

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; amending s.
12 627.428, F.S.; limiting the applicability of
13 provisions relating to attorney fees in certain
14 actions against insurers; amending s. 626.9373, F.S.;
15 limiting the applicability of provisions relating to
16 attorney fees in certain actions against surplus lines
17 insurers; creating s. 768.0427, F.S.; providing
18 definitions; providing standards for the admissibility
19 of evidence to prove the cost of damages for medical
20 expenses in certain civil actions; requiring certain
21 disclosures with respect to claims for medical
22 expenses for treatment rendered under letters of
23 protection; specifying the damages that may be
24 recovered by a claimant for the reasonable and
25 necessary cost of medical care; creating s. 768.0701,

26 F.S.; requiring the trier of fact to consider the
27 fault of certain persons who contribute to an injury;
28 creating s. 768.0706, F.S.; providing definitions;
29 providing that the owner or principal operator of a
30 multifamily residential property which substantially
31 implements the specified security measures on that
32 property has a presumption against liability in
33 connection with certain criminal acts that occur on
34 the premises; requiring the Florida Crime Prevention
35 Training Institute of the Department of Legal Affairs
36 to develop a proposed curriculum or best practices for
37 owners or principal operators; providing construction;
38 amending s. 768.075, F.S.; revising provisions
39 relating to immunity from liability for injury to
40 trespassers on real property; amending s. 768.79,
41 F.S.; specifying the applicability of provisions
42 relating to offer of judgment and demand for judgment;
43 amending s. 768.81, F.S.; providing that a party in a
44 negligence action who is at fault by a specified
45 amount may not recover damages under a comparative
46 negligence action; providing applicability; amending
47 ss. 475.01, 475.611, 517.191, and 627.441, F.S.;
48 conforming provisions to changes made by the act;
49 providing a directive to the Division of Law Revision;
50 providing applicability; providing an effective date.

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

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

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

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

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

76 Section 2. Subsections (3), (4), and (10) of section
 77 95.11, Florida Statutes, are amended to read:

78 95.11 Limitations other than for the recovery of real
 79 property.—Actions other than for recovery of real property shall
 80 be commenced as follows:

81 (3) WITHIN FOUR YEARS.—

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

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

86 (b)~~(e)~~ An action founded on the design, planning, or
 87 construction of an improvement to real property, with the time
 88 running from the date of actual possession by the owner, the
 89 date of the issuance of a certificate of occupancy, the date of
 90 abandonment of construction if not completed, or the date of
 91 completion of the contract or termination of the contract
 92 between the professional engineer, registered architect, or
 93 licensed contractor and his or her employer, whichever date is
 94 latest; except that, when the action involves a latent defect,
 95 the time runs from the time the defect is discovered or should
 96 have been discovered with the exercise of due diligence. In any
 97 event, the action must be commenced within 10 years after the
 98 date of actual possession by the owner, the date of the issuance
 99 of a certificate of occupancy, the date of abandonment of
 100 construction if not completed, or the date of completion of the

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

124 (c)~~(d)~~ An action to recover public money or property held
 125 by a public officer or employee, or former public officer or

126 | employee, and obtained during, or as a result of, his or her
 127 | public office or employment.

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

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

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

134 | ~~(g)~~(h) An action for taking, detaining, or injuring
 135 | personal property.

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

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

138 | ~~(j)~~(k) A legal or equitable action on a contract,
 139 | obligation, or liability not founded on a written instrument,
 140 | including an action for the sale and delivery of goods, wares,
 141 | and merchandise, and on store accounts.

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

143 | ~~(l)~~(m) An action for money paid to any governmental
 144 | authority by mistake or inadvertence.

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

146 | ~~(n)~~(o) An action for assault, battery, false arrest,
 147 | malicious prosecution, malicious interference, false
 148 | imprisonment, or any other intentional tort, except as provided
 149 | in subsections (4), (5), and (7).

150 | ~~(o)~~(p) Any action not specifically provided for in these

151 statutes.

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

154 (4) WITHIN TWO YEARS.—

155 (a) An action founded on negligence.

