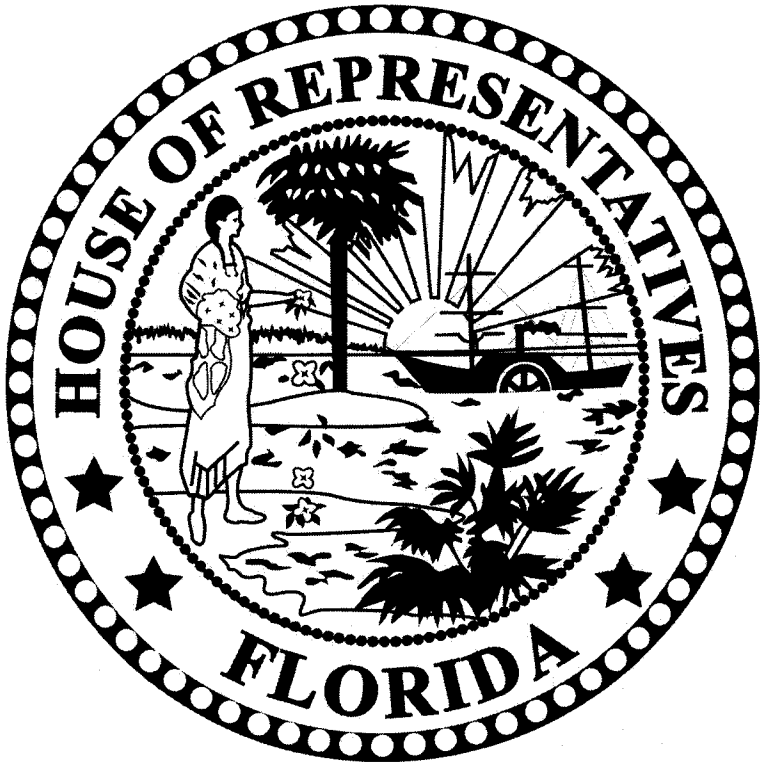

Jobs & Entrepreneurship Council

Thursday, October 4, 2007
1:45 pm – 4:15 pm
404 HOB

Marco Rubio
Speaker

Ron Reagan
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Jobs & Entrepreneurship Council

Start Date and Time:	Thursday, October 04, 2007 01:45 pm
End Date and Time:	Thursday, October 04, 2007 04:15 pm
Location:	404 HOB
Duration:	2.50 hrs

Consideration of the following bill(s):

HB 13C Motor Vehicle Insurance by Bogdanoff
HB 15C Pub. Rec./Personal Identifying Information & Property Damage Liability Insurance Policies/DHSMV by Bogdanoff

NOTICE FINALIZED on 10/04/2007 07:58 by SJG

HB 13C
Bogdanoff

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 13C Motor Vehicle Insurance
SPONSOR(S): Bogdanoff
TIED BILLS: HB 15C **IDEN./SIM. BILLS:** SB 40C

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Insurance	11 Y, 1 N	Overton	Overton
2) Jobs & Entrepreneurship Council		Overton	Thorn
3)			
4)			
5)			

SUMMARY ANALYSIS

In 2003, the Legislature repealed the Florida Motor Vehicle No-Fault law and provided that the repeal would take effect October 1, 2007, unless the provisions were reenacted by the Legislature. The Legislature did not reenact the No-Fault Law, so the law is no longer in effect.

This bill reenacts the No-Fault Law as it existed on September 31, 2007 for policies issued on or after the date the bill becomes law. Additionally, the bill reenacts and revises the No-Fault law for polices issued on or after January 15, 2008 and provides procedures for the transition.

Under the Florida Motor Vehicle No-Fault law motor vehicle owners had to maintain $10,000 worth of first-party insurance known as Personal Injury Protection, which is commonly referred to as PIP. For polices issued on or after January 15, 2008, the PIP requirement is revised.

- PIP will continue to cover 80% of medical expenses up to $10,000, but the benefits are limited to services and care provided, ordered, or prescribed by a physician, osteopath, or dentist or provided by other specified health care providers.
- Insurers may limit PIP reimbursement to 80% of a schedule of maximum charges based on usual and customary charges, or the Medicare or the workers' compensation fee schedule, depending on both the service and the entity providing the service.
- The PIP insurer must reserve $5,000 of PIP benefits for payment to physicians rendering emergency care or inpatient care in the hospital.
- Deductibles would no longer be allowed for PIP.

The Attorney General and the Office of Insurance Regulation are given additional authority to investigate and initiate actions against an insurer that fails to pay valid PIP claims with such frequency as to indicate a general business.

The bill clarifies that property damage liability insurance is mandatory and the requirement remains effective during any period that PIP is not required.

Except as provided, the bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility - The bill requires that motor vehicle owners maintain first-party security for medical care and services rendered as a result of a motor vehicle accident.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Florida Motor Vehicle No-Fault Law

In 2003, the Legislature repealed the Florida Motor Vehicle No-Fault law.[1] The law provided that the repeal will take effect October 1, 2007, unless the provisions are reenacted by the Legislature.[2] The Legislature did not reenact the law and it is currently repealed.

Personal Injury Protection (PIP)

Under Florida's Motor Vehicle No-Fault Law, motor vehicle owners were required to maintain $10,000 worth of first-party insurance known as Personal Injury Protection, which is commonly referred to as PIP. PIP coverage provides up to $10,000 per person for loss sustained as a result of bodily injury, sickness, disease, or death that arises from owning, maintaining, or using an insured motor vehicle. PIP benefits are available for certain express damages sustained in a motor vehicle accident, regardless of fault.

In exchange for the automatic $10,000 PIP benefit, the insured motor vehicle owner may not sue for damages covered by PIP. Additionally, the motor vehicle owner is immune from liability for damages covered by PIP. Nonetheless, special (economic) damages such as medical expenses in excess of the PIP benefit may be recovered in tort, as may a limited class of general (non-economic) damages for extreme forms of pain and suffering.[3]

PIP coverage extends to the named insured, relatives who reside in the same household, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and other persons struck by the insured motor vehicle who suffer bodily injury and are not occupants of a self-propelled vehicle at the time that they suffer the injury.[4] Required PIP benefits are detailed in section 627.736(1), Florida Statutes. They include the following: 80% of medically necessary expenses, 60% of lost wages, 100% of replacement services (household-type services that the injured party would provide in the absence of the injury), and a $5,000 death benefit.

Since the No-Fault law has been repealed, motor vehicle owners are no longer required to have PIP and are no longer covered by the immunity provision that protects the insured from tort actions by others for pain, suffering, mental anguish, and inconvenience arising out of the vehicle accident.

---

[1] The affected sections are: ss. 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S. Insurers are authorized to provide, in all policies issued or renewed after October 1, 2006, that such policies may terminate on or after October 1, 2007.

[2] Section 19, ch. 2003-411, L.O.F.

[3] Under section 627.737(2), a person may sue in tort for pain and suffering as a result of a motor vehicle accident only if there is: (a) significant and permanent loss of an important bodily function; (b) permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; (c) significant and permanent scarring or disfigurement; or (d) death. This is referred to as "piercing the verbal threshold."

[4] Section 627.736(1), F.S.

PIP Fraud

Over time, PIP has been subject to a variety of fraudulent activities. Examples of PIP fraud include: solicitation of individuals to participate in fraud; staging motor vehicle accidents; billing for treatment that never occurred; and overbilling/build-up of legitimate claims. In 2000, the Fifteenth Statewide Grand Jury issued a report on PIP Fraud, which concluded that PIP is beset with fraud. It made a number of recommendations for addressing fraud, many of which were adopted by the Legislature in 2001 and 2003.

In 2001, legislation was enacted that did the following: provided a medical fee schedule for certain diagnostic procedures; provided additional funding for anti-fraud measures; provided additional funding for assistant state attorneys and fraud investigators; prohibited payment to brokers; required the Agency for Health Care Administration (AHCA) to license medical clinics; and increased fraud penalties.[5]

In 2003, legislation was enacted that did the following: increased restrictions on access to medical reports; increased health care clinic regulation; provided that insurers do not have to pay PIP benefits if the insured has committed PIP fraud; required the Department of Health (DOH) to create a list of diagnostic tests that are not deemed to be medically necessary, and provided that insurers do not have to pay for invalid diagnostic tests; prohibited unlawful solicitation of business within 60 days after a motor vehicle accident; prohibited lawyers and licensed health care providers from ever soliciting business; gave a felony designation to certain PIP fraud crimes (solicitation with intent to defraud, using confidential information from police reports, unlawfully obtaining/using confidential accident reports, operating unlicensed clinics, filing false insurance application or creating false insurance record, and organizing, planning, or participating in an intentional motor vehicle collision).[6] Additionally, the legislation provided for the Florida Motor Vehicle No-Fault Law to sunset on October 1, 2007.

The Division of Insurance Fraud (DIF) has continued to handle an increasing number of fraud cases. From 2002 to 2005, PIP fraud referrals have increased 300%, from 615 referrals to 2,628 referrals; between 2002 and 2005, PIP fraud referrals made up 15% of all referrals to the Division of Insurance Fraud.[7] There were 225 convictions for PIP fraud during the fiscal year 2005-2006, which made up 36% of the 620 total insurance fraud convictions for that year.[8] Of those 225 convictions, 124 were for staged motor vehicle accidents.

Effect of the Bill

Reenacting the Motor Vehicle No-Fault Law

The bill reenacts the Florida Motor Vehicle No-Fault Law effective upon the bill becoming a law for polices effective on or after October 1, 2007, but before January 15, 2008. The changes to the PIP benefit are effective on January 15, 2008. The bill is intended to be remedial and curative in nature and to minimize confusion concerning the changes made to ss. 627.730-627.7405, Florida Statutes. Therefore, the Florida Motor Vehicle No-Fault Law shall continue to be codified in the same sections of the Florida Statutes.

Property Damage Liability Coverage

The repeal of the No-Fault law has caused uncertainly as to whether the mandatory requirement for property damage liability insurance of at least $10,000 is still in effect, and what authority, if any, the Department of Highway Safety and Motor Vehicles (DHSMV) has to enforce the requirement. A recent

[5] Ch. 2001-271, Laws of Florida.
[6] Ch. 2003-411, Laws, of Florida.
[7] Report of Senate Committee on Banking and Insurance, Report No. 2006-102, dated Nov. 2005.
[8] Florida Department of Financial Services, 2006 Stat Pack, recorded on July 21, 2006.

legal opinion from DHSMV concluded that the repeal of No-Fault does not affect the requirement for maintaining property damage (PD) liability coverage.[9] However, the requirement that motor vehicle policies must also provide coverage for property damage liability is found in s. 627.7275(1), F.S., which is part of the No-Fault law which sunsetted. Additionally, some enforcement provisions refer only to the PIP mandate.

Effective upon the bill becoming a law, the bill clarifies that property damage liability insurance is mandatory and remains effective during any period that PIP is not required.

Additionally, the bill:

- Amends s. 316.646, F.S., to require persons to have proof of PD liability coverage (insurance card) in their immediate possession while operating a motor vehicle (as currently required for PIP).

- Amends s. 320.02, F.S., to specify that proof of PD liability presented at registration is not a warranty of its accuracy and that neither the DHSMV or any tax collector is liable for any insufficiency or falsification (as currently provided for PIP).

- Amends s. 321.245, F.S., relating to use of certain funds in the Highway Safety Operating Trust Fund, to correct a cross-reference to provisions that are transferred by the bill.

- Amends s. 324.022, F.S., to clarify that $10,000 of PD liability coverage is mandatory for specified motor vehicles.

- Creates s. 324.0221, F.S., to enforce mandatory PD liability and PIP, as required for PIP in ss. 627.733(6)-(7) and 627.736(9), F.S. (repealed on October 1, 2007). This section requires insurers to report to DHSMV policy cancellations, non-renewals, and new policies written, and requires DHSMV to suspend the driver's license of persons who do not obtain the required coverage. A person whose license is suspended is subject to a $150 driver's license reinstatement fee, $250 for a second reinstatement, and $500 for each subsequent reinstatement within a 3-year period. These are the same requirements for enforcing PIP/PD that were subject to repeal on October 1 2007, except that the public records exemption for the reports by insurers is deleted.[10]

- Amends. 627.7275, F.S., related to motor vehicle liability policies, to make technical conforming changes. This section maintains the requirement that a policy providing PIP coverage must also include PD liability coverage.

