good faith in  
300 furnishing information regarding the claim, in making demands of



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301 the insurer, in setting deadlines, and in attempting to settle  
302 the claim. This duty does not create a separate cause of action,  
303 but may only be considered pursuant to subparagraph 2.

304 2. In any action for bad faith against an insurer, the  
305 trier of fact may consider whether the insured, claimant, or  
306 representative of the insured or claimant did not act in good  
307 faith pursuant to this paragraph, in which case the trier of  
308 fact may reasonably reduce the amount of damages awarded against  
309 the insurer.

310 (6) If two or more third-party claimants have competing  
311 claims arising out of a single occurrence, which in total may  
312 exceed the available policy limits of one or more of the insured  
313 parties who may be liable to the third-party claimants, an  
314 insurer is not liable beyond the available policy limits for  
315 failure to pay all or any portion of the available policy limits  
316 to one or more of the third-party claimants if, within 90 days  
317 after receiving notice of the competing claims in excess of the  
318 available policy limits, the insurer complies with either  
319 paragraph (a) or paragraph (b).

320 (a) The insurer files an interpleader action under the  
321 Florida Rules of Civil Procedure. If the claims of the competing  
322 third-party claimants are found to be in excess of the policy  
323 limits, the third-party claimants are entitled to a prorated  
324 share of the policy limits as determined by the trier of fact.  
325 An insurer's interpleader action does not alter or amend the  
326 insurer's obligation to defend its insured.

327 (b) Pursuant to binding arbitration that has been agreed to  
328 by the insurer and the third-party claimants, the insurer makes  
329 the entire amount of the policy limits available for payment to



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

341 (7)~~(4)~~ Upon adverse adjudication at trial or upon appeal,  
342 the authorized insurer shall be liable for damages, together  
343 with court costs and reasonable attorney ~~attorney's~~ fees  
344 incurred by the plaintiff.

345 (8)~~(5)~~ ~~No~~ Punitive damages may not ~~shall~~ be awarded under  
346 this section unless the acts giving rise to the violation occur  
347 with such frequency as to indicate a general business practice  
348 and these acts are:

349 (a) Willful, wanton, and malicious;

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

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

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

358 (9)~~(6)~~ This section does ~~shall~~ not ~~be construed to~~



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359 authorize a class action suit against an authorized insurer or a  
360 civil action against the commission, the office, or the  
361 department or any of their employees, or to create a cause of  
362 action when an authorized health insurer refuses to pay a claim  
363 for reimbursement on the ground that the charge for a service  
364 was unreasonably high or that the service provided was not  
365 medically necessary.

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

374 (11)~~(8)~~ The civil remedy specified in this section does not  
375 preempt any other remedy or cause of action provided for  
376 pursuant to any other statute or pursuant to the common law of  
377 this state. Any person may obtain a judgment under either the  
378 common-law remedy of bad faith or this statutory remedy, but is  
379 ~~shall not be~~ entitled to a judgment under both remedies. This  
380 section does ~~shall not be construed to~~ create a common-law cause  
381 of action. The damages recoverable pursuant to this section  
382 shall include those damages which are a reasonably foreseeable  
383 result of a specified violation of this section by the  
384 authorized insurer and may include an award or judgment in an  
385 amount that exceeds the policy limits.

386 (12)~~(9)~~ A surety issuing a payment or performance bond on  
387 the construction or maintenance of a building or roadway project



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388 is not an insurer for purposes of subsection (1).

389 Section 5. Section 624.1552, Florida Statutes, is created  
390 to read:

391 624.1552 Civil actions involving an insurance contract;  
392 applicability of offer of judgment provisions.—The provisions of  
393 s. 768.79 apply to any civil action involving an insurance  
394 contract.

395 Section 6. Section 768.0427, Florida Statutes, is created  
396 to read:

397 768.0427 Admissibility of evidence to prove medical  
398 expenses in personal injury or wrongful death actions;  
399 disclosure of letters of protection; recovery of past and future  
400 medical expenses damages.—

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

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

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

411 (c) "Health care provider" means any of the following  
412 professionals and entities, and professionals and entities  
413 similarly licensed in another jurisdiction:

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

415 2. A clinical laboratory providing services in this state  
416 or services to health care providers in this state, if the



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417 clinical laboratory is certified by the Centers for Medicare and  
418 Medicaid Services under the federal Clinical Laboratory  
419 Improvement Amendments and the federal rules adopted thereunder.