156 (b)~~(a)~~ An action for professional malpractice, other than
157 medical malpractice, whether founded on contract or tort;
158 provided that the period of limitations shall run from the time
159 the cause of action is discovered or should have been discovered
160 with the exercise of due diligence. However, the limitation of
161 actions herein for professional malpractice shall be limited to
162 persons in privity with the professional.

163 (c)~~(b)~~ An action for medical malpractice shall be
164 commenced within 2 years from the time the incident giving rise
165 to the action occurred or within 2 years from the time the
166 incident is discovered, or should have been discovered with the
167 exercise of due diligence; however, in no event shall the action
168 be commenced later than 4 years from the date of the incident or
169 occurrence out of which the cause of action accrued, except that
170 this 4-year period shall not bar an action brought on behalf of
171 a minor on or before the child's eighth birthday. An "action for
172 medical malpractice" is defined as a claim in tort or in
173 contract for damages because of the death, injury, or monetary
174 loss to any person arising out of any medical, dental, or
175 surgical diagnosis, treatment, or care by any provider of health

176 care. The limitation of actions within this subsection shall be
 177 limited to the health care provider and persons in privity with
 178 the provider of health care. In those actions covered by this
 179 paragraph in which it can be shown that fraud, concealment, or
 180 intentional misrepresentation of fact prevented the discovery of
 181 the injury the period of limitations is extended forward 2 years
 182 from the time that the injury is discovered or should have been
 183 discovered with the exercise of due diligence, but in no event
 184 to exceed 7 years from the date the incident giving rise to the
 185 injury occurred, except that this 7-year period shall not bar an
 186 action brought on behalf of a minor on or before the child's
 187 eighth birthday. This paragraph shall not apply to actions for
 188 which ss. 766.301-766.316 provide the exclusive remedy.

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

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

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

197 (g)~~(f)~~ An action for personal injury caused by contact
 198 with or exposure to phenoxy herbicides while serving either as a
 199 civilian or as a member of the Armed Forces of the United States
 200 during the period January 1, 1962, through May 7, 1975; the

201 period of limitations shall run from the time the cause of
 202 action is discovered or should have been discovered with the
 203 exercise of due diligence.

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

205 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
 206 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
 207 (4) (e) ~~(4) (d)~~, an action for wrongful death seeking damages
 208 authorized under s. 768.21 brought against a natural person for
 209 an intentional tort resulting in death from acts described in s.
 210 782.04 or s. 782.07 may be commenced at any time. This
 211 subsection shall not be construed to require an arrest, the
 212 filing of formal criminal charges, or a conviction for a
 213 violation of s. 782.04 or s. 782.07 as a condition for filing a
 214 civil action.

215 Section 3. Section 624.155, Florida Statutes, is amended
 216 to read:

217 624.155 Civil remedy.—

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

220 (a) By a violation of any of the following provisions by
 221 the insurer:

- 222 1. Section 626.9541(1) (i), (o), or (x);
- 223 2. Section 626.9551;
- 224 3. Section 626.9705;
- 225 4. Section 626.9706;

226 5. Section 626.9707; or

227 6. Section 627.7283.

228 (b) By the commission of any of the following acts by the
229 insurer:

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

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

237 3. Except as to liability coverages, failing to promptly
238 settle claims, when the obligation to settle a claim has become
239 reasonably clear, under one portion of the insurance policy
240 coverage in order to influence settlements under other portions
241 of the insurance policy coverage.

242
243 Notwithstanding the provisions of the above to the contrary, a
244 person pursuing a remedy under this section need not prove that
245 such act was committed or performed with such frequency as to
246 indicate a general business practice.

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

250 (3) (a) As a condition precedent to bringing an action

251 | under this section, the department and the authorized insurer
252 | must have been given 60 days' written notice of the violation.
253 | Notice to the authorized insurer must be provided by the
254 | department to the e-mail address designated by the insurer under
255 | s. 624.422.

256 | (b) The notice shall be on a form provided by the
257 | department and shall state with specificity the following
258 | information, and such other information as the department may
259 | require:

260 | 1. The statutory provision, including the specific
261 | language of the statute, which the authorized insurer allegedly
262 | violated.

263 | 2. The facts and circumstances giving rise to the
264 | violation.

265 | 3. The name of any individual involved in the violation.