- Amends s. 627.7295, F.S., which currently requires a policy that provides both PIP and PD liability to be non-cancellable for a 60-day period and to require a minimum two months down payment of the premium, with exceptions. The bill specifies that this requirement applies to a policy providing PIP, PD liability, or both. (This section is not subject to repeal.)

Limitation on Providers

The PIP medical benefit in effect prior to October 1, 2007, paid for 80% of all reasonable expenses for medically necessary medical, surgical, x-ray, dental, and rehabilitative services.[11] There was no limitation on who provided, ordered, or prescribed the services.

---

[9] See Memos dated 8/21/07 and 8/24/07 from Michael J. Alderman, Senior Assistant General Counsel, DHSMV, to Electra Theodorides-Bustle, Executive Director, DHSMV, regarding Enforcement of Motor Vehicle Property Liability Insurance Requirement of Section 324.022, Florida Statutes, etc. on file with the House Committee on Insurance

[10] HB 15C would create a new public records exemption for this information.

[11] Section 627.736(1)(a), F.S.

The bill provides that for policies effective or renewed on or after January 15, 2008, PIP will continue to pay 80% of medical expenses up to $10,000, but reimbursement is limited to the following medical services and care:

- Services and care that are *provided, ordered, or prescribed by*:
  - A physician licensed under chapter 458.
  - An osteopath licensed under chapter 459.
  - A dentist licensed under chapter 466.

- Services and care that are *provided by*:
  - A chiropractic physician licensed under chapter 460.
  - A hospital or ambulatory surgical center licensed under chapter 395.
  - Emergency transportation and treatment by a person or entity licensed under ss. 401.2101-401.45.
  - An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, or dentists licensed under chapter 466, or by such practitioner or practitioners and the spouse, parent, child, or sibling of that practitioner or those practitioners.
  - An entity wholly owned, directly or indirectly, by a hospital or hospitals.

- Services and care that are *provided by*:
  - A health care clinic licensed pursuant to ss. 400.990-400.995 which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, or the Accreditation Association for Ambulatory Health Care, Inc.

- Services and care that are *provided by* a health care clinic licensed pursuant to ss. 400.990-400.995, but not accredited by one of the organizations above, that meets all of the following:
  - Has a medical director that is a Florida licensed physician, osteopath, or chiropractor;
  - Has either been continuously licensed for more than three years or is a publicly traded corporation; and
  - Provides at least four of the following medical specialties: 1) general medicine; 2) radiography; 3) orthopedic medicine; 4) physical medicine; 5) physical therapy; 6) physical rehabilitation; 7) prescribing or dispensing outpatient prescription medication; 8) laboratory services.

Current law does not limit the types of providers that can order or provide reimbursable services under PIP. Specifically delineating and limiting the types of providers may give insurers more control over what they pay for and may reduce the likelihood of fraud.

Health Care Clinics

Part XIII of ch. 400, F.S., contains the Health Care Clinic Act (Act) (ss. 400.990-400.995, F.S.). The Act was passed in 2003 to reduce fraud and abuse occurring in the PIP insurance system. Under the Act, the Agency for Health Care Administration (AHCA or agency) licenses health care clinics, ensures that such clinics meet basic standards, and provides administrative oversight. Any entity that meets the definition of a "clinic" (an entity at which health care services are provided to individuals and charges for reimbursement for such services) must be licensed as a clinic.[12] Every entity that meets the definition of a "clinic" must maintain a valid license with the AHCA at all times, and each clinic location must be licensed separately. Each clinic must file in its application for licensure information regarding the identity of the owners, medical providers employed, and the medical director and proof that the clinic is in compliance with applicable rules. The clinic must also present proof of financial ability to operate a

[12] Section 400.9905(4), F.S.

clinic. A level 2 background screening pursuant to ch. 435, F.S., is required of each applicant for clinic licensure. A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of *nolo contendere* or guilty to, any offense prohibited under the level 2 standards for screening or a violation of insurance fraud under s. 817.234, F.S., within the past 5 years.

Each clinic must have a medical director or clinic director who agrees in writing to accept legal responsibility pursuant to s. 400.9935, F.S., for various activities on behalf of the clinic, including:

- Conducting systematic reviews of clinic billings to ensure billings are not fraudulent or unlawful. If an unlawful charge is discovered, immediate corrective action must be taken;

- Allowing full and complete access to the premises and to billing records. (Licensed clinics are subject to unannounced inspections of the clinic by AHCA personnel to determine compliance with the Health Care Clinic Act and applicable rules. The agency may deny, revoke, or suspend a health care clinic license and impose administrative fines of up to $5,000 per violation pursuant to s. 400.995, F.S.); and

- Although all clinics must be licensed with the AHCA, s. 400.9905(4), F.S., contains a lengthy list of entities that are not considered a "clinic" for the purposes of clinic licensure.

Health care providers and practitioners may voluntarily apply to the AHCA for a certificate of exemption under the act, but are not required to do so. Such providers find it useful to obtain a certificate of exemption to present to an insurance company, particularly a PIP insurer, to prove that the provider is not required to be licensed as a health care clinic.

According to the Division of Insurance Fraud (DIF) officials, the magnitude of the PIP fraud problem is illustrated by the large number of health care clinics established in Florida under the Health Care Clinic Act (Act). Current figures indicate that over 65 percent[13] of the more than 2,435 medical clinics licensed by the AHCA statewide are located in Dade, Broward, and Palm Beach counties. Moreover, 4,590 clinics have received exemption certificates and are therefore subject to no state regulation. (This figure does not count the clinics that have decided not to file for an exemption certificate with the AHCA.) Division intelligence indicates that "hundreds" of these clinics have been established primarily in the South Florida area for the sole purpose of perpetrating PIP fraud according to DIF officials.[14]

Clinics are often not owned by a licensed medical professional and may be a higher fraud risk than other health care providers because their owners do not risk their ability to continue a medical profession. However, health care clinic licensure standards are minimal compared to other licensure programs, and focus on financial solvency, criminal background checks, and fraudulent billing rather than quality of care. In addition, unlike physician licensure, it is possible for one person or company to hold multiple clinic licenses and operate multiple clinics, and to more successfully seek a new license after discontinuing a prior license.

The bill imposes additional qualifications on health care clinics in order to receive PIP reimbursement, requiring health care clinics to either obtain accreditation by certain national accrediting organizations or meet additional criteria that lower the risk of fraud. The four accrediting organizations listed in the bill – the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, and the Accreditation Association for Ambulatory Health Care, Inc. - are all national organizations that accredit health care clinics. These accreditation organizations use rigorous processes in evaluating a provider's internal business practices, outcomes management and performance improvement, quality of services

[13] National Insurance Crime Bureau, White Paper: Addressing Personal Injury Protection Fraud through the Florida Medical Fraud Task Force (August 2005).
[14] Division of Fraud Budget Request, FY 2005-2006.

provided, and continuity of care to ensure high-quality care focused on the needs of the patients. Factors considered in the accreditation process include, but are not limited to, whether a provider has: retained adequate, competent medical personnel to provide services; acquired adequate space for providing necessary services; established a system of accountability that measures the success of its services by evaluating the outcomes achieved by its patients; established adequate procedures for managing health information internally and externally and obtaining informed consent; established a method for improving organizational performance; addressed ethical issues in providing patient care; developed procedures to ensure patient privacy; developed and implemented a safety and security plan and provides a safe environment for the patient, including the detection, prevention and control of infection; and developed a human resource plan that ensures adequate staffing and job training; a defined, clear, and active governance structure.

The bill imposes alternative criteria on non-accredited clinics for PIP reimbursement. Current clinic licensure law requires clinics to have a medical director who is a licensed medical doctor, osteopath, chiropractor or podiatrist.[15] The bill requires clinics to have a medical director who is a licensed medical doctor, osteopath or chiropractor to receive PIP reimbursement. In addition, the bill requires the non-accredited clinic to be continuously licensed for more than three years, or be a publicly traded corporation registered with the U.S. Securities and Exchange Commission. The three-year requirement would eliminate clinics that exist for a short period of time, often operated by a person or entity that opens and closes one new clinic after another, which is an indicator of possible fraud patterns.

Publicly traded corporations have enhanced fraud deterrents because they are subject to the federal Sarbanes-Oxley Act of 2002.[16] The Act established that, effective in 2006, all publicly-traded companies are required to submit an annual report of the effectiveness of their internal accounting controls to the Security and Exchange Commission. Provisions of the Sarbanes-Oxley Act detail criminal and civil penalties for noncompliance, certification of internal auditing and increased financial disclosure. All public U.S. companies and non-U.S. companies with a U.S. presence must comply with this law, the essence of which relates to corporate governance and financial disclosure. In addition to lawsuits, a corporate officer who does not comply with this law or submits an inaccurate certification is subject to a fine up to $1 million and ten years in prison, even if done mistakenly. If an incorrect certification was submitted purposely, the fine can be up to $5 million and twenty years in prison.

The bill also provides that the Financial Services Commission adopt by rule the form that must be used by an insurer and health care clinics to document that the health care clinic meets the applicable criteria and the rule must include a requirement for a sworn statement or affidavit.

Fee Schedules

Health care providers are not required by law to adhere to a fee schedule or utilization protocols for PIP in Florida except for a limited number of specified diagnostic procedures. For all other procedures, medical health providers may be compensated for "medically necessary" services and may charge "a reasonable amount...for the services and supplies rendered."[17] Charges in excess of the amount customarily charged are prohibited. In determining whether a charge is reasonable "consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute" along with "reimbursement levels in the community and various federal and state medical fee schedules applicable to automobile and other insurance coverages" and "other information relevant to the reasonableness of the reimbursement of the service, treatment or supply."

---

[15] Sections 400.9905(5), 400.9935, F.S.

[16] See www.Sarbanes-Oxleycompliance. The Act, sponsored by US Senator Paul Sarbanes and US Representative Michael Oxley, represented one of the biggest changes to federal securities laws in recent history. The enactment of this law came as a result of the large corporate financial scandals involving Enron, WorldCom, Global Crossing and Arthur Anderson.

[17] Section 627.736(5), F.S.

Determining what are medically necessary treatments and the amount of reasonable charges is often litigated in Florida courts between providers and insures which further increases costs to the No-Fault system. In contrast, fee schedules are used in Florida to limit health care costs for workers' compensation, Medicare, and Medicaid, and contractual fee limits are common between health insurers and providers.

Due to rapidly rising costs for diagnostic tests in Florida, the Legislature enacted several exceptions that make certain diagnostic tests under PIP subject to the worker's compensation medical fee schedule under s. 440.13, F.S. [18] Also, nerve conduction testing (if medically necessary), cannot exceed 200 percent of the Medicare Part B fee schedule for the area where treatment was rendered.[19] Magnetic resonance imaging (MRI) tests cannot exceed 175 percent of the Medicare Part B fee schedule, unless offered at facilities accredited by specified organizations, in which case 200 percent of the Medicare Part B fee schedule may be charged.[20]

Medicare Fee Schedule

The Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services administers Medicare, the nation's largest health insurance program, which covers nearly 40 million Americans. Medicare is a health insurance program for people 65 years of age and older, some disabled people under 65 years of age, and people with End-Stage Renal Disease (permanent kidney failure treated with dialysis or a transplant).

Medicare Part A (hospital insurance) covers medically necessary inpatient care in hospitals, including critical access hospitals, and skilled nursing facilities (not custodial or long-term care). It also covers hospice care and some home health care.[21] Medicare Part B (medical insurance) covers medically necessary doctors' services and outpatient medical and surgical services and supplies, diagnostic tests, ambulatory surgery center facility fees for approved procedures, and durable medical equipment. Part B also covers outpatient mental health care, outpatient occupational and physical therapy, home health care, and various preventive medical screenings.[22]

Medicare Parts A and B do not cover the following procedures:[23] acupuncture; chiropractic services;[24] cosmetic surgery; custodial care; deductibles, coinsurance or copayments when obtaining certain health care services; dental care and dentures; diabetic supplies; routine eye care or foot care exams; hearing aids and exams; hearing tests; laboratory tests (screening); long-term care; orthopedic shoes; routine or yearly physical exams; prescription drugs; preventive vaccinations; screening tests; or travel.[25] Under Medicare Part C, private insurers approved by Medicare provide for this coverage. Medicare Part D offers prescription drug coverage for everyone with Medicare.