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

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

424 5. A health care professional licensed under part IV of  
425 chapter 468.

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

427 7. A provider licensed under chapter 394 or chapter 397 and  
428 its clinical and nonclinical staff providing inpatient or  
429 outpatient services.

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

431 9. A pharmacy permitted under chapter 465.

432 (d) "Letter of protection" means any arrangement by which a  
433 health care provider renders treatment in exchange for a promise  
434 of payment for the claimant's medical expenses from any judgment  
435 or settlement of a personal injury or wrongful death action. The  
436 term includes any such arrangement, regardless of whether  
437 referred to as a letter of protection.

438 (2) ADMISSIBLE EVIDENCE OF MEDICAL TREATMENT OR SERVICE  
439 EXPENSES.—Evidence offered to prove the amount of damages for  
440 past or future medical treatment or services in a personal  
441 injury or wrongful death action is admissible as provided in  
442 this subsection.

443 (a) Evidence offered to prove the amount of damages for  
444 past medical treatment or services that have been satisfied is  
445 limited to evidence of the amount actually paid, regardless of





446 the source of payment.

447 (b) Evidence offered to prove the amount necessary to  
448 satisfy unpaid charges for incurred medical treatment or  
449 services shall include, but is not limited to, evidence as  
450 provided in this paragraph.

451 1. If the claimant has health care coverage other than  
452 Medicare or Medicaid, evidence of the amount which such health  
453 care coverage is obligated to pay the health care provider to  
454 satisfy the charges for the claimant's incurred medical  
455 treatment or services, plus the claimant's share of medical  
456 expenses under the insurance contract or regulation.

457 2. If the claimant has health care coverage but obtains  
458 treatment under a letter of protection or otherwise does not  
459 submit charges for any health care provider's medical treatment  
460 or services to health care coverage, evidence of the amount the  
461 claimant's health care coverage would pay the health care  
462 provider to satisfy the past unpaid medical charges under the  
463 insurance contract or regulation, plus the claimant's share of  
464 medical expenses under the insurance contract or regulation, had  
465 the claimant obtained medical services or treatment pursuant to  
466 the health care coverage.

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

473 4. If the claimant obtains medical treatment or services  
474 under a letter of protection and the health care provider



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475 subsequently transfers the right to receive payment under the  
476 letter of protection to a third party, evidence of the amount  
477 the third party paid or agreed to pay the health care provider  
478 in exchange for the right to receive payment pursuant to the  
479 letter of protection.

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

483 (c) Evidence offered to prove the amount of damages for any  
484 future medical treatment or services the claimant will receive  
485 shall include, but is not limited to, evidence as provided in  
486 this paragraph.

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

493 2. If the claimant does not have health care coverage or  
494 has health care coverage through Medicare or Medicaid, or is  
495 eligible for such health care coverage, evidence of 120 percent  
496 of the Medicare reimbursement rate in effect at the time of  
497 trial for the medical treatment or services the claimant will  
498 receive, or, if there is no applicable Medicare rate for a  
499 service, 170 percent of the applicable state Medicaid rate.

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

503 (d) This subsection does not impose an affirmative duty



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504 upon any party to seek a reduction in billed charges to which  
505 the party is not contractually entitled.

506 (e) Individual contracts between providers and authorized  
507 commercial insurers or authorized health maintenance  
508 organizations are not subject to discovery or disclosure and are  
509 not admissible into evidence.

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

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

516 (b) All billings for the claimant's medical expenses, which  
517 must be itemized and, to the extent applicable, coded according  
518 to:

519 1. For health care providers billing at the provider level,  
520 the American Medical Association's Current Procedural  
521 Terminology (CPT), or the Healthcare Common Procedure Coding  
522 System (HCPCS), in effect on the date the services were  
523 rendered.

524 2. For health care providers billing at the facility level  
525 for expenses incurred in a clinical or outpatient setting,  
526 including when billing through an Ambulatory Payment  
527 Classification (APC) or Enhanced Ambulatory Patient Grouping  
528 (EAPG), the International Classification of Diseases (ICD)  
529 diagnosis code and, if applicable, the American Medical  
530 Association's Current Procedural Terminology (CPT), in effect on  
531 the date the services were rendered.