266 | 4. Reference to specific policy language that is relevant
267 | to the violation, if any. If the person bringing the civil
268 | action is a third party claimant, she or he shall not be
269 | required to reference the specific policy language if the
270 | authorized insurer has not provided a copy of the policy to the
271 | third party claimant pursuant to written request.

272 | 5. A statement that the notice is given in order to
273 | perfect the right to pursue the civil remedy authorized by this
274 | section.

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

276 insurer receives notice from the department in accordance with
 277 this subsection, the damages are paid or the circumstances
 278 giving rise to the violation are corrected.

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

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

284 1. Sixty days after the insurer receives from the
 285 department the notice required by this subsection.

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

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

291 (4) (a) An action for bad faith involving a liability
 292 insurance claim, including any such action brought under the
 293 common law, shall not lie if the insurer tenders the lesser of
 294 the policy limits or the amount demanded by the claimant within
 295 120 days after receiving actual notice of a claim which is
 296 accompanied by sufficient evidence to support the amount of the
 297 claim.

298 (b) Failure of an insurer to offer payment pursuant to
 299 this subsection shall not constitute bad faith and is
 300 inadmissible as evidence in any action seeking to establish bad

301 faith on the part of the insurer.

302 (c) If the insurer fails to tender pursuant to paragraph
303 (a) within the 120-day period, any applicable statute of
304 limitations is extended for an additional 120 days.

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

308 (a) Mere negligence alone is insufficient to constitute
309 bad faith.

310 (b)1. The insured, claimant, and representative of the
311 insured or claimant have a duty to act in good faith in
312 furnishing information regarding the claim, in making demands of
313 the insurer, in setting deadlines, and in attempting to settle
314 the claim. This duty does not create a separate cause of action,
315 but may only be considered pursuant to subparagraph 2.

316 2. In any action for bad faith against an insurer, the
317 trier of fact may consider whether the insured, claimant, or
318 representative of the insured or claimant did not act in good
319 faith pursuant to this paragraph, in which case the trier of
320 fact may reasonably reduce the amount of damages awarded against
321 the insurer.

322 (6) If two or more third-party claimants have competing
323 claims arising out of a single occurrence, which in total may
324 exceed the available policy limits of one or more of the insured
325 parties who may be liable to the third-party claimants, an

326 insurer is not liable beyond the available policy limits for
327 failure to pay all or any portion of the available policy limits
328 to one or more of the third-party claimants if, within 90 days
329 after receiving notice of the competing claims in excess of the
330 available policy limits, the insurer complies with either
331 paragraph (a) or paragraph (b).

332 (a) The insurer files an interpleader action under the
333 Florida Rules of Civil Procedure. If the claims of the competing
334 third-party claimants are found to be in excess of the policy
335 limits, the third-party claimants are entitled to a prorated
336 share of the policy limits as determined by the trier of fact.
337 An insurer's interpleader action does not alter or amend the
338 insurer's obligation to defend its insured.

339 (b) Pursuant to binding arbitration that has been agreed
340 to by the insurer and the third-party claimants, the insurer
341 makes the entire amount of the policy limits available for
342 payment to the competing third-party claimants before a
343 qualified arbitrator agreed to by the insurer and such third-
344 party claimants at the expense of the insurer. The third-party
345 claimants are entitled to a prorated share of the policy limits
346 as determined by the arbitrator, who must consider the
347 comparative fault, if any, of each third-party claimant, and the
348 total likely outcome at trial based upon the total of the
349 economic and noneconomic damages submitted to the arbitrator for
350 consideration. A third-party claimant whose claim is resolved by

351 the arbitrator must execute and deliver a general release to the
 352 insured party whose claim is resolved by the proceeding.

353 ~~(7)-(4)~~ Upon adverse adjudication at trial or upon appeal,
 354 the authorized insurer shall be liable for damages, together
 355 with court costs and reasonable attorney ~~attorney's~~ fees
 356 incurred by the plaintiff.

357 ~~(8)-(5)~~ ~~No~~ Punitive damages may not ~~shall~~ be awarded under
 358 this section unless the acts giving rise to the violation occur
 359 with such frequency as to indicate a general business practice
 360 and these acts are:

- 361 (a) Willful, wanton, and malicious;
- 362 (b) In reckless disregard for the rights of any insured;
- 363 or
- 364 (c) In reckless disregard for the rights of a beneficiary
- 365 under a life insurance contract.