Medicare is subject to a fee schedule under federal law which is a comprehensive listing of fee maximums that are used to reimburse physicians and other providers on a fee-for-service basis. CMS develops fee schedules for physicians, ambulance services, clinical laboratory services, and durable

---

[18] Section 627.736(5)(b)2., F.S, provides that the diagnostic tests subject to the worker's compensation fee schedule are cephalic thermograms, peripheral thermograms, spinal ultrasounds, extremity ultrasounds, video fluoroscopy, and surface electromyography.
[19] Section 627.736(5)(b)3., F.S. The Medicare Part B fee schedule for 2001 is used, as adjusted yearly to reflect changes in the Consumer Price Index for All Urban Consumers in the South Region as determined by the U.S. Bureau of Labor Statistics in the Department of Labor.
[20] Id.
[21] Beneficiaries must meet certain conditions to get these benefits. Most people don't pay a premium for Part A because they or a spouse already paid for it through their payroll taxes while working.
[22] See, Centers for Medicare & Medicaid Services, *Medicare & You, 2007*, the official government handbook on Medicare, which can be found online at http://www.medicare.gov/publications/pubs/pdf/10050.pdf. Most people pay a monthly premium for coverage under Part B.
[23] There are some exceptions to this list. See, *Medicare & You, 2007*, page 21, noted under footnote 16.
[24] Except to correct a subluxation (when one or more of the bones of the spine moves out of position) using manipulation of the spine.
[25] Travel relates to health care a person receives traveling outside of the U.S.

medical equipment, prosthetics, orthotics, and supplies. Each year the CMS revises the fee schedules and covered benefits under Medicare.

In general, the Medicare fee schedule classifies different patient conditions and illnesses into diagnosis related groups (DRG) and reimbursement amounts vary depending on the region of the country where treatment is rendered.[26]

Florida's Workers' Compensation Reimbursement Provisions

In workers' compensation, the three-member panel ("panel"), consisting of the Chief Financial Officer, or designee, and two members appointed by the Governor, is charged with the responsibility for determining statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians and hospitals.[27] The panel must annually adopt reimbursement schedules for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers (ASC), work hardening programs, pain programs and durable medical equipment. The panel considers the level of payment by other programs, the impact on cost to employers and the impact of reimbursement allowances on health care providers. It authorizes three reimbursement manuals (one for individual health care providers, one for ambulatory surgical centers and one for hospitals). Any provider and insurer may enter into a contract or a managed care agreement setting another reimbursement level.[28] An individual physician, hospital, ASC, work hardening program or pain program must be reimbursed based on either the agreed-upon contract price or the maximum reimbursement allowance in the appropriate schedule.

Specifically, maximum reimbursement allowances (MRAs) for physician services are statutorily tied to Medicare, with physicians reimbursed at 140 percent of Medicare for surgical procedures and at 110 percent of Medicare for most other services.[29] Approximately 600 physician services not covered by Medicare, but covered by workers' compensation, are reimbursed at the 2003 MRA amount. For services not covered by MRAs, the physician's fee is negotiated based on documentation submitted to the insurer containing information on medical necessity clinical data, charges, fees, relative values, reimbursement and costs for similar procedures. However, the insurer and physician may negotiate fees above or below the fee schedule.

As to reimbursement for prescription medications, the statutory formula sets reimbursement at the average wholesale price, plus a $4.18 dispensing fee.

For hospitals, the insurer applies the Florida Workers' Compensation Hospital Reimbursement Manual to adjust and pay the bill. The manual sets reimbursement according to several criteria, which generally allow the following: inpatient services are set at a per diem allowance unless the total charge exceeds the stop loss point of $50,000, then reimbursement is 75 percent of the usual and customary charge; outpatient scheduled surgery services are set at 60 percent of the usual and customary charge, and, for most other outpatient services, reimbursement is 75 percent of the usual and customary charge. There are exceptions for outpatient non-emergency radiology and clinical laboratory, occupational therapy, physical therapy and speech therapy.[30]

---

[26] Florida Hospital Association, *Medicare 101: An Overview of Medicare Payment Systems* (2005), pg. 1.

[27] Section 440.13(12), F.S. The term 'physicians' encompasses health care providers.

[28] When issuing a bill for services, the health care provider uses one of four billing forms: the DWC-9 (individual providers and ambulatory surgical centers); the DWC-10 (pharmacists and medical supply providers); the DWC-11 (dentists); and the DWC-90 (hospitals). The insurer is required to pay or deny a claim within 45 days of receipt.

[29] *Id.* Physicians bill under the Current Procedural Terminology (CPT) code and Healthcare Common Procedure Coding System (HCPCS) including their usual and customary charge. The insurer applies the appropriate reimbursement manual to adjust and pay the bill according to applicable policy limitations and exceptions.

[30] These services are reimbursed based on CPT code (entered by the hospital on its bill) listed in the Health Care Provider Reimbursement Manual (HCPRM) and the insurer makes payment based on the maximum reimbursement allowance. The Hospital Reimbursement Manual incorporates the HCPRM for purposes of clinical lab, x-ray, occupational therapy, physical therapy and speech therapy.

Ambulatory surgical centers (ASC) bill under the appropriate Current Procedural Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes including their usual and customary charge from the facility's charge master.[31] The insurer applies the Surgical Centers Reimbursement Manual to adjust and pay the bill according to the maximum reimbursement allowances in the manual. For services not covered by MRAs, reimbursement is set at 70 percent of the ASC's usual and customary charge.

Medical supplier's bill under the HCPCS codes and the insurer applies the Provider Reimbursement Manual to adjust and pay the bill. In general, skilled nursing, home health, emergency transportation and durable medical equipment reimbursement are negotiated based on usual and customary charges. Rental items are paid at the rental price until the purchase price is exceeded and then it converts to the purchase price with a negotiated markup.

Section 440.134, F.S., provides that a self-insured employer or an insurer may furnish medical services through a managed care arrangement under the Workers' Compensation law.

Usual and Customary Charges

The "usual and customary charge" is a standard occasionally used in the health care industry to define third party reimbursement outside the context of a negotiated fee agreement between the payer and the provider. This standard is used in regulating health maintenance organizations (HMOs): Florida law sets the reimbursement amount for emergency services provided by providers that do not have a contract with the HMO at the lesser of the provider's charges or the usual and customary charge for the service, or the charge mutually agreed to within 60 days.[32] Similarly, this standard is used by the Florida Medicaid program: Florida law sets fee-for-service rates at the lesser of the amount billed, the usual and customary charge, or the maximum fee set by the Medicaid program.[33]

The usual and customary charge standard can be based on the individual provider billing habits or on the billing practices of the community of like providers in the relevant geographical area.

Fee Schedules in Other No-Fault States

Since medical treatment is the primary cost driver for PIP coverage, some states have enacted PIP medical fee schedules in an attempt to contain such costs. New York provides that charges for health services under its PIP law cannot exceed those contained in the state's worker's compensation fee schedule.[34] For treatments that are not included in the worker's compensation fee schedule, the state superintendent of insurance, chairman of the worker's compensation fee schedule board, and the commissioner of health are authorized to establish by rule and regulation fee schedules for such treatments.[35] New Jersey also has a PIP fee schedule, but limits fees to the 75th percentile of the practitioners within the region.[36] New Jersey authorizes the commissioner of insurance to contract with a proprietary purveyor of fee schedules for the maintenance of the fee schedule, which must be adjusted biennially for inflation and to add new medical procedures. Oregon also has a fee schedule for PIP benefits that is tied to its worker's compensation fee schedule.[37]

---

[31] The 'charge master' means for hospitals a comprehensive listing of all the goods and services for which the facility maintains a separate charge.
[32] Section 641.513(5), F.S.
[33] Section 409.908(3), F.S.
[34] N.Y. Ins. Law s. 5108(a).
[35] N.Y. Ins. Law s. 5108(b).
[36] N.J. Rev. Stat. 39:6A-4.6 (2004). New Jersey divides itself into three regions for the purpose of setting its fee schedules. See *New Jersey Automobile Fee Schedule.* http://www.state.nj.us/dobi/aicrapg.htm
[37] Or. Rev. Stat. s. 742.525 (2004).

New Jersey also has adopted treatment protocols for treatment rendered under PIP coverage.[38] The utilization protocols must be recognized by national standard setting organizations, national or state professional organizations of the same discipline as the treating provider, or those designated or approved by the commissioner of insurance in consultation with the applicable licensing boards in the New Jersey Division of Consumer Affairs.

Medical Fee Limitations in the Bill

For policies effective on or after January 15, 2007, the bill allows PIP insurers to limit reimbursement to 80% of the following schedule of maximum charges:

- Emergency transport and treatment by providers licensed under ch. 401, F.S. (emergency transportation): 200 percent of Medicare.
- Emergency services and care provided by a hospital licensed under ch. 395, F.S.: 75 percent of the hospital's usual and customary charges.
- Emergency services and care rendered by a physician and related inpatient services rendered by a physician: usual and customary charges in the community.
- Hospital inpatient services other than emergency services and care: 200 percent of Medicare Part A applicable to the hospital providing care.
- Hospital outpatient services other than emergency services and care: 200 percent of the Medicare Part A Ambulatory Payment Classification applicable to the hospital providing outpatient services.
- For all other medical services, supplies, and care: 200 percent of the applicable Medicare Part B fee schedule.

If medical care is not reimbursable under Medicare, the insurer may limit reimbursement to 80% of the maximum reimbursement under the workers' compensation fee schedule as determined under s. 440.13, F.S., and rules adopted pursuant to that section.

If services, supplies, or care are not reimbursable under Medicare or workers' compensation the insurer is not required to provide reimbursement.

The applicable fee schedule under Medicare is the fee schedule in effect at the time services, supplies, or care are provided and for the area in which such services are rendered. Thus, as Medicare fee schedules are revised by the Centers for Medicare and Medicaid services, those schedules would be used to calculate PIP reimbursement.

The bill neither authorizes nor prohibits insurers from applying utilization limits, but does clarify that the section of law authorizing the fee schedule does not allow the insurer to apply any utilization limits that apply under Medicare or workers' compensation.

An insurer that applies the PIP fee schedule must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether the provider would be entitled to reimbursement under Medicare due to restrictions on the type of health care provider that may be reimbursed for a particular procedure. Thus, a PIP insurer must provide reimbursement for care and treatment provided by any provider so long as the care is within the provider's practice license and Medicare provides reimbursement for such care or treatment to any type of provider.

A medical provider may not balance bill the insured for treatment and services for which they receive reimbursement from an insurer that applies the PIP fee schedule. However, the provider may bill insured for the 20 percent not paid by PIP. Also, once PIP benefits are exhausted, the PIP fee schedule does not apply to treatment and services for which the provider bills the patient or the patient's health insurer.

[38] N.J. Rev. Stat. 39:6A-3.1a and 39:6A-fa.

Priority of Payment for Physicians Rendering Care in a Hospital

Under current law, PIP reimbursements are due from an insurer 30 days after a medical service provider furnishes a written claim to the insurer and overdue payments are entitled to interest.[39] No funds are reserved for any purpose. Most service providers are required to submit their bills not more that 35 days after the service is rendered or the insurer is not required to pay the bill.[40] There is no time limit for submission of bills by hospitals and other providers of emergency services[41]; however, if they do not quickly submit their bills, they risk having benefits exhausted by other claims.

For policies issued on or after January 15, 2008, the bill provides that when the PIP insurer receives notice of an accident, the insurer must reserve $5,000 of PIP benefits for payment to physicians who provide emergency services and care, as defined in s. 395.002(9)[42], or who provide hospital inpatient care.

Thirty days after the insurer receives notice of an accident, the unclaimed amount of the reserve may be used to pay claims from other providers.

The required time to pay claims to other providers is tolled for the time period the insurer is required to hold such claims due to this requirement. For example, if the insurer receives a notice of accident on March 1st and then receives a bill for services from other than a physician on March 15th, then the insurer cannot pay the bill until March 30th, but has until April 28th before the bill is past due.

Death Benefits

The PIP death benefit in effect prior to October 1, 2007, was $5,000 per person.[43] The bill clarifies that the death benefit is equal to the lesser of $5,000 or the remainder of the unused personal injury protection benefits.

Demand Letter

For polices effect prior to October 1, 2007, the insurer must receive a demand letter prior to the initiation of litigation on the payment of a claim.[44] The demand letter must provide the insurer with name of the insured, the claim or policy number, and detailed information supporting the claim.[45]

If the insurer paid the claim within 15 days of receipt of the demand letter, the insurer was not obligated to pay attorney's fees.[46]

The bill extends the period of time for the insurer to pay the claim from 15 days to 30 days. This extension will give insurers more time to investigate claims before a lawsuit is filed.