532 3. For health care providers billing at the facility level



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533 for expenses incurred in an inpatient setting, including when  
534 billing through a Diagnosis Related Group (DRG), the  
535 International Classification of Diseases (ICD) diagnosis and  
536 procedure codes in effect on the date in which the claimant is  
537 discharged.

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

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

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

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

549 (e) Whether the claimant was referred for treatment under a  
550 letter of protection and, if so, the identity of the person who  
551 made the referral. If the referral is made by the claimant's  
552 attorney, disclosure of the referral is permitted, and evidence  
553 of such referral is admissible notwithstanding s. 90.502.  
554 Moreover, in such situation, the financial relationship between  
555 a law firm and a medical provider, including the number of  
556 referrals, frequency, and financial benefit obtained, is  
557 relevant to the issue of the bias of a testifying medical  
558 provider.

559 (4) DAMAGES RECOVERABLE FOR MEDICAL TREATMENT OR SERVICE  
560 EXPENSES.—The damages that may be recovered by a claimant in a  
561 personal injury or wrongful death action for the reasonable and



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562 necessary cost or value of medical care rendered may not include  
563 any amount in excess of the evidence of medical treatment and  
564 services expenses admitted pursuant to subsection (2), and also  
565 may not exceed the sum of the following:

566 (a) Amounts actually paid by or on behalf of the claimant  
567 to a health care provider who rendered medical treatment or  
568 services;

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

572 (c) Amounts necessary to provide for any reasonable and  
573 necessary medical treatment or services the claimant will  
574 receive in the future.

575 Section 7. Section 768.0701, Florida Statutes, is created  
576 to read:

577 768.0701 Premises liability for criminal acts of third  
578 parties.—Notwithstanding s. 768.81(4), in an action for damages  
579 against the owner, lessor, operator, or manager of commercial or  
580 real property brought by a person lawfully on the property who  
581 was injured by the criminal act of a third party, the trier of  
582 fact must consider the fault of all persons who contributed to  
583 the injury.

584 Section 8. Section 768.0706, Florida Statutes, is created  
585 to read:

586 768.0706 Multifamily residential property safety and  
587 security; presumption against liability.—

588 (1) As used in this section, the term:

589 (a) "Crime prevention through environmental design" has the  
590 same meaning as in s. 163.503(6).



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591 (b) "Multifamily residential property" means a residential  
592 building, or group of residential buildings, such as apartments,  
593 townhouses, or condominiums, consisting of at least five  
594 dwelling units on a particular parcel.

595 (c) "Parcel" means real property for which a distinct  
596 parcel identification number is assigned to the property by the  
597 property appraiser for the county in which the property is  
598 located.

599 (2) The owner or principal operator of a multifamily  
600 residential property which substantially implements the  
601 following security measures on that property has a presumption  
602 against liability in connection with criminal acts that occur on  
603 the premises which are committed by third parties who are not  
604 employees or agents of the owner or operator:

605 (a)1. A security camera system at points of entry and exit  
606 which records, and maintains as retrievable for at least 30  
607 days, video footage to assist in offender identification and  
608 apprehension.

609 2. A lighted parking lot illuminated at an intensity of at  
610 least an average of 1.8 foot-candles per square foot at 18  
611 inches above the surface from dusk until dawn or controlled by  
612 photocell or any similar electronic device that provides light  
613 from dusk until dawn.

614 3. Lighting in walkways, laundry rooms, common areas, and  
615 porches. Such lighting must be illuminated from dusk until dawn  
616 or controlled by photocell or any similar electronic device that  
617 provides light from dusk until dawn.

618 4. At least a 1-inch deadbolt in each dwelling unit door.

619 5. A locking device on each window, each exterior sliding



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620 door, and any other doors not used for community purposes.

621 6. Locked gates with key or fob access along pool fence  
622 areas.

623 7. A peephole or door viewer on each dwelling unit door  
624 that does not include a window or that does not have a window  
625 next to the door.

626 (b) By January 1, 2025, the owner or principal operator of  
627 a multifamily residential property has a crime prevention  
628 through environmental design assessment that is no more than 3  
629 years old completed for the property. Such assessment must be  
630 performed by a law enforcement agency or a Florida Crime  
631 Prevention Through Environmental Design Practitioner designated  
632 by the Florida Crime Prevention Training Institute of the  
633 Department of Legal Affairs. The owner or principal operator  
634 must remain in substantial compliance with the assessment for  
635 purposes of this paragraph.