366
 367 Any person who pursues a claim under this subsection shall post
 368 in advance the costs of discovery. Such costs shall be awarded
 369 to the authorized insurer if no punitive damages are awarded to
 370 the plaintiff.

371 ~~(9)-(6)~~ This section does ~~shall~~ not be ~~construed to~~
 372 authorize a class action suit against an authorized insurer or a
 373 civil action against the commission, the office, or the
 374 department or any of their employees, or to create a cause of
 375 action when an authorized health insurer refuses to pay a claim

376 | for reimbursement on the ground that the charge for a service
 377 | was unreasonably high or that the service provided was not
 378 | medically necessary.

379 | (10)~~(7)~~ In the absence of expressed language to the
 380 | contrary, this section shall not be construed to authorize a
 381 | civil action or create a cause of action against an authorized
 382 | insurer or its employees who, in good faith, release information
 383 | about an insured or an insurance policy to a law enforcement
 384 | agency in furtherance of an investigation of a criminal or
 385 | fraudulent act relating to a motor vehicle theft or a motor
 386 | vehicle insurance claim.

387 | (11)~~(8)~~ The civil remedy specified in this section does
 388 | not preempt any other remedy or cause of action provided for
 389 | pursuant to any other statute or pursuant to the common law of
 390 | this state. Any person may obtain a judgment under either the
 391 | common-law remedy of bad faith or this statutory remedy, but is
 392 | ~~shall not be~~ entitled to a judgment under both remedies. This
 393 | section does ~~shall not be construed to~~ create a common-law cause
 394 | of action. The damages recoverable pursuant to this section
 395 | shall include those damages which are a reasonably foreseeable
 396 | result of a specified violation of this section by the
 397 | authorized insurer and may include an award or judgment in an
 398 | amount that exceeds the policy limits.

399 | (12)~~(9)~~ A surety issuing a payment or performance bond on
 400 | the construction or maintenance of a building or roadway project

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

402 Section 4. Subsection (1) of section 627.428, Florida
 403 Statutes, is amended to read:

404 627.428 Attorney fees.—

405 (1) Except as provided in subsection (4), upon the
 406 rendition of a judgment or decree by any of the courts of this
 407 state in an action brought pursuant to chapter 86 for the
 408 determination of insurance coverage against an insurer which
 409 denied coverage and in favor of any named or omnibus insured or
 410 the named beneficiary under a policy or contract executed by the
 411 insurer, the trial court or, in the event of an appeal in which
 412 the insured or beneficiary prevails, the appellate court shall
 413 adjudge or decree against the insurer and in favor of the
 414 insured or beneficiary a reasonable sum as fees or compensation
 415 for the insured's or beneficiary's attorney prosecuting the suit
 416 under chapter 86 in which the recovery is had. Such fees or
 417 compensation are limited to fees incurred in the action filed
 418 pursuant to chapter 86 for the determination of insurance
 419 coverage.

420 Section 5. Subsection (1) of section 626.9373, Florida
 421 Statutes, is amended to read:

422 626.9373 Attorney fees.—

423 (1) Except as provided in subsection (3), upon the
 424 rendition of a judgment or decree by any court of this state in
 425 an action brought pursuant to chapter 86 for the determination

426 of insurance coverage against a surplus lines insurer which
 427 denied coverage and in favor of any named or omnibus insured or
 428 the named beneficiary under a policy or contract executed by the
 429 insurer ~~on or after the effective date of this act,~~ the trial
 430 court or, if the insured or beneficiary prevails on appeal, the
 431 appellate court, shall adjudge or decree against the insurer in
 432 favor of the insured or beneficiary a reasonable sum as fees or
 433 compensation for the insured's or beneficiary's attorney
 434 prosecuting the lawsuit ~~for which recovery is awarded.~~ Such fees
 435 or compensation are limited to fees incurred in the action filed
 436 pursuant to chapter 86 for the determination of insurance
 437 coverage.