Unfair or Deceptive Trade Practices

Under current law, the Office of Insurance Regulation is empowered to investigate insures to determine whether they are engaged in unfair or deceptive trade practices.[47] Insurers who engage in unfair trade

---

[39] Section 627.736(4), F.S.
[40] Section 627.736(5)(c)1.,F.S.
[41] Id.
[42] "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.
[43] Section 627.736(1)(c), F.S.
[44] Section 627.736(11), F.S.
[45] Section 627.736(11)(b), F.S
[46] Section 627.736(11)(d), F.S.

practices are subject to fines[48], cease and desist orders[49], and revocation of their authorization to conduct insurance business.[50]

The bill provides that an insurer who fails to pay valid claims for personal injury protection with such frequency so as to indicate a general business practice is engaging in a prohibited unfair or deceptive practice.

The Office of Insurance Regulation is given the authority within its regulatory jurisdiction to examine and investigate the affairs of insurers in this state in order to determine whether they have been or are engaged in the failure to pay valid claims for personal injury protection with such frequency so as to indicate a general business practice. Insurers who engage in such unfair trade practices will be subject to fines, cease and desist orders, and revocation of their authorization to conduct insurance business.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA), part II of ch. 501, F.S., provides remedies and penalties for "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."[51] Willful violations of FDUTPA occur when the person knew or should have known that the conduct was unfair, deceptive, or prohibited by rule.[52] Remedies for acts prohibited by FDUTPA may include an action to enjoin a person from committing such acts,[53] as well as the imposition of a civil penalty of not more than $10,000.[54] A person or entity found liable for a violation of FDUTPA may be assessed a civil penalty, but orders of restitution or reimbursement are given priority over the imposition of a civil penalty.[55]

Actions may be brought by a state attorney, the Department of Legal Affairs,[56] or by a consumer.[57] The Attorney General[58] or other enforcing authority may bring an action on behalf of a consumer or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.[59]

The bill authorizes the Department of Legal Affairs (Attorney General) to investigate and initiate actions for insurers who fails to pay valid claims for personal injury protection with such frequency so as to indicate a general business practice, utilizing the powers and duties specified in FDUTPA. [60]

Joinder of Claims

The bill requires that in any civil action brought to recover PIP benefits by a claimant against an insurer, all claims related to the same health care provider for the same injured patient must be brought in a

---

[47] Section 626.9561, F.S. See Chapter 626, Part IX, on prohibited unfair insurance trade practices.
[48] Section 626.9521(2), F.S.
[49] Section 626.9581, F.S.
[50] Id.
[51] Section 501.204, F.S.
[52] 10 Fla. Jur. 2d *Consumer Etc. Protection* s. 159 (2006).
[53] Section 501.207(1)(b), F.S.
[54] Section 501.2075, F.S. Under s. 501.2077, F.S., the penalty for a violation under FDUTPA involving persons over age 60 or handicapped persons is increased to $15,000 per violation.
[55] 10A Fla. Jur 2d *Consumer Etc. Protection* s. 159 (2006), cites s. 501.2077(3), F.S., for the general proposition that orders of restitution or reimbursement are given priority over the imposition of civil penalties. This section of statute, however, addresses violations involving senior citizens or handicapped persons. It is unclear whether reimbursement of creditors takes priority over payment of civil penalties where the victims are not senior citizens or handicapped persons.
[56] Section 501.203(2), F.S.
[57] Section 501.211(1), F.S.
[58] The Attorney General is the head of the Department of Legal Affairs. See s. 20.11, F.S.
[59] Section 501.207(1)(c), F.S.
[60] An exemption is created to the statutory exclusion in s. 501.212, F.S., that currently exempts entities regulated by the Office of Insurance Regulation from the Florida Unfair and Deceptive Trade Practices Act (ss. 501.201-501.213, F.S.).

single action, unless good cause can be shown why the claims should be brought separately. If a court determines that a civil action is filed for a claim that should have been brought in a prior civil action, the court may not award attorney's fees to the claimant.

Deductibles

Insurers have to offer PIP benefit for polices in effect prior to October 1, 2007 with deductibles in amounts of $250, $500, and $1,000.[61]

The bill provides that deductibles from PIP benefits may not be offered by insurers.

Electronic Payments

For the PIP benefit in effect prior to October 1, 2007, most were required service providers submit their bills to the insurer within 35 days after the service was rendered, or the insurer was not required to pay the bill. [62] The "postmark" date began the time period for counting the 35 days.

The bill provides that the 35 days begins on the postmark date or the electronic submission date. This will allow providers to more quickly and efficiently submit their bills to the insurance companies.

The bill also provides that any electronic notice, documentation, transmission, or communication of any kind required or authorized under the No-Fault law must be transmitted by secure electronic data transfer that is consistent with state and federal privacy and security laws

Transition

Section 22 of the bill provides for a transition from revived and re-enacted the Florida Motor Vehicle No-Fault Law which apples to policies issued on or after the effective date of the act[63] to the revised PIP benefit for policies issued or renewed on or after January 15, 2008. Thus, the "old" No-Fault Law (Sections 8 through 19 of the bill) will apply to policies issued on or after the date the bill becomes law, requiring that such policies include PIP coverage and be subject to the No-Fault Law as it existed before its repeal. The PIP reforms in Sections 20 and 21 will apply to policies issued or renewed on or after January 15, 2008.

The transition section of the bill states that within 30 days after the act's effective date, insurers issuing coverage that is subject to no-fault requirements must:

- Deliver a revised notice of premium and policy changes that includes PIP benefits to each policyholder whose policy has an effective date on or after the effective date of the act if the policyholder was issued a motor vehicle insurance policy or sent a renewal notice based on the assumption that the no-fault law would sunset.
- For a renewal policy, provide coverage with the same limits of PIP coverage, the same deductible from PIP coverage, and the same limits of medical payments coverage as provided in the prior policy, unless the policyholder elects different limits that are available.

The effective date of the revised policy or renewal must be the same as the effective date specified in the prior notice. The revised notice of premium and coverage changes is exempt from the requirements of ss. 627.7277, 627.728, and 627.7282, F.S. (statutes governing notices of renewal premium, cancellations and nonrenewals, additional premium, and cancellation for nonpayment of premium).

Upon receiving the revised notice, the policyholder:

---

[61] 627.739, F.S.
[62] Section 627.736(5)(c)1.,F.S.
[63] The effective date is "upon becoming a law" which would presumably will be early October of 2007.

- Has a period of 30 days, or longer if specified by the insurer, to pay any additional amount of premium and maintain the policy in force.

- May instead cancel the policy within this time period and obtain a refund of the unearned premium.

- Will have their policy canceled by the insurer and receive any unearned premium if the policyholder fails to timely respond to the revised notice. The date on which the policy will be canceled must be stated in the revised notice and may not be less than 35 days after the date of the notice.

Failure of an insurer to timely mail or deliver a revised notice as required by this subsection does not affect the other requirements of this section.

With respect to a policy providing PIP coverage with an effective date between the effective date of this act (upon becoming law) and January 14, 2008, the insurer shall use the forms and rates it had in effect on September 30, 2007 (the last day before PIP was repealed) unless the insurer makes a new rate or form filing that is approved by the OIR or is otherwise legally allowed.

Persons who have been issued a motor vehicle insurance policy effective on or after October 1, 2007, and before the effective date of this act may continue to own and operate a motor vehicle in Florida and is not subject to any sanction for failing to maintain PIP coverage if:

- That person continues to meet the statutory requirement of maintaining property damage liability coverage; and

- Obtains PIP coverage no later than December 1, 2007.

A person with a policy that does not include PIP is not subject to the provisions of s. 627.737, F.S., relating to the exemption from tort liability with respect to injuries sustained by the person in a motor vehicle crash occurring while the policy without PIP coverage is in effect through November 30, 2007. Thus, such person may see recovery tort, and is not subject to the limitation on recovery for non-economic damages. Conversely, this person is also not immune from liability in tort, since such person is not required to have PIP and would not be protected from such liability pursuant to s. 627.737, F.S.

Every insurer must notify such policyholders by October 31, 2007, that the policyholder must obtain PIP that takes effect no later than December 1, 2007. The notice must include the premium for such coverage and any premium credit that should be provided for other coverage (such as bodily injury or uninsured motorist coverage) due to requirement in subsection (3) that the insurer must use the rates it had in effect on Sept. 30. Alternatively, the insurer may add an endorsement to the policy to provide PIP coverage, effective no later than December 1, 2007, without requiring any additional payment from the insured.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.646, Florida Statutes, to require persons to have proof of property damage liability coverage while operating a motor vehicle (as currently required for PIP).

Section 2. Amends s. 320.02, Florida Statutes, to clarify the requirements concerning proof of insurance and liability coverage.

Section 3. Amends s. 321.245, Florida Statutes, relating to the use of certain funds in the Highway Safety Operating Trust Fund to correct a cross-reference.

Section 4. Amends s. 324.022, Florida Statutes, relating to property damage requirements for vehicle owners and operators and providing exception for active duty Armed Forces members.

Section 5. Creates s. 324.0221, Florida Statutes, relating to enforcement of mandatory PD and PIP coverage.

Section 6. Amends s. 627.7275, Florida Statutes, relating to motor vehicle insurance policies and contracts; conforming provisions to changes made by the act.

Section 7. Amends s. 627.7295, Florida Statutes, relating to motor vehicle insurance contracts, conforming provisions to changes made by the act.

Section 8. Revives and reenacts s. 627.730, Florida Statutes, entitling ss 627.730 through 627.7405, the Florida Motor Vehicle No-Fault Law.

Section 9. Revives and reenacts s. 627.731, Florida Statutes, containing a statement of purpose for the Florida Motor Vehicle No-Fault Law.

Section 10. Revives and reenacts s. 627.732, Florida Statutes, containing definitions applicable to the Florida Motor Vehicle No-Fault Law.

Section 11. Revives and reenacts and amends s. 627.733, Florida Statutes, regarding required security for the owners and operators of motor vehicles; conforms provisions to changes made by the act.

Section 12. Revives and reenacts s. 627.7347, Florida Statutes, relating to proof of security requirements and penalties.

Section 13. Revives and reenacts and amends s. 627.736, Florida Statutes, relating to required personal injury protection benefits, exclusions, priority and claims; conforming provisions to changes made by the act.

Section 14. Revives and reenacts s. 627.737, Florida Statutes, relating to exemption of tort liability for injuries payable through PIP benefits.

Section 15. Revives and reenacts s. 627.739, Florida Statutes, relating to PIP deductibles.

Section 16. Revives and reenacts s. 627.7401, Florida Statutes, relating to the notification of insured's rights.

Section 17. Revives and reenacts s. 627.7403, Florida Statutes, relating to the mandatory joinder of derivative claims.

Section 18. Revives and reenacts s. 627.7405, Florida Statutes, relating to insurers' rights of reimbursement when claims involved commercial vehicles.

Section 19. Provides legislative intent and codifies the revived and amended Florida Motor Vehicle No-Fault Law as ss 627.730-627.7405, Florida Statutes, despite those sections being previously repealed.

Section 20. Effective January 15, 2008, and applicable to policies issued on or after that date, amends s. 627.736, Florida Statutes, revision provisions governing the medical benefits provided as required PIP benefits; providing medical benefits for services and care ordered or prescribed by a physician or provided by certain persons or entities that meet certain requirements; requiring the Financial services Commission to adopt rules; revising a limitation on the amount of death benefits payable; requiring personal injury protection insurers to reserve benefits for certain providers for a specified period; tolling

the time period for the insurer to pay claims from other providers; authorizing an insurer to limit reimbursement for personal injury protection benefits to a specified percentage of a schedule of maximum charges; prohibiting provider from billing or attempting to collect amounts in excess of such limits, except for amounts that are not covered by personal injury protection coverage; deleting provisions specifying allowable amounts for certain tests and services; providing for electronic transmission of certain statements; extending the period during which an insurer may pay an overdue claim following receipt of a demand letter without incurring a penalty; providing for penalties to be imposed against certain insurers for failing to pay claims for personal injury protection; authorizing the Department of Legal Affairs to investigate violations and initiate enforcement action; requiring that all claims related to the same health care provider for the same injured person be brought in one act unless good cause is shown; requiring that the transmission of electronic notices and communications required or authorized under the Florida Motor Vehicle No-Fault Law be consistent with state and federal privacy and security laws relating to required PIP benefits and claims; specifies medical providers eligible for reimbursement; allocates benefits for death and emergencies; provides a medical fee schedule; labels failure to pay claims an unfair, deceptive practice; requires joinder of related claims.