636 (c)1. By January 1, 2025, the owner or principal operator  
637 of a multifamily residential property provides proper crime  
638 deterrence and safety training to its current employees. After  
639 January 1, 2025, the owner or principal operator must provide  
640 such training to an employee within 60 days after his or her  
641 hire date for purposes of this paragraph.

642 2. For purposes of this paragraph, "proper crime deterrence  
643 and safety training" means training which trains and  
644 familiarizes employees with the security principles, devices,  
645 measures, and standards set forth under paragraph (a), and which  
646 is reviewed at least every 3 years and updated as necessary. The  
647 owner or principal operator may request a law enforcement agency  
648 or the Florida Crime Prevention Through Environmental Design



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649 Practitioner performing the assessment under paragraph (b) to  
650 review the training curriculum.

651 (3) For purposes of establishing the presumption against  
652 liability under subsection (2), the burden of proof is on the  
653 owner or principal operator to demonstrate that the owner or  
654 principal operator has substantially implemented the security  
655 measures specified in subsection (2).

656 (4) The Florida Crime Prevention Training Institute of the  
657 Department of Legal Affairs shall develop a proposed curriculum  
658 or best practices for owners or principal operators to implement  
659 such training. The state has no liability in connection with  
660 providing a proposed training curriculum under this subsection.

661 (5) This section does not establish a private cause of  
662 action.

663 Section 9. Subsection (2) of section 768.81, Florida  
664 Statutes, is amended, and subsection (6) is added to that  
665 section, to read:

666 768.81 Comparative fault.—

667 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence action,  
668 contributory fault chargeable to the claimant diminishes  
669 proportionately the amount awarded as economic and noneconomic  
670 damages for an injury attributable to the claimant's  
671 contributory fault, but does not bar recovery, subject to  
672 subsection (6).

673 (6) GREATER PERCENTAGE OF FAULT.—In a negligence action to  
674 which this section applies, any party found to be greater than  
675 50 percent at fault for his or her own harm may not recover any  
676 damages. This subsection does not apply to an action for damages  
677 for personal injury or wrongful death arising out of medical





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678 negligence pursuant to chapter 766.

679 Section 10. Section 626.9373, Florida Statutes, is  
680 repealed.

681 Section 11. Section 627.428, Florida Statutes, is repealed.

682 Section 12. Subsection (1) of section 627.756, Florida  
683 Statutes, is amended to read:

684 627.756 Bonds for construction contracts; attorney fees in  
685 case of suit.—

686 (1) In a suit ~~Section 627.428~~ applies to suits brought by  
687 an owner, a contractor, a subcontractor, a laborer, or a  
688 materialman ~~owners, contractors, subcontractors, laborers, and~~  
689 ~~materialmen~~ against a surety insurer under payment or  
690 performance bonds written by the insurer under the laws of this  
691 state to indemnify against pecuniary loss by breach of a  
692 building or construction contract, upon the rendition of a  
693 judgment or decree by any of the courts of this state against  
694 the surety insurer and in favor of the owner, contractor,  
695 subcontractor, laborer, or materialman, the trial court or, in  
696 the event of an appeal in which the owner, contractor,  
697 subcontractor, laborer, or materialman prevails, the appellate  
698 court, shall adjudge or decree against the surety insurer and in  
699 favor of the owner, contractor, subcontractor, laborer, or  
700 materialman a reasonable sum as fees or compensation for the  
701 attorney prosecuting the suit in which the recovery is had.  
702 ~~Owners, contractors, subcontractors, laborers, and materialmen~~  
703 ~~shall be deemed to be insureds or beneficiaries for the purposes~~  
704 ~~of this section.~~