438 Section 6. Section 768.0427, Florida Statutes, is created
 439 to read:

440 768.0427 Admissibility of evidence to prove medical
 441 expenses in personal injury or wrongful death actions;
 442 disclosure of letters of protection; recovery of past and future
 443 medical expenses damages.-

444 (1) DEFINITIONS.-As used in this section, the term:

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

448 (b) "Health care coverage" means any third-party health
 449 care or disability services financing arrangement, including,
 450 but not limited to, arrangements with entities certified or

451 authorized under federal law or under the Florida Insurance
 452 Code; state or federal health care benefit programs; workers'
 453 compensation; and personal injury protection.

454 (c) "Health care provider" means any of the following
 455 professionals and entities, and professionals and entities
 456 similarly licensed in another jurisdiction:

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

458 2. A clinical laboratory providing services in this state
 459 or services to health care providers in this state, if the
 460 clinical laboratory is certified by the Centers for Medicare and
 461 Medicaid Services under the federal Clinical Laboratory
 462 Improvement Amendments and the federal rules adopted thereunder.

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

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

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

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

470 7. A provider licensed under chapter 394 or chapter 397
 471 and its clinical and nonclinical staff providing inpatient or
 472 outpatient services.

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

474 9. A pharmacy permitted under chapter 465.

475 (d) "Letter of Protection" means any arrangement by which

476 a health care provider renders treatment in exchange for a
477 promise of payment for the claimant's medical expenses from any
478 judgment or settlement of a personal injury or wrongful death
479 action. The term includes any such arrangement, regardless of
480 whether referred to as a letter of protection.

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

486 (a) Evidence offered to prove the amount of damages for
487 past medical treatment or services that have been satisfied is
488 limited to evidence of the amount actually paid, regardless of
489 the source of payment.

490 (b) Evidence offered to prove the usual and customary
491 amount necessary to satisfy unpaid charges for incurred medical
492 treatment or services is limited to evidence as provided in this
493 paragraph.

494 1. If the claimant has health care coverage other than
495 Medicare or Medicaid, evidence of the amount which such health
496 care coverage is obligated to pay the health care provider to
497 satisfy the charges for the claimant's incurred medical
498 treatment or services, plus the claimant's share of medical
499 expenses under the insurance contract or regulation.

500 2. If the claimant has health care coverage but obtains

501 treatment under a letter of protection or otherwise does not
502 submit charges for any health care provider's medical treatment
503 or services to health care coverage, evidence of the amount the
504 claimant's health care coverage would pay the health care
505 provider to satisfy the past unpaid medical charges under the
506 insurance contract or regulation, plus the claimant's share of
507 medical expenses under the insurance contract or regulation, had
508 the claimant obtained medical services or treatment pursuant to
509 the health care coverage.

510 3. If the claimant does not have health care coverage
511 consistent with subparagraph 1., evidence of 120 percent of the
512 Medicare reimbursement rate in effect on the date of the
513 claimant's incurred medical treatment or services, or, if there
514 is no applicable Medicare rate for a service, 170 percent of the
515 applicable state Medicaid rate.

516 4. If the claimant obtains medical treatment or services
517 under a letter of protection and the health care provider
518 subsequently transfers the right to receive payment under the
519 letter of protection to a third party, evidence of the amount
520 the third party paid or agreed to pay the health care provider
521 in exchange for the right to receive payment pursuant to the
522 letter of protection.

523
524 Any evidence that does not otherwise meet the requirements of
525 this paragraph may be admitted into evidence, if it is otherwise

526 admissible.

527 (c) Evidence offered to prove the usual and customary
528 amount of damages for any future medical treatment or services
529 the claimant will receive is governed by this paragraph.

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

536 2. If the claimant does not have health care coverage
537 consistent with subparagraph 1., evidence of 120 percent of the
538 Medicare reimbursement rate in effect at the time of trial for
539 the medical treatment or services the claimant will receive, or,
540 if there is no applicable Medicare rate for a service, 170
541 percent of the applicable state Medicaid rate.

542
543 Any evidence that does not otherwise meet the requirements of
544 this paragraph may be admitted into evidence, if it is otherwise
545 admissible.

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

549 (e) Individual contracts between providers and authorized
550 commercial insurers or authorized health maintenance

551 organizations are not subject to discovery or disclosure and are
552 not admissible into evidence.