Section 21. Effective January 15, 2008, and applicable to policies issued on or after that date, amends s. 627.739, Florida Statutes, relating to optional limitations and deductibles on personal injury protection.

Section 22. Provides legislative intent as to what auto insurance policies will be affected by the act; provides procedures and requirements for transitional period.

Section 23. Provides act is effective upon being law, except where otherwise proved.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   Insurers will have to make form and rate filings with the Office of Insurance Regulation to meet the new requirements for PIP policies that will take effect January 15, 2008. The Office anticipates that it may have a nonrecurring fiscal impact due to the temporary substantial increase in workload.

   At present, the Office has 2 forms staff and 5 rates staff that are responsible for the review and approval/disapproval of auto filings. Last year staff processed approximately 1,549 auto form and rate filings in a 12 month period. Although it is unknown how many filings will be received, it will be difficult for Office staff to properly review the filings without additional resources or additional time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurers and policy holders may realize a savings due to a projected decline in motor vehicle insurance fraud.

D. FISCAL COMMENTS:

Since the requirement of having personal injury protection benefits is reinstated, there will be no net fiscal impact on state government. Revenues to the Department of Highway Safety and Motor Vehicle from license reinstatement fees should remain constant and revenues to the General Revenue Fund from insurance premium tax should remain constant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill also provides that the Financial Services Commission adopt by rule the form that must be used by an insurer and a health care to document that the health care provider meets the applicable criteria to be eligible to provide services for PIP benefits and the rule must include a requirement for a sworn statement or affidavit.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On October 3, 2007, the Committee on Insurance adopted one amendment that restored the requirement that insurers must offer PIP polices with deductibles in amounts of $250, $500, and $1,000. The bill had previously repealed the deductible requirement for polices issued or renewed on or after January 15, 2008.

A bill to be entitled

An act relating to motor vehicle insurance; amending s. 316.646, F.S.; requiring each person operating a motor vehicle to have in his or her possession proof of property damage liability coverage; conforming a cross-reference to changes made by the act; amending s. 320.02, F.S.; clarifying the requirements concerning insurance and liability coverage for certain motor vehicles registered in this state; amending s. 321.245, F.S., relating to the disposition of certain funds in the Highway Safety Operating Trust Fund; conforming a cross-reference; amending s. 324.022, F.S.; revising provisions requiring the owner or operator of a motor vehicle to maintain property damage liability coverage; specifying the requirements that apply to such a policy; providing definitions; requiring that a nonresident owner or registrant of a motor vehicle maintain property damage liability coverage if the motor vehicle is in the state longer than a specified period; providing an exception for a member of the United States Armed Forces who is on active duty outside the United States; creating s. 324.0221, F.S.; requiring insurers to report to the Department of Highway Safety and Motor Vehicles the renewal, cancellation, or nonrenewal of a policy providing personal injury protection coverage or motor vehicle property damage liability coverage; authorizing the department to adopt rules for the reports; providing that failure to report as required is a violation of the

Florida Insurance Code; requiring that an insurer notify the named insured that a cancelled or nonrenewed policy will be reported to the department; requiring that the department suspend the registration and driver's license of an owner or registrant of a motor vehicle who fails to maintain the required liability coverage; providing for the reinstatement of a registration or driver's license upon payment of certain fees; requiring that a person obtain noncancelable coverage following such reinstatement; providing for the deposit and use of reinstatement fees; amending ss. 627.7275 and 627.7295, F.S., relating to motor vehicle insurance policies and contracts; conforming provisions to changes made by the act; reviving and reenacting ss. 627.730, 627.731, 627.732, 627.734, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., and reviving, reenacting, and amending ss. 627.733 and 627.736, the Florida Motor Vehicle No-Fault Law, notwithstanding the repeal of such law provided in s. 19, chapter 2003-411, Laws of Florida; deleting certain provisions relating to the suspension and reinstatement of a driver's license and registration and notice to the Department of Highway Safety and Motor Vehicles; conforming provisions to changes made by the act; providing legislative intent with respect to the reenactment and codification of the Florida Motor Vehicle No-Fault Law, notwithstanding its prior repeal; amending s. 627.736, F.S., as reenacted and amended; revising provisions governing the medical benefits provided as

required personal injury protection benefits; providing medical benefits for services and care ordered or prescribed by a physician or provided by certain persons or entities that meet certain requirements; requiring the Financial services Commission to adopt rules; revising a limitation on the amount of death benefits payable; requiring personal injury protection insurers to reserve benefits for certain providers for a specified period; tolling the time period for the insurer to pay claims from other providers; authorizing an insurer to limit reimbursement for personal injury protection benefits to a specified percentage of a schedule of maximum charges; prohibiting provider from billing or attempting to collect amounts in excess of such limits, except for amounts that are not covered by personal injury protection coverage; deleting provisions specifying allowable amounts for certain tests and services; providing for electronic transmission of certain statements; extending the period during which an insurer may pay an overdue claim following receipt of a demand letter without incurring a penalty; providing for penalties to be imposed against certain insurers for failing to pay claims for personal injury protection; authorizing the Department of Legal Affairs to investigate violations and initiate enforcement action; requiring that all claims related to the same health care provider for the same injured person be brought in one act unless good cause is shown; requiring that the transmission of electronic notices and communications

required or authorized under the Florida Motor Vehicle No-Fault Law be consistent with state and federal privacy and security laws; amending s. 627.739, F.S., as reenacted; deleting provisions authorizing an insurer to offer certain deductibles with respect to a policy of personal injury protection; providing legislative intent concerning the application of the act; requiring insurers to deliver revised notices of premium and policy changes to certain policyholders; requiring an insurer to cancel the policy and return any unearned premium if the insured fails to timely respond to the notice; providing for calculating the amount of unearned premium; requiring that insurers continue to use certain forms and rates until a specified date unless the Office of Insurance Regulation approves new forms or rates or are otherwise legally allowed; providing that a person purchasing a motor vehicle insurance policy without personal injury protection coverage is exempt from the requirement for such coverage and is not subject to certain liability provisions for a specified period; requiring that insurers provide notice of the requirement for personal injury protection coverage or add an endorsement to the policy providing such coverage; providing effective dates.

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

Section 1. Subsections (1) and (3) of section 316.646, Florida Statutes, are amended to read:

316.646 Security required; proof of security and display thereof; dismissal of cases.--

(1) Any person required by s. 324.022 to maintain property damage liability security, required by s. 324.023 to maintain liability security for bodily injury or death, or ~~any person~~ required by s. 627.733 to maintain personal injury protection security on a motor vehicle shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the required security. Such proof shall be ~~either~~ a uniform proof-of-insurance card in a form prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by the department.

(3) Any person who violates this section commits a nonmoving traffic infraction subject to the penalty provided in chapter 318 and shall be required to furnish proof of security as provided in this section. If any person charged with a violation of this section fails to furnish proof, at or before the scheduled court appearance date, that security was in effect at the time of the violation, the court may immediately suspend the registration and driver's license of such person. Such license and registration may ~~only~~ be reinstated only as provided in s. 324.0221 ~~627.733~~.

Section 2. Paragraphs (a) and (d) of subsection (5) of section 320.02, Florida Statutes, are amended to read:

320.02 Registration required; application for registration; forms.--

(5)(a) Proof that personal injury protection benefits have

been purchased when required under s. 627.733, that property damage liability coverage has been purchased as required under s. 324.022, that bodily injury or death coverage has been purchased if required under s. 324.023, and that combined bodily liability insurance and property damage liability insurance have been purchased when required under s. 627.7415 shall be provided in the manner prescribed by law by the applicant at the time of application for registration of any motor vehicle that is subject to such requirements ~~owned as defined in s. 627.732~~. The issuing agent shall refuse to issue registration if such proof of purchase is not provided. Insurers shall furnish uniform proof-of-purchase cards in a form prescribed by the department and shall include the name of the insured's insurance company, the coverage identification number, and the make, year, and vehicle identification number of the vehicle insured. The card shall contain a statement notifying the applicant of the penalty specified in s. 316.646(4). The card or insurance policy, insurance policy binder, or certificate of insurance or a photocopy of any of these; an affidavit containing the name of the insured's insurance company, the insured's policy number, and the make and year of the vehicle insured; or such other proof as may be prescribed by the department shall constitute sufficient proof of purchase. If an affidavit is provided as proof, it shall be in substantially the following form:

Under penalty of perjury, I (Name of insured) do hereby certify that I have (Personal Injury Protection, Property Damage Liability, and, when required, Bodily Injury Liability)

Insurance currently in effect with (Name of insurance company) under (policy number) covering (make, year, and vehicle identification number of vehicle) . (Signature of Insured)

Such affidavit shall include the following warning:

WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO PROSECUTION.

When an application is made through a licensed motor vehicle dealer as required in s. 319.23, the original or a photostatic copy of such card, insurance policy, insurance policy binder, or certificate of insurance or the original affidavit from the insured shall be forwarded by the dealer to the tax collector of the county or the Department of Highway Safety and Motor Vehicles for processing. By executing the aforesaid affidavit, no licensed motor vehicle dealer will be liable in damages for any inadequacy, insufficiency, or falsification of any statement contained therein. A card shall also indicate the existence of any bodily injury liability insurance voluntarily purchased.

(d) The verifying of proof of personal injury protection insurance, <u>proof of property damage liability insurance,</u> proof of combined bodily liability insurance and property damage liability insurance, or proof of financial responsibility insurance and the issuance or failure to issue the motor vehicle registration under the provisions of this chapter may not be

construed in any court as a warranty of the reliability or accuracy of the evidence of such proof. Neither the department nor any tax collector is liable in damages for any inadequacy, insufficiency, falsification, or unauthorized modification of any item of the proof of personal injury protection insurance, proof of property damage liability insurance, proof of combined bodily liability insurance and property damage liability insurance, or proof of financial responsibility insurance ~~either~~ prior to, during, or subsequent to the verification of the proof. The issuance of a motor vehicle registration does not constitute prima facie evidence or a presumption of insurance coverage.

Section 3. Section 321.245, Florida Statutes, is amended to read:

321.245 Disposition of certain funds in the Highway Safety Operating Trust Fund.--The director of the Florida Highway Patrol, after receiving recommendations from the commander of the auxiliary, is authorized to purchase uniforms and equipment for auxiliary law enforcement officers as defined in s. 321.24 from funds described in s. 324.0221(3) ~~627.733(7)~~. The amounts expended under this section shall not exceed $50,000 in any one fiscal year.

Section 4. Section 324.022, Florida Statutes, is amended to read:

324.022 Financial responsibility for property damage.--

(1) Every owner or operator of a motor vehicle~~, which motor vehicle is subject to the requirements of ss. 627.730-627.7405 and~~ required to be registered in this state~~,~~ shall~~, by~~

~~one of the methods established in s. 324.031 or by having a policy that complies with s. 627.7275,~~ establish and maintain the ability to respond in damages for liability on account of accidents arising out of the use of the motor vehicle in the amount of $10,000 because of damage to, or destruction of, property of others in any one crash. The requirements of this section may be met by one of the methods established in s. 324.031; by self-insuring as authorized by s. 768.28(16); or by maintaining an insurance policy providing coverage for property damage liability in the amount of at least $10,000 because of damage to, or destruction of, property of others in any one accident arising out of the use of the motor vehicle. The requirements of this section may also be met by having a policy which provides coverage in the amount of at least $30,000 for combined property damage liability and bodily injury liability for any one crash arising out of the use of the motor vehicle. The policy, with respect to coverage for property damage liability, must meet the applicable requirements of s. 324.151, subject to the usual policy exclusions that have been approved in policy forms by the Office of Insurance Regulation. No insurer shall have any duty to defend uncovered claims irrespective of their joinder with covered claims.

(2) As used in this section, the term:

(a) "Motor vehicle" means any self-propelled vehicle that has four or more wheels and that is of a type designed and required to be licensed for use on the highways of this state, and any trailer or semitrailer designed for use with such vehicle. The term does not include:

1. A mobile home.

2. A motor vehicle that is used in mass transit and designed to transport more than five passengers, exclusive of the operator of the motor vehicle, and that is owned by a municipality, transit authority, or political subdivision of the state.

3. A school bus as defined in s. 1006.25.

4. A vehicle providing for-hire transportation that is subject to the provisions of s. 324.031. A taxicab shall maintain security as required under s. 324.032(1).

(b) "Owner" means the person who holds legal title to a motor vehicle or the debtor or lessee who has the right to possession of a motor vehicle that is the subject of a security agreement or lease with an option to purchase.