705 Section 13. Paragraphs (a) and (j) of subsection (1) of  
706 section 475.01, Florida Statutes, are amended to read:



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707 475.01 Definitions.—  
708 (1) As used in this part:  
709 (a) "Broker" means a person who, for another, and for a  
710 compensation or valuable consideration directly or indirectly  
711 paid or promised, expressly or impliedly, or with an intent to  
712 collect or receive a compensation or valuable consideration  
713 therefor, appraises, auctions, sells, exchanges, buys, rents, or  
714 offers, attempts or agrees to appraise, auction, or negotiate  
715 the sale, exchange, purchase, or rental of business enterprises  
716 or business opportunities or any real property or any interest  
717 in or concerning the same, including mineral rights or leases,  
718 or who advertises or holds out to the public by any oral or  
719 printed solicitation or representation that she or he is engaged  
720 in the business of appraising, auctioning, buying, selling,  
721 exchanging, leasing, or renting business enterprises or business  
722 opportunities or real property of others or interests therein,  
723 including mineral rights, or who takes any part in the procuring  
724 of sellers, purchasers, lessors, or lessees of business  
725 enterprises or business opportunities or the real property of  
726 another, or leases, or interest therein, including mineral  
727 rights, or who directs or assists in the procuring of prospects  
728 or in the negotiation or closing of any transaction which does,  
729 or is calculated to, result in a sale, exchange, or leasing  
730 thereof, and who receives, expects, or is promised any  
731 compensation or valuable consideration, directly or indirectly  
732 therefor; and all persons who advertise rental property  
733 information or lists. A broker renders a professional service  
734 and is a professional within the meaning of s. 95.11(4)(b) ~~s.~~  
735 ~~95.11(4)(a)~~. Where the term "appraise" or "appraising" appears



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736 in the definition of the term "broker," it specifically excludes  
737 those appraisal services which must be performed only by a  
738 state-licensed or state-certified appraiser, and those appraisal  
739 services which may be performed by a registered trainee  
740 appraiser as defined in part II. The term "broker" also includes  
741 any person who is a general partner, officer, or director of a  
742 partnership or corporation which acts as a broker. The term  
743 "broker" also includes any person or entity who undertakes to  
744 list or sell one or more timeshare periods per year in one or  
745 more timeshare plans on behalf of any number of persons, except  
746 as provided in ss. 475.011 and 721.20.

747 (j) "Sales associate" means a person who performs any act  
748 specified in the definition of "broker," but who performs such  
749 act under the direction, control, or management of another  
750 person. A sales associate renders a professional service and is  
751 a professional within the meaning of s. 95.11(4)(b) ~~s.~~  
752 ~~95.11(4)(a)~~.

753 Section 14. Paragraph (h) of subsection (1) of section  
754 475.611, Florida Statutes, is amended to read:

755 475.611 Definitions.—

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

757 (h) "Appraiser" means any person who is a registered  
758 trainee real estate appraiser, a licensed real estate appraiser,  
759 or a certified real estate appraiser. An appraiser renders a  
760 professional service and is a professional within the meaning of  
761 s. 95.11(4)(b) ~~s. 95.11(4)(a)~~.

762 Section 15. Subsection (7) of section 517.191, Florida  
763 Statutes, is amended to read:

764 517.191 Injunction to restrain violations; civil penalties;



765 enforcement by Attorney General.—

766 (7) Notwithstanding s. 95.11(4)(f) ~~s. 95.11(4)(e)~~, an  
767 enforcement action brought under this section based on a  
768 violation of any provision of this chapter or any rule or order  
769 issued under this chapter shall be brought within 6 years after  
770 the facts giving rise to the cause of action were discovered or  
771 should have been discovered with the exercise of due diligence,  
772 but not more than 8 years after the date such violation  
773 occurred.

774 Section 16. Subsection (4) of section 624.123, Florida  
775 Statutes, is amended to read:

776 624.123 Certain international health insurance policies;  
777 exemption from code.—

778 (4) Any international health insurance policy or  
779 application solicited, provided, entered into, issued, or  
780 delivered pursuant to this subsection is exempt from all  
781 provisions of the insurance code, except that such policy,  
782 contract, or agreement is subject to the provisions of ss.  
783 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521,  
784 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591,  
785 626.9601, 627.413, 627.4145, ~~627.428~~, and 627.6043.

786 Section 17. Subsection (4) of section 624.488, Florida  
787 Statutes, is amended to read:

788 624.488 Applicability of related laws.—In addition to other  
789 provisions of the code cited in ss. 624.460-624.488:

790 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,  
791 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428~~,  
792 627.702, and 627.706; part XI of chapter 627; ss. 627.912,  
793 627.913, and 627.918;



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794  
795 apply to self-insurance funds. Only those sections of the code  
796 that are expressly and specifically cited in ss. 624.460-624.489  
797 apply to self-insurance funds.