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

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

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

562 1. For health care providers billing at the provider
563 level, the American Medical Association's Current Procedural
564 Terminology (CPT), or the Healthcare Common Procedure Coding
565 System (HCPCS), in effect on the date the services were
566 rendered.

567 2. For health care providers billing at the facility level
568 for expenses incurred in a clinical or outpatient setting,
569 including when billing through an Ambulatory Payment
570 Classification (APC) or Enhanced Ambulatory Patient Grouping
571 (EAPG), the International Classification of Diseases (ICD)
572 diagnosis code and, if applicable, the American Medical
573 Association's Current Procedural Terminology (CPT), in effect on
574 the date the services were rendered.

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

576 for expenses incurred in an inpatient setting, including when
577 billing through a Diagnosis Related Group (DRG), the
578 International Classification of Diseases (ICD) diagnosis and
579 procedure codes in effect on the date in which the claimant is
580 discharged.

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

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

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

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

592 (e) Whether the claimant was referred for treatment under
593 a letter of protection and, if so, the identity of the person
594 who made the referral. If the referral is made by the claimant's
595 attorney, disclosure of the referral is permitted, and evidence
596 of such referral is admissible notwithstanding s. 90.502.
597 Moreover, in such situation, the financial relationship between
598 a law firm and a medical provider, including the number of
599 referrals, frequency, and financial benefit obtained, is
600 relevant to the issue of the bias of a testifying medical

601 provider.

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

609 (a) Amounts actually paid by or on behalf of the claimant
 610 to a health care provider who rendered medical treatment or
 611 services;

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

615 (c) Amounts necessary to provide for any reasonable and
 616 necessary medical treatment or services the claimant will
 617 receive in the future.

618 Section 7. Section 768.0701, Florida Statutes, is created
 619 to read:

620 768.0701 Premises liability for criminal acts of third
 621 parties.—Notwithstanding s. 768.81(4), in an action for damages
 622 against the owner, lessor, operator, or manager of commercial or
 623 real property brought by a person lawfully on the property who
 624 was injured by the criminal act of a third party, the trier of
 625 fact must consider the fault of all persons who contributed to

626 the injury.

627 Section 8. Section 768.0706, Florida Statutes, is created
628 to read:

629 768.0706 Multifamily residential property safety and
630 security; presumption against liability.-

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

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

634 (b) "Multifamily residential property" means a residential
635 building, or group of residential buildings, such as apartments,
636 townhouses, or condominiums, consisting of at least five
637 dwelling units on a particular parcel.

638 (c) "Parcel" means real property for which a distinct
639 parcel identification number is assigned to the property by the
640 property appraiser for the county in which the property is
641 located.

642 (2) The owner or principal operator of a multifamily
643 residential property which substantially implements the
644 following security measures on that property has a presumption
645 against liability in connection with criminal acts that occur on
646 the premises which are committed by third parties who are not
647 employees or agents of the owner or operator:

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

651 apprehension.

652 2. A lighted parking lot illuminated at an intensity of at
653 least an average of 1.8 foot-candles per square foot at 18
654 inches above the surface from dusk until dawn or controlled by
655 photocell or any similar electronic device that provides light
656 from dusk until dawn.

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

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

662 5. A locking device on each window, each exterior sliding
663 door, and any other doors not used for community purposes.

664 6. Locked gates with key or fob access along pool fence
665 areas.

666 7. A peephole or door viewer on each dwelling unit door
667 that does not include a window or that does not have a window
668 next to the door.

669 (b) By January 1, 2025, the owner or principal operator of
670 a multifamily residential property has a crime prevention
671 through environmental design assessment that is no more than 5
672 years old completed for the property. Such assessment must be
673 performed by a law enforcement agency or a Florida Crime
674 Prevention Through Environmental Design Practitioner designated
675 by the Florida Crime Prevention Training Institute of the

676 Department of Legal Affairs. The owner or principal operator
677 must remain in substantial compliance with the assessment for
678 purposes of this paragraph.