(3) Each nonresident owner or registrant of a motor vehicle that, whether operated or not, has been physically present within this state for more than 90 days during the preceding 365 days shall maintain security as required by subsection (1) that is in effect continuously throughout the period the motor vehicle remains within this state.

(4) The owner or registrant of a motor vehicle is exempt from the requirements of this section if she or he is a member of the United States Armed Forces and is called to or on active duty outside the United States in an emergency situation. The exemption provided by this subsection applies only as long as the member of the Armed Forces is on such active duty outside the United States and applies only while the vehicle is not operated by any person. Upon receipt of a written request by the

insured to whom the exemption provided in this subsection applies, the insurer shall cancel the coverages and return any unearned premium or suspend the security required by this section. Notwithstanding s. 324.0221(3), the department may not suspend the registration or operator's license of any owner or registrant of a motor vehicle during the time she or he qualifies for an exemption under this subsection. Any owner or registrant of a motor vehicle who qualifies for an exemption under this subsection shall immediately notify the department prior to and at the end of the expiration of the exemption.

Section 5. Section 324.0221, Florida Statutes, is created to read:

324.0221 Reports by insurers to the department; suspension of driver's license and vehicle registrations; reinstatement.--

(1)(a) Each insurer that has issued a policy providing personal injury protection coverage or property damage liability coverage shall report the renewal, cancellation, or nonrenewal thereof to the department within 45 days after the effective date of each renewal, cancellation, or nonrenewal. Upon the issuance of a policy providing personal injury protection coverage or property damage liability coverage to a named insured not previously insured by the insurer during that calendar year, the insurer shall report the issuance of the new policy to the department within 30 days. The report shall be in the form and format and contain any information required by the department and must be provided in a format that is compatible with the data-processing capabilities of the department. The department may adopt rules regarding the form and documentation

required. Failure by an insurer to file proper reports with the department as required by this subsection or rules adopted with respect to the requirements of this subsection constitutes a violation of the Florida Insurance Code. These records shall be used by the department only for enforcement and regulatory purposes, including the generation by the department of data regarding compliance by owners of motor vehicles with the requirements for financial responsibility coverage.

(b) With respect to an insurance policy providing personal injury protection coverage or property damage liability coverage, each insurer shall notify the named insured, or the first-named insured in the case of a commercial fleet policy, in writing that any cancellation or nonrenewal of the policy will be reported by the insurer to the department. The notice must also inform the named insured that failure to maintain personal injury protection coverage and property damage liability coverage on a motor vehicle when required by law may result in the loss of registration and driving privileges in this state and inform the named insured of the amount of the reinstatement fees required by this section. This notice is for informational purposes only, and an insurer is not civilly liable for failing to provide this notice.

(2) The department shall suspend, after due notice and an opportunity to be heard, the registration and driver's license of any owner or registrant of a motor vehicle with respect to which security is required under ss. 324.022 and 627.733 upon:

(a) The department's records showing that the owner or registrant of such motor vehicle did not have in full force and

effect when required security that complies with the requirements of ss. 324.022 and 627.733; or

(b) Notification by the insurer to the department, in a form approved by the department, of cancellation or termination of the required security.

(3) An operator or owner whose driver's license or registration has been suspended under this section or s. 316.646 may effect its reinstatement upon compliance with the requirements of this section and upon payment to the department of a nonrefundable reinstatement fee of $150 for the first reinstatement. The reinstatement fee is $250 for the second reinstatement and $500 for each subsequent reinstatement during the 3 years following the first reinstatement. A person reinstating her or his insurance under this subsection must also secure noncancelable coverage as described in ss. 324.021(8), 324.023, and 627.7275(2) and present to the appropriate person proof that the coverage is in force on a form adopted by the department, and such proof shall be maintained for 2 years. If the person does not have a second reinstatement within 3 years after her or his initial reinstatement, the reinstatement fee is $150 for the first reinstatement after that 3-year period. If a person's license and registration are suspended under this section or s. 316.646, only one reinstatement fee must be paid to reinstate the license and the registration. All fees shall be collected by the department at the time of reinstatement. The department shall issue proper receipts for such fees and shall promptly deposit those fees in the Highway Safety Operating Trust Fund. One-third of the fees collected under this

subsection shall be distributed from the Highway Safety Operating Trust Fund to the local governmental entity or state agency that employed the law enforcement officer seizing the license plate pursuant to s. 324.201. The funds may be used by the local governmental entity or state agency for any authorized purpose.

Section 6. Section 627.7275, Florida Statutes, is amended to read:

627.7275 Motor vehicle liability.--

(1) A motor vehicle insurance policy providing personal injury protection as set forth in s. 627.736 may not be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state unless the policy also provides coverage for property damage liability as required by s. 324.022 ~~in the amount of at least $10,000 because of damage to, or destruction of, property of others in any one accident arising out of the use of the motor vehicle or unless the policy provides coverage in the amount of at least $30,000 for combined property damage liability and bodily injury liability in any one accident arising out of the use of the motor vehicle. The policy, as to coverage of property damage liability, must meet the applicable requirements of s. 324.151, subject to the usual policy exclusions that have been approved in policy forms by the office~~.

(2)(a) Insurers writing motor vehicle insurance in this state shall make available, subject to the insurers' usual underwriting restrictions:

1. Coverage under policies as described in subsection (1) to any applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state when the driving privileges were revoked or suspended pursuant to s. 316.646 or s. 324.0221 ~~627.733~~ due to the failure of the applicant to maintain required security.

2. Coverage under policies as described in subsection (1), which also provides liability coverage for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of the motor vehicle in an amount not less than the limits described in s. 324.021(7) and conforms to the requirements of s. 324.151, to any applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state after such privileges were revoked or suspended under s. 316.193 or s. 322.26(2) for driving under the influence.

(b) The policies described in paragraph (a) shall be issued for a period of at least 6 months and as to the minimum coverages required under this section shall not be cancelable by the insured for any reason or by the insurer after a period not to exceed 30 days during which the insurer must complete underwriting of the policy. After the insurer has completed underwriting the policy within the 30-day period, the insurer shall notify the Department of Highway Safety and Motor Vehicles that the policy is in full force and effect and the policy shall not be cancelable for the remainder of the policy period. A

premium shall be collected and coverage shall be in effect for the 30-day period during which the insurer is completing the underwriting of the policy whether or not the person's driver license, motor vehicle tag, and motor vehicle registration are in effect. Once the noncancelable provisions of the policy become effective, the coverage or risk shall not be changed during the policy period and the premium shall be nonrefundable. If, during the pendency of the 2-year proof of insurance period required under s. 324.0221 ~~627.733(7)~~ or during the 3-year proof of financial responsibility required under s. 324.131, whichever is applicable, the insured obtains additional coverage or coverage for an additional risk or changes territories, the insured must obtain a new 6-month noncancelable policy in accordance with the provisions of this section. However, if the insured must obtain a new 6-month policy and obtains the policy from the same insurer, the policyholder shall receive credit on the new policy for any premium paid on the previously issued policy.

(c) This subsection controls to the extent of any conflict with any other section.

(d) An insurer issuing a policy subject to this section may cancel the policy if, during the policy term, the named insured or any other operator, who resides in the same household or customarily operates an automobile insured under the policy, has his or her driver's license suspended or revoked.

(e) Nothing in this subsection requires an insurer to offer a policy of insurance to an applicant if such offer would be inconsistent with the insurer's underwriting guidelines and

procedures.

Section 7. Paragraph (a) of subsection (1) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.--

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

(a) "Policy" means a motor vehicle insurance policy that provides personal injury protection coverage, ~~and~~ property damage liability coverage, or both.

Section 8. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.730, Florida Statutes, is revived and reenacted to read:

627.730 Florida Motor Vehicle No-Fault Law.--Sections 627.730-627.7405 may be cited and known as the "Florida Motor Vehicle No-Fault Law."

Section 9. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.731, Florida Statutes, is revived and reenacted to read:

627.731 Purpose.--The purpose of ss. 627.730-627.7405 is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault, and to require motor vehicle insurance securing such benefits, for motor vehicles required to be registered in this state and, with respect to motor vehicle accidents, a limitation on the right to claim damages for pain, suffering, mental anguish, and inconvenience.

Section 10. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.732, Florida Statutes, is revived and reenacted to read:

627.732 Definitions.--As used in ss. 627.730-627.7405, the term:

(1) "Broker" means any person not possessing a license under chapter 395, chapter 400, chapter 429, chapter 458, chapter 459, chapter 460, chapter 461, or chapter 641 who charges or receives compensation for any use of medical equipment and is not the 100-percent owner or the 100-percent lessee of such equipment. For purposes of this section, such owner or lessee may be an individual, a corporation, a partnership, or any other entity and any of its 100-percent-owned affiliates and subsidiaries. For purposes of this subsection, the term "lessee" means a long-term lessee under a capital or operating lease, but does not include a part-time lessee. The term "broker" does not include a hospital or physician management company whose medical equipment is ancillary to the practices managed, a debt collection agency, or an entity that has contracted with the insurer to obtain a discounted rate for such services; nor does the term include a management company that has contracted to provide general management services for a licensed physician or health care facility and whose compensation is not materially affected by the usage or frequency of usage of medical equipment or an entity that is 100-percent owned by one or more hospitals or physicians. The term "broker" does not include a person or entity that certifies, upon request of an insurer, that:

(a) It is a clinic licensed under ss. 400.990-400.995;

(b) It is a 100-percent owner of medical equipment; and

(c) The owner's only part-time lease of medical equipment

for personal injury protection patients is on a temporary basis not to exceed 30 days in a 12-month period, and such lease is solely for the purposes of necessary repair or maintenance of the 100-percent-owned medical equipment or pending the arrival and installation of the newly purchased or a replacement for the 100-percent-owned medical equipment, or for patients for whom, because of physical size or claustrophobia, it is determined by the medical director or clinical director to be medically necessary that the test be performed in medical equipment that is open-style. The leased medical equipment cannot be used by patients who are not patients of the registered clinic for medical treatment of services. Any person or entity making a false certification under this subsection commits insurance fraud as defined in s. 817.234. However, the 30-day period provided in this paragraph may be extended for an additional 60 days as applicable to magnetic resonance imaging equipment if the owner certifies that the extension otherwise complies with this paragraph.

(2) "Medically necessary" refers to a medical service or supply that a prudent physician would provide for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or symptom in a manner that is:

(a) In accordance with generally accepted standards of medical practice;

(b) Clinically appropriate in terms of type, frequency, extent, site, and duration; and

(c) Not primarily for the convenience of the patient, physician, or other health care provider.

(3) "Motor vehicle" means any self-propelled vehicle with four or more wheels which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semitrailer designed for use with such vehicle and includes:

(a) A "private passenger motor vehicle," which is any motor vehicle which is a sedan, station wagon, or jeep-type vehicle and, if not used primarily for occupational, professional, or business purposes, a motor vehicle of the pickup, panel, van, camper, or motor home type.

(b) A "commercial motor vehicle," which is any motor vehicle which is not a private passenger motor vehicle.

The term "motor vehicle" does not include a mobile home or any motor vehicle which is used in mass transit, other than public school transportation, and designed to transport more than five passengers exclusive of the operator of the motor vehicle and which is owned by a municipality, a transit authority, or a political subdivision of the state.

(4) "Named insured" means a person, usually the owner of a vehicle, identified in a policy by name as the insured under the policy.

(5) "Owner" means a person who holds the legal title to a motor vehicle; or, in the event a motor vehicle is the subject of a security agreement or lease with an option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for the purposes of ss. 627.730-627.7405.

(6) "Relative residing in the same household" means a relative of any degree by blood or by marriage who usually makes her or his home in the same family unit, whether or not temporarily living elsewhere.

(7) "Certify" means to swear or attest to being true or represented in writing.

(8) "Immediate personal supervision," as it relates to the performance of medical services by nonphysicians not in a hospital, means that an individual licensed to perform the medical service or provide the medical supplies must be present within the confines of the physical structure where the medical services are performed or where the medical supplies are provided such that the licensed individual can respond immediately to any emergencies if needed.

(9) "Incident," with respect to services considered as incident to a physician's professional service, for a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, if not furnished in a hospital, means such services must be an integral, even if incidental, part of a covered physician's service.

(10) "Knowingly" means that a person, with respect to information, has actual knowledge of the information; acts in deliberate ignorance of the truth or falsity of the information; or acts in reckless disregard of the information, and proof of specific intent to defraud is not required.