798 Section 18. Paragraph (b) of subsection (3) of section  
799 627.062, Florida Statutes, is amended to read:

800 627.062 Rate standards.—

801 (3)

802 (b) Individual risk rates and modifications to existing  
803 approved forms are not subject to this part or part II, except  
804 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,  
805 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,  
806 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,  
807 627.4265, and 627.427, ~~and 627.428~~, but are subject to all other  
808 applicable provisions of this code and rules adopted thereunder.

809 Section 19. Subsections (3), (4), and (5) of section  
810 627.401, Florida Statutes, are amended to read:

811 627.401 Scope of this part.—No provision of this part of  
812 this chapter applies to:

813 (3) Wet marine and transportation insurance, except ss.  
814 627.409 ~~and~~, 627.420, ~~and 627.428~~.

815 (4) Title insurance, except ss. 627.406, 627.415, 627.416,  
816 627.419, and 627.427, ~~and 627.428~~.

817 (5) Credit life or credit disability insurance, except s.  
818 627.419(5) ~~ss. 627.419(5) and 627.428~~.

819 Section 20. Subsection (2) of section 627.441, Florida  
820 Statutes, is amended to read:

821 627.441 Commercial general liability policies; coverage to  
822 contractors for completed operations.—



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823 (2) A liability insurer must offer coverage at an  
824 appropriate additional premium for liability arising out of  
825 current or completed operations under an owner-controlled  
826 insurance program for any period beyond the period for which the  
827 program provides liability coverage, as specified in s.  
828 255.0517(2) (b). The period of such coverage must be sufficient  
829 to protect against liability arising out of an action brought  
830 within the time limits provided in s. 95.11(3) (b) ~~s.~~  
831 ~~95.11(3) (c)~~.

832 Section 21. Subsection (8) of section 627.727, Florida  
833 Statutes, is amended to read:

834 627.727 Motor vehicle insurance; uninsured and underinsured  
835 vehicle coverage; insolvent insurer protection.—

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

841 Section 22. Subsection (8) of section 627.736, Florida  
842 Statutes, is amended to read:

843 627.736 Required personal injury protection benefits;  
844 exclusions; priority; claims.—

845 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—  
846 With respect to any dispute under the provisions of ss. 627.730-  
847 627.7405 between the insured and the insurer, or between an  
848 assignee of an insured's rights and the insurer, the provisions  
849 of s. 768.79 ~~ss. 627.428 and 768.79~~ apply, except as provided in  
850 subsections (10) and (15), and except that any attorney fees  
851 recovered must:



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- 852 (a) Comply with prevailing professional standards;  
853 (b) Not overstate or inflate the number of hours reasonably  
854 necessary for a case of comparable skill or complexity; and  
855 (c) Represent legal services that are reasonable and  
856 necessary to achieve the result obtained.

857  
858 Upon request by either party, a judge must make written  
859 findings, substantiated by evidence presented at trial or any  
860 hearings associated therewith, that any award of attorney fees  
861 complies with this subsection. ~~Notwithstanding s. 627.428,~~  
862 Attorney fees recovered under ss. 627.730-627.7405 must be  
863 calculated without regard to a contingency risk multiplier.

864 Section 23. Subsection (4) of section 628.6016, Florida  
865 Statutes, is amended to read:

866 628.6016 Applicability of related laws.—In addition to  
867 other provisions of the code cited in ss. 628.6011-628.6018:

868 (4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418,  
869 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, ~~627.428,~~  
870 627.702, and 627.706; part XI of chapter 627; ss. 627.912,  
871 627.913, and 627.918; and

872  
873 apply to assessable mutual insurers; however, ss. 628.255,  
874 628.411, and 628.421 do not apply. No section of the code not  
875 expressly and specifically cited in ss. 628.6011-628.6018  
876 applies to assessable mutual insurers. The term "assessable  
877 mutual insurer" shall be substituted for the term "commercial  
878 self-insurer" as appropriate.