679 (c)1. By January 1, 2025, the owner or principal operator
680 of a multifamily residential property provides proper crime
681 deterrence and safety training to their current employees. After
682 January 1, 2025, the owner or principal operator must provide
683 such training to an employee within 60 days after his or her
684 hire date for purposes of this paragraph.

685 2. For purposes of this paragraph, "proper crime
686 deterrence and safety training" means training which trains and
687 familiarizes employees with the security principles, devices,
688 measures, and standards set forth under paragraph (a), and which
689 is reviewed at least every 5 years and updated as necessary. The
690 owner or principal operator may request a law enforcement agency
691 or the Florida Crime Prevention Through Environmental Design
692 Practitioner performing the assessment under paragraph (b) to
693 review the training curriculum.

694 (3) The Florida Crime Prevention Training Institute of the
695 Department of Legal Affairs shall develop a proposed curriculum
696 or best practices for owners or principal operators to implement
697 such training. The state has no liability in connection with
698 providing a proposed training curriculum under this subsection.

699 (4) This section does not establish a private cause of
700 action.

701 Section 9. Subsection (4) of section 768.075, Florida
 702 Statutes, is amended to read:

703 768.075 Immunity from liability for injury to trespassers
 704 on real property.—

705 (4) A person or organization owning or controlling an
 706 interest in real property, or an agent of such person or
 707 organization, shall not be held liable for negligence that
 708 results in the death of, injury to, or damage to a person who is
 709 attempting to commit a criminal act ~~felony~~ or who is engaged in
 710 the commission of a criminal act ~~felony~~ on the property.

711 Section 10. Subsection (1) of section 768.79, Florida
 712 Statutes, is amended to read:

713 768.79 Offer of judgment and demand for judgment.—

714 (1) In any civil action for damages and in any civil
 715 action involving an insurance contract filed in the courts of
 716 this state, if a defendant files an offer of judgment which is
 717 not accepted by the plaintiff within 30 days, the defendant
 718 shall be entitled to recover reasonable costs and attorney's
 719 fees incurred by her or him or on the defendant's behalf
 720 pursuant to a policy of liability insurance or other contract
 721 from the date of filing of the offer if the judgment is one of
 722 no liability or the judgment obtained by the plaintiff is at
 723 least 25 percent less than such offer, and the court shall set
 724 off such costs and attorney's fees against the award. Where such
 725 costs and attorney's fees total more than the judgment, the

726 court shall enter judgment for the defendant against the
727 plaintiff for the amount of the costs and fees, less the amount
728 of the plaintiff's award. If a plaintiff files a demand for
729 judgment which is not accepted by the defendant within 30 days
730 and the plaintiff recovers a judgment in an amount at least 25
731 percent greater than the offer, she or he shall be entitled to
732 recover reasonable costs and attorney's fees incurred from the
733 date of the filing of the demand. If rejected, neither an offer
734 nor demand is admissible in subsequent litigation, except for
735 pursuing the penalties of this section.

736 Section 11. Subsection (2) of section 768.81, Florida
737 Statutes, is amended, and subsection (6) is added to that
738 section, to read:

739 768.81 Comparative fault.—

740 (2) EFFECT OF CONTRIBUTORY FAULT.—In a negligence action,
741 contributory fault chargeable to the claimant diminishes
742 proportionately the amount awarded as economic and noneconomic
743 damages for an injury attributable to the claimant's
744 contributory fault, but does not bar recovery, subject to
745 subsection (6).

746 (6) GREATER PERCENTAGE OF FAULT.—In a negligence action to
747 which this section applies, any party found to be greater than
748 50 percent at fault for his or her own harm may not recover any
749 damages. This subsection does not apply to an action for damages
750 for personal injury or wrongful death arising out of medical

751 negligence pursuant to chapter 766.