(11) "Lawful" or "lawfully" means in substantial compliance with all relevant applicable criminal, civil, and administrative requirements of state and federal law related to

the provision of medical services or treatment.

(12) "Hospital" means a facility that, at the time services or treatment were rendered, was licensed under chapter 395.

(13) "Properly completed" means providing truthful, substantially complete, and substantially accurate responses as to all material elements to each applicable request for information or statement by a means that may lawfully be provided and that complies with this section, or as agreed by the parties.

(14) "Upcoding" means an action that submits a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed. The term does not include an otherwise lawful bill by a magnetic resonance imaging facility, which globally combines both technical and professional components, if the amount of the global bill is not more than the components if billed separately; however, payment of such a bill constitutes payment in full for all components of such service.

(15) "Unbundling" means an action that submits a billing code that is properly billed under one billing code, but that has been separated into two or more billing codes, and would result in payment greater in amount than would be paid using one billing code.

Section 11. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.733, Florida Statutes, is revived, reenacted, and amended to read:

627.733 Required security.--

(1)(a) Every owner or registrant of a motor vehicle, other than a motor vehicle used as a school bus as defined in s. 1006.25 or limousine, required to be registered and licensed in this state shall maintain security as required by subsection (3) in effect continuously throughout the registration or licensing period.

(b) Every owner or registrant of a motor vehicle used as a taxicab shall not be governed by paragraph (1)(a) but shall maintain security as required under s. 324.032(1), and s. 627.737 shall not apply to any motor vehicle used as a taxicab.

(2) Every nonresident owner or registrant of a motor vehicle which, whether operated or not, has been physically present within this state for more than 90 days during the preceding 365 days shall thereafter maintain security as defined by subsection (3) in effect continuously throughout the period such motor vehicle remains within this state.

(3) Such security shall be provided:

(a) By an insurance policy delivered or issued for delivery in this state by an authorized or eligible motor vehicle liability insurer which provides the benefits and exemptions contained in ss. 627.730-627.7405. Any policy of insurance represented or sold as providing the security required hereunder shall be deemed to provide insurance for the payment of the required benefits; or

(b) By any other method authorized by s. 324.031(2), (3), or (4) and approved by the Department of Highway Safety and Motor Vehicles as affording security equivalent to that afforded

by a policy of insurance or by self-insuring as authorized by s. 768.28(16). The person filing such security shall have all of the obligations and rights of an insurer under ss. 627.730-627.7405.

(4) An owner of a motor vehicle with respect to which security is required by this section who fails to have such security in effect at the time of an accident shall have no immunity from tort liability, but shall be personally liable for the payment of benefits under s. 627.736. With respect to such benefits, such an owner shall have all of the rights and obligations of an insurer under ss. 627.730-627.7405.

(5) In addition to other persons who are not required to provide required security as required under this section and s. 324.022, the owner or registrant of a motor vehicle is exempt from such requirements if she or he is a member of the United States Armed Forces and is called to or on active duty outside the United States in an emergency situation. The exemption provided by this subsection applies only as long as the member of the armed forces is on such active duty outside the United States and applies only while the vehicle covered by the security required by this section and s. 324.022 is not operated by any person. Upon receipt of a written request by the insured to whom the exemption provided in this subsection applies, the insurer shall cancel the coverages and return any unearned premium or suspend the security required by this section and s. 324.022. Notwithstanding s. 324.0221(2) ~~subsection (6)~~, the Department of Highway Safety and Motor Vehicles may not suspend the registration or operator's license of any owner or

registrant of a motor vehicle during the time she or he qualifies for an exemption under this subsection. Any owner or registrant of a motor vehicle who qualifies for an exemption under this subsection shall immediately notify the department prior to and at the end of the expiration of the exemption.

~~(6) The Department of Highway Safety and Motor Vehicles shall suspend, after due notice and an opportunity to be heard, the registration and driver's license of any owner or registrant of a motor vehicle with respect to which security is required under this section and s. 324.022:~~

~~(a) Upon its records showing that the owner or registrant of such motor vehicle did not have in full force and effect when required security complying with the terms of this section; or~~

~~(b) Upon notification by the insurer to the Department of Highway Safety and Motor Vehicles, in a form approved by the department, of cancellation or termination of the required security.~~

~~(7) Any operator or owner whose driver's license or registration has been suspended pursuant to this section or s. 316.646 may effect its reinstatement upon compliance with the requirements of this section and upon payment to the Department of Highway Safety and Motor Vehicles of a nonrefundable reinstatement fee of $150 for the first reinstatement. Such reinstatement fee shall be $250 for the second reinstatement and $500 for each subsequent reinstatement during the 3 years following the first reinstatement. Any person reinstating her or his insurance under this subsection must also secure noncancelable coverage as described in ss. 324.021(8), 324.023,~~

~~and 627.7275(2) and present to the appropriate person proof that the coverage is in force on a form promulgated by the Department of Highway Safety and Motor Vehicles, such proof to be maintained for 2 years. If the person does not have a second reinstatement within 3 years after her or his initial reinstatement, the reinstatement fee shall be $150 for the first reinstatement after that 3-year period. In the event that a person's license and registration are suspended pursuant to this section or s. 316.646, only one reinstatement fee shall be paid to reinstate the license and the registration. All fees shall be collected by the Department of Highway Safety and Motor Vehicles at the time of reinstatement. The Department of Highway Safety and Motor Vehicles shall issue proper receipts for such fees and shall promptly deposit those fees in the Highway Safety Operating Trust Fund. One-third of the fee collected under this subsection shall be distributed from the Highway Safety Operating Trust Fund to the local government entity or state agency which employed the law enforcement officer who seizes a license plate pursuant to s. 324.201. Such funds may be used by the local government entity or state agency for any authorized purpose.~~

Section 12. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.734, Florida Statutes, is revived and reenacted to read:

627.734 Proof of security; security requirements; penalties.--

(1) The provisions of chapter 324 which pertain to the

method of giving and maintaining proof of financial responsibility and which govern and define a motor vehicle liability policy shall apply to filing and maintaining proof of security required by ss. 627.730-627.7405.

(2) Any person who:

(a) Gives information required in a report or otherwise as provided for in ss. 627.730-627.7405, knowing or having reason to believe that such information is false;

(b) Forges or, without authority, signs any evidence of proof of security; or

(c) Files, or offers for filing, any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority,

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 13. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.736, Florida Statutes, is revived, reenacted, and amended to read:

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

(1) REQUIRED BENEFITS.--Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury

while not an occupant of a self-propelled vehicle, subject to the provisions of subsection (2) and paragraph (4)(d), to a limit of $10,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) Medical benefits.--Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and medically necessary ambulance, hospital, and nursing services. Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his or her religious beliefs; however, this sentence does not affect the determination of what other services or procedures are medically necessary.

(b) Disability benefits.--Sixty percent of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his or her household. All disability benefits payable under this provision shall be paid not less than every 2 weeks.

(c) Death benefits.--Death benefits of $5,000 per individual. The insurer may pay such benefits to the executor

or administrator of the deceased, to any of the deceased's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and no such insurer shall require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such required benefits. Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. Any insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice shall be deemed to have violated part IX of chapter 626, and such violation shall constitute an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance; and any such insurer committing such violation shall be subject to the penalties afforded in such part, as well as those which may be afforded elsewhere in the insurance code.

(2) AUTHORIZED EXCLUSIONS.--Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another

motor vehicle owned by the named insured and not insured under the policy or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his or her injury under any of the following circumstances:

1. Causing injury to himself or herself intentionally; or

2. Being injured while committing a felony.

Whenever an insured is charged with conduct as set forth in subparagraph 2., the 30-day payment provision of paragraph (4)(b) shall be held in abeyance, and the insurer shall withhold payment of any personal injury protection benefits pending the outcome of the case at the trial level. If the charge is nolle prossed or dismissed or the insured is acquitted, the 30-day payment provision shall run from the date the insurer is notified of such action.

(3) INSURED'S RIGHTS TO RECOVERY OF SPECIAL DAMAGES IN TORT CLAIMS.--No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured party who is entitled to bring suit under the provisions of ss. 627.730-627.7405, or his or her legal representative, shall have no right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his or her special damages notwithstanding this limitation, but if special

damages are introduced in evidence, the trier of facts, whether judge or jury, shall not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid or payable.

(4) BENEFITS; WHEN DUE.--Benefits due from an insurer under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. When the Agency for Health Care Administration provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of the Medicaid program.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by ss. 627.730-627.7405.

(b) Personal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim,

any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. When an insurer pays only a portion of a claim or rejects a claim, the insurer shall provide at the time of the partial payment or rejection an itemized specification of each item that the insurer had reduced, omitted, or declined to pay and any information that the insurer desires the claimant to consider related to the medical necessity of the denied treatment or to explain the reasonableness of the reduced charge, provided that this shall not limit the introduction of evidence at trial; and the insurer shall include the name and address of the person to whom the claimant should respond and a claim number to be referenced in future correspondence. However, notwithstanding the fact that written notice has been furnished to the insurer, any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery. This paragraph does not preclude or limit the ability of the insurer to assert that the claim was unrelated, was not medically necessary, or was unreasonable or that the amount of the charge was in excess

of that permitted under, or in violation of, subsection (5). Such assertion by the insurer may be made at any time, including after payment of the claim or after the 30-day time period for payment set forth in this paragraph.

(c) All overdue payments shall bear simple interest at the rate established under s. 55.03 or the rate established in the insurance contract, whichever is greater, for the year in which the payment became overdue, calculated from the date the insurer was furnished with written notice of the amount of covered loss. Interest shall be due at the time payment of the overdue claim is made.

(d) The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state, but within the United States of America or its territories or possessions or Canada, by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1. or subparagraph 2., provided the relative at the time of the accident is domiciled in the owner's household and is not himself or herself the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself or herself:

a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405; or

b. Entitled to personal injury benefits from the insurer of the owner or owners of such a motor vehicle.

(e) If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person, the maximum payable shall be as specified in subsection (1), and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

(f) It is a violation of the insurance code for an insurer to fail to timely provide benefits as required by this section with such frequency as to constitute a general business practice.

(g) Benefits shall not be due or payable to or on the behalf of an insured person if that person has committed, by a material act or omission, any insurance fraud relating to personal injury protection coverage under his or her policy, if the fraud is admitted to in a sworn statement by the insured or if it is established in a court of competent jurisdiction. Any insurance fraud shall void all coverage arising from the claim

related to such fraud under the personal injury protection coverage of the insured person who committed the fraud, irrespective of whether a portion of the insured person's claim may be legitimate, and any benefits paid prior to the discovery of the insured person's insurance fraud shall be recoverable by the insurer from the person who committed insurance fraud in their entirety. The prevailing party is entitled to its costs and attorney's fees in any action in which it prevails in an insurer's action to enforce its right of recovery under this paragraph.

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.--

(a) Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment, if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like services or supplies. With respect to a determination of whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be

given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, and reimbursement levels in the community and various federal and state medical fee schedules applicable to automobile and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

(b)1. An insurer or insured is not required to pay a claim or charges:

a. Made by a broker or by a person making a claim on behalf of a broker;

b. For any service or treatment that was not lawful at the time rendered;

c. To any person who knowingly submits a false or misleading statement relating to the claim or charges;

d. With respect to a bill or statement that does not substantially meet the applicable requirements of paragraph (d);

e. For any treatment or service that is upcoded, or that is unbundled when such treatment or services should be bundled, in accordance with paragraph (d). To facilitate prompt payment of lawful services, an insurer may change codes that it determines to have been improperly or incorrectly upcoded or unbundled, and may make payment based on the changed codes, without affecting the right of the provider to dispute the change by the insurer, provided that before doing so, the insurer must contact the health care provider and discuss the reasons for the insurer's change and the health care provider's reason for the coding, or make a reasonable good faith effort to

do so, as documented in the insurer's file; and

f. For medical services or treatment billed by a physician and not provided in a hospital unless such services are rendered by the physician or are incident to his or her professional services and are included on the physician's bill, including documentation verifying that the physician is responsible for the medical services that were rendered and billed.

2. Charges for medically necessary cephalic thermograms, peripheral thermograms, spinal ultrasounds, extremity ultrasounds, video fluoroscopy, and surface electromyography shall not exceed the maximum reimbursement allowance for such procedures as set forth in the applicable fee schedule or other payment methodology established pursuant to s. 440.13.

3. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing when done in conjunction with a needle electromyography procedure and both are performed and billed solely by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 who is also certified by the American Board of Electrodiagnostic Medicine or by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or who holds diplomate status with the American Chiropractic Neurology Board or its predecessors shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care

Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor.

4. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing that does not meet the requirements of subparagraph 3. shall not exceed the applicable fee schedule or other payment methodology established pursuant to s. 440.13.

5. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services shall not exceed 175 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year, except that allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services provided in facilities accredited by the Accreditation Association for Ambulatory Health Care, the American College of Radiology, or the Joint Commission on Accreditation of Healthcare Organizations shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the

treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year. This paragraph does not apply to charges for magnetic resonance imaging services and nerve conduction testing for inpatients and emergency services and care as defined in chapter 395 rendered by facilities licensed under chapter 395.

6. The Department of Health, in consultation with the appropriate professional licensing boards, shall adopt, by rule, a list of diagnostic tests deemed not to be medically necessary for use in the treatment of persons sustaining bodily injury covered by personal injury protection benefits under this section. The initial list shall be adopted by January 1, 2004, and shall be revised from time to time as determined by the Department of Health, in consultation with the respective professional licensing boards. Inclusion of a test on the list of invalid diagnostic tests shall be based on lack of demonstrated medical value and a level of general acceptance by the relevant provider community and shall not be dependent for results entirely upon subjective patient response. Notwithstanding its inclusion on a fee schedule in this subsection, an insurer or insured is not required to pay any charges or reimburse claims for any invalid diagnostic test as determined by the Department of Health.

(c)1. With respect to any treatment or service, other than

medical services billed by a hospital or other provider for emergency services as defined in s. 395.002 or inpatient services rendered at a hospital-owned facility, the statement of charges must be furnished to the insurer by the provider and may not include, and the insurer is not required to pay, charges for treatment or services rendered more than 35 days before the postmark date of the statement, except for past due amounts previously billed on a timely basis under this paragraph, and except that, if the provider submits to the insurer a notice of initiation of treatment within 21 days after its first examination or treatment of the claimant, the statement may include charges for treatment or services rendered up to, but not more than, 75 days before the postmark date of the statement. The injured party is not liable for, and the provider shall not bill the injured party for, charges that are unpaid because of the provider's failure to comply with this paragraph. Any agreement requiring the injured person or insured to pay for such charges is unenforceable.

2. If, however, the insured fails to furnish the provider with the correct name and address of the insured's personal injury protection insurer, the provider has 35 days from the date the provider obtains the correct information to furnish the insurer with a statement of the charges. The insurer is not required to pay for such charges unless the provider includes with the statement documentary evidence that was provided by the insured during the 35-day period demonstrating that the provider reasonably relied on erroneous information from the insured and either:

a. A denial letter from the incorrect insurer; or

b. Proof of mailing, which may include an affidavit under penalty of perjury, reflecting timely mailing to the incorrect address or insurer.

3. For emergency services and care as defined in s. 395.002 rendered in a hospital emergency department or for transport and treatment rendered by an ambulance provider licensed pursuant to part III of chapter 401, the provider is not required to furnish the statement of charges within the time periods established by this paragraph; and the insurer shall not be considered to have been furnished with notice of the amount of covered loss for purposes of paragraph (4)(b) until it receives a statement complying with paragraph (d), or copy thereof, which specifically identifies the place of service to be a hospital emergency department or an ambulance in accordance with billing standards recognized by the Health Care Finance Administration.

4. Each notice of insured's rights under s. 627.7401 must include the following statement in type no smaller than 12 points:

BILLING REQUIREMENTS.--Florida Statutes provide that with respect to any treatment or services, other than certain hospital and emergency services, the statement of charges furnished to the insurer by the provider may not include, and the insurer and the injured party are not required to pay, charges for treatment or services rendered more than 35 days before the postmark date of the statement, except for past due

amounts previously billed on a timely basis, and except that, if the provider submits to the insurer a notice of initiation of treatment within 21 days after its first examination or treatment of the claimant, the statement may include charges for treatment or services rendered up to, but not more than, 75 days before the postmark date of the statement.

(d) All statements and bills for medical services rendered by any physician, hospital, clinic, or other person or institution shall be submitted to the insurer on a properly completed Centers for Medicare and Medicaid Services (CMS) 1500 form, UB 92 forms, or any other standard form approved by the office or adopted by the commission for purposes of this paragraph. All billings for such services rendered by providers shall, to the extent applicable, follow the Physicians' Current Procedural Terminology (CPT) or Healthcare Correct Procedural Coding System (HCPCS), or ICD-9 in effect for the year in which services are rendered and comply with the Centers for Medicare and Medicaid Services (CMS) 1500 form instructions and the American Medical Association Current Procedural Terminology (CPT) Editorial Panel and Healthcare Correct Procedural Coding System (HCPCS). All providers other than hospitals shall include on the applicable claim form the professional license number of the provider in the line or space provided for "Signature of Physician or Supplier, Including Degrees or Credentials." In determining compliance with applicable CPT and HCPCS coding, guidance shall be provided by the Physicians' Current Procedural Terminology (CPT) or the Healthcare Correct Procedural Coding System (HCPCS) in effect for the year in which services were

rendered, the Office of the Inspector General (OIG), Physicians Compliance Guidelines, and other authoritative treatises designated by rule by the Agency for Health Care Administration. No statement of medical services may include charges for medical services of a person or entity that performed such services without possessing the valid licenses required to perform such services. For purposes of paragraph (4)(b), an insurer shall not be considered to have been furnished with notice of the amount of covered loss or medical bills due unless the statements or bills comply with this paragraph, and unless the statements or bills are properly completed in their entirety as to all material provisions, with all relevant information being provided therein.

(e)1. At the initial treatment or service provided, each physician, other licensed professional, clinic, or other medical institution providing medical services upon which a claim for personal injury protection benefits is based shall require an insured person, or his or her guardian, to execute a disclosure and acknowledgment form, which reflects at a minimum that:

a. The insured, or his or her guardian, must countersign the form attesting to the fact that the services set forth therein were actually rendered;

b. The insured, or his or her guardian, has both the right and affirmative duty to confirm that the services were actually rendered;

c. The insured, or his or her guardian, was not solicited by any person to seek any services from the medical provider;

d. That the physician, other licensed professional,

clinic, or other medical institution rendering services for which payment is being claimed explained the services to the insured or his or her guardian; and

e. If the insured notifies the insurer in writing of a billing error, the insured may be entitled to a certain percentage of a reduction in the amounts paid by the insured's motor vehicle insurer.

2. The physician, other licensed professional, clinic, or other medical institution rendering services for which payment is being claimed has the affirmative duty to explain the services rendered to the insured, or his or her guardian, so that the insured, or his or her guardian, countersigns the form with informed consent.

3. Countersignature by the insured, or his or her guardian, is not required for the reading of diagnostic tests or other services that are of such a nature that they are not required to be performed in the presence of the insured.

4. The licensed medical professional rendering treatment for which payment is being claimed must sign, by his or her own hand, the form complying with this paragraph.

5. The original completed disclosure and acknowledgment form shall be furnished to the insurer pursuant to paragraph (4)(b) and may not be electronically furnished.

6. This disclosure and acknowledgment form is not required for services billed by a provider for emergency services as defined in s. 395.002, for emergency services and care as defined in s. 395.002 rendered in a hospital emergency department, or for transport and treatment rendered by an

ambulance provider licensed pursuant to part III of chapter 401.

7. The Financial Services Commission shall adopt, by rule, a standard disclosure and acknowledgment form that shall be used to fulfill the requirements of this paragraph, effective 90 days after such form is adopted and becomes final. The commission shall adopt a proposed rule by October 1, 2003. Until the rule is final, the provider may use a form of its own which otherwise complies with the requirements of this paragraph.

8. As used in this paragraph, "countersigned" means a second or verifying signature, as on a previously signed document, and is not satisfied by the statement "signature on file" or any similar statement.

9. The requirements of this paragraph apply only with respect to the initial treatment or service of the insured by a provider. For subsequent treatments or service, the provider must maintain a patient log signed by the patient, in chronological order by date of service, that is consistent with the services being rendered to the patient as claimed. The requirements of this subparagraph for maintaining a patient log signed by the patient may be met by a hospital that maintains medical records as required by s. 395.3025 and applicable rules and makes such records available to the insurer upon request.

(f) Upon written notification by any person, an insurer shall investigate any claim of improper billing by a physician or other medical provider. The insurer shall determine if the insured was properly billed for only those services and treatments that the insured actually received. If the insurer determines that the insured has been improperly billed, the

insurer shall notify the insured, the person making the written notification and the provider of its findings and shall reduce the amount of payment to the provider by the amount determined to be improperly billed. If a reduction is made due to such written notification by any person, the insurer shall pay to the person 20 percent of the amount of the reduction, up to $500. If the provider is arrested due to the improper billing, then the insurer shall pay to the person 40 percent of the amount of the reduction, up to $500.

(g) An insurer may not systematically downcode with the intent to deny reimbursement otherwise due. Such action constitutes a material misrepresentation under s. 626.9541(1)(i)2.

(6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.--

(a) Every employer shall, if a request is made by an insurer providing personal injury protection benefits under ss. 627.730-627.7405 against whom a claim has been made, furnish forthwith, in a form approved by the office, a sworn statement of the earnings, since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(b) Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if

requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates, and costs of such treatment of the injured person and why the items identified by the insurer were reasonable in amount and medically necessary, together with a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained and identifying which portion of the expenses for such treatment or services was incurred as a result of such bodily injury, and produce forthwith, and permit the inspection and copying of, his or her or its records regarding such history, condition, treatment, dates, and costs of treatment; provided that this shall not limit the introduction of evidence at trial. Such sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief." No cause of action for violation of the physician-patient privilege or invasion of the right of privacy shall be permitted against any physician, hospital, clinic, or other medical institution complying with the provisions of this section. The person requesting such records and such sworn statement shall pay all reasonable costs connected therewith. If an insurer makes a written request for documentation or information under this paragraph within 30 days after having received notice of the amount of a covered loss under paragraph (4)(a), the amount or the partial amount which is the subject of the insurer's inquiry shall become overdue if the insurer does not pay in accordance with paragraph (4)(b) or within 10 days after the insurer's

receipt of the requested documentation or information, whichever occurs later. For purposes of this paragraph, the term "receipt" includes, but is not limited to, inspection and copying pursuant to this paragraph. Any insurer that requests documentation or information pertaining to reasonableness of charges or medical necessity under this paragraph without a reasonable basis for such requests as a general business practice is engaging in an unfair trade practice under the insurance code.

(c) In the event of any dispute regarding an insurer's right to discovery of facts under this section, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(d) The injured person shall be furnished, upon request, a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(e) Notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured.

(7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;

REPORTS.--

(a) Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon the request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer shall be borne entirely by the insurer. Such examination shall be conducted within the municipality where the insured is receiving treatment, or in a location reasonably accessible to the insured, which, for purposes of this paragraph, means any location within the municipality in which the insured resides, or any location within 10 miles by road of the insured's residence, provided such location is within the county in which the insured resides. If the examination is to be conducted in a location reasonably accessible to the insured, and if there is no qualified physician to conduct the examination in a location reasonably accessible to the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits. An insurer may not withdraw payment of a treating physician without the consent of the injured person covered by the personal injury protection, unless the insurer first obtains a valid report by a Florida physician licensed under the same chapter as the

treating physician whose treatment authorization is sought to be withdrawn, stating that treatment was not reasonable, related, or necessary. A valid report is one that is prepared and signed by the physician examining the injured person or reviewing the treatment records of the injured person and is factually supported by the examination and treatment records if reviewed and that has not been modified by anyone other than the physician. The physician preparing the report must be in active practice, unless the physician is physically disabled. Active practice means that during the 3 years immediately preceding the date of the physical examination or review of the treatment records the physician must have devoted professional time to the active clinical practice of evaluation, diagnosis, or treatment of medical conditions or to the instruction of students in an accredited health professional school or accredited residency program or a clinical research program that is affiliated with an accredited health professional school or teaching hospital or accredited residency program. The physician preparing a report at the request of an insurer and physicians rendering expert opinions on behalf of persons claiming medical benefits for personal injury protection, or on behalf of an insured through an attorney or another entity, shall maintain, for at least 3 years, copies of all examination reports as medical records and shall maintain, for at least 3 years, records of all payments for the examinations and reports. Neither an insurer nor any person acting at the direction of or on behalf of an insurer may materially change an opinion in a report prepared under this paragraph or direct the physician preparing the report to change

such opinion. The denial of a payment as the result of such a changed opinion constitutes a material misrepresentation under s. 626