879 Section 24. Section 631.70, Florida Statutes, is repealed.

880 Section 25. Section 631.926, Florida Statutes, is repealed.



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881 Section 26. Subsection (11) of section 632.638, Florida  
882 Statutes, is amended to read:

883 632.638 Applicability of other code provisions.—In addition  
884 to other provisions contained or referred to in this chapter,  
885 the following chapters and provisions of this code apply to  
886 fraternal benefit societies, to the extent applicable and not in  
887 conflict with the express provisions of this chapter and the  
888 reasonable implications thereof:

889 ~~(11) Section 627.428;~~

890 Section 27. The Division of Law Revision is directed to  
891 replace the phrase "the effective date of this act" wherever it  
892 occurs in this act with the date this act becomes a law.

893 Section 28. The amendments made by this act to s. 95.11,  
894 Florida Statutes, apply to causes of action accruing after the  
895 effective date of this act.

896 Section 29. This act shall not be construed to impair any  
897 right under an insurance contract in effect on or before the  
898 effective date of this act. To the extent that this act affects  
899 a right under an insurance contract, this act applies to an  
900 insurance contract issued or renewed after the effective date of  
901 this act.

902 Section 30. Except as otherwise expressly provided in this  
903 act, this act shall apply to causes of action filed after the  
904 effective date of this act.

905 Section 31. This act shall take effect upon becoming a law.

906

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

908 And the title is amended as follows:

909 Delete everything before the enacting clause





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910 and insert:

911                   A bill to be entitled  
912           An act relating to civil remedies; amending s. 57.104,  
913           F.S.; creating a rebuttable presumption that a  
914           lodestar fee is a sufficient and reasonable attorney  
915           fee in most civil actions; providing an exception;  
916           creating s. 86.121, F.S.; authorizing a court to award  
917           attorney fees in certain declaratory actions;  
918           prohibiting the transfer, assignment, or acquisition  
919           of the right to such attorney fees except by specified  
920           persons; amending s. 95.11, F.S.; reducing the statute  
921           of limitations for negligence actions; providing  
922           applicability of certain provisions to actions  
923           involving servicemembers; amending s. 624.155, F.S.;  
924           providing standards for bad faith actions; providing  
925           for the distribution of proceeds when two or more  
926           third-party claims arising out of a single occurrence  
927           exceed policy limits; creating s. 624.1552, F.S.;  
928           providing for applicability of specified offer of  
929           judgment provisions to civil actions involving  
930           insurance contracts; creating s. 768.0427, F.S.;  
931           providing definitions; providing standards for the  
932           admissibility of evidence to prove the cost of damages  
933           for medical expenses in certain civil actions;  
934           requiring certain disclosures with respect to claims  
935           for medical expenses for treatment rendered under  
936           letters of protection; specifying the damages that may  
937           be recovered by a claimant for the reasonable and  
938           necessary cost of medical care; creating s. 768.0701,



939 F.S.; requiring the trier of fact to consider the  
940 fault of certain persons who contribute to an injury;  
941 creating s. 768.0706, F.S.; providing definitions;  
942 providing that the owner or principal operator of a  
943 multifamily residential property which substantially  
944 implements specified security measures on that  
945 property has a presumption against liability for  
946 negligence in connection with certain criminal acts  
947 that occur on the premises; requiring the Florida  
948 Crime Prevention Training Institute of the Department  
949 of Legal Affairs to develop a proposed curriculum or  
950 best practices for owners or principal operators;  
951 providing construction; amending s. 768.81, F.S.;  
952 providing that a party in a negligence action who is  
953 at fault by a specified amount may not recover damages  
954 under a comparative negligence action; providing  
955 applicability; repealing ss. 626.9373 and 627.428,  
956 F.S., relating to attorney fees awarded against  
957 surplus lines insurers and insurers, respectively;  
958 amending s. 627.756, F.S.; providing for the award of  
959 costs and attorney fees in certain actions; amending  
960 ss. 475.01, 475.611, 517.191, 624.123, 624.488,  
961 627.062, 627.401, 627.441, 627.727, 627.736, and  
962 628.6016, F.S.; conforming provisions to changes made  
963 by the act; repealing ss. 631.70 and 631.926, F.S.,  
964 relating to attorney fees; amending s. 632.638, F.S.;  
965 conforming provisions to changes made by the act;  
966 providing a directive to the Division of Law Revision;  
967 providing applicability and construction; providing an



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968

effective date.