752 Section 12. Paragraphs (a) and (j) of subsection (1) of
753 section 475.01, Florida Statutes, are amended to read:

754 475.01 Definitions.—

755 (1) As used in this part:

756 (a) "Broker" means a person who, for another, and for a
757 compensation or valuable consideration directly or indirectly
758 paid or promised, expressly or impliedly, or with an intent to
759 collect or receive a compensation or valuable consideration
760 therefor, appraises, auctions, sells, exchanges, buys, rents, or
761 offers, attempts or agrees to appraise, auction, or negotiate
762 the sale, exchange, purchase, or rental of business enterprises
763 or business opportunities or any real property or any interest
764 in or concerning the same, including mineral rights or leases,
765 or who advertises or holds out to the public by any oral or
766 printed solicitation or representation that she or he is engaged
767 in the business of appraising, auctioning, buying, selling,
768 exchanging, leasing, or renting business enterprises or business
769 opportunities or real property of others or interests therein,
770 including mineral rights, or who takes any part in the procuring
771 of sellers, purchasers, lessors, or lessees of business
772 enterprises or business opportunities or the real property of
773 another, or leases, or interest therein, including mineral
774 rights, or who directs or assists in the procuring of prospects
775 or in the negotiation or closing of any transaction which does,

776 or is calculated to, result in a sale, exchange, or leasing
 777 thereof, and who receives, expects, or is promised any
 778 compensation or valuable consideration, directly or indirectly
 779 therefor; and all persons who advertise rental property
 780 information or lists. A broker renders a professional service
 781 and is a professional within the meaning of s. 95.11(4)(b) ~~s.~~
 782 ~~95.11(4)(a)~~. Where the term "appraise" or "appraising" appears
 783 in the definition of the term "broker," it specifically excludes
 784 those appraisal services which must be performed only by a
 785 state-licensed or state-certified appraiser, and those appraisal
 786 services which may be performed by a registered trainee
 787 appraiser as defined in part II. The term "broker" also includes
 788 any person who is a general partner, officer, or director of a
 789 partnership or corporation which acts as a broker. The term
 790 "broker" also includes any person or entity who undertakes to
 791 list or sell one or more timeshare periods per year in one or
 792 more timeshare plans on behalf of any number of persons, except
 793 as provided in ss. 475.011 and 721.20.

794 (j) "Sales associate" means a person who performs any act
 795 specified in the definition of "broker," but who performs such
 796 act under the direction, control, or management of another
 797 person. A sales associate renders a professional service and is
 798 a professional within the meaning of s. 95.11(4)(b) ~~s.~~
 799 ~~95.11(4)(a)~~.

800 Section 13. Paragraph (h) of subsection (1) of section

801 475.611, Florida Statutes, is amended to read:

802 475.611 Definitions.—

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

804 (h) "Appraiser" means any person who is a registered
 805 trainee real estate appraiser, a licensed real estate appraiser,
 806 or a certified real estate appraiser. An appraiser renders a
 807 professional service and is a professional within the meaning of
 808 s. 95.11(4)(b) ~~s. 95.11(4)(a)~~.

809 Section 14. Subsection (7) of section 517.191, Florida
 810 Statutes, is amended to read:

811 517.191 Injunction to restrain violations; civil
 812 penalties; enforcement by Attorney General.—

813 (7) Notwithstanding s. 95.11(4)(f) ~~s. 95.11(4)(e)~~, an
 814 enforcement action brought under this section based on a
 815 violation of any provision of this chapter or any rule or order
 816 issued under this chapter shall be brought within 6 years after
 817 the facts giving rise to the cause of action were discovered or
 818 should have been discovered with the exercise of due diligence,
 819 but not more than 8 years after the date such violation
 820 occurred.

821 Section 15. Subsection (2) of section 627.441, Florida
 822 Statutes, is amended to read:

823 627.441 Commercial general liability policies; coverage to
 824 contractors for completed operations.—

825 (2) A liability insurer must offer coverage at an

826 appropriate additional premium for liability arising out of
 827 current or completed operations under an owner-controlled
 828 insurance program for any period beyond the period for which the
 829 program provides liability coverage, as specified in s.
 830 255.0517(2)(b). The period of such coverage must be sufficient
 831 to protect against liability arising out of an action brought
 832 within the time limits provided in s. 95.11(3)(b) ~~s.~~
 833 ~~95.11(3)(c)~~.

834 Section 16. The Division of Law Revision is directed to
 835 replace the phrase "the effective date of this act" wherever it
 836 occurs in this act with the date this act becomes a law.

837 Section 17. The procedural changes within this act are
 838 remedial in nature and shall apply to all pending and
 839 prospective claims.

840 Section 18. This act shall take effect upon becoming a
 841 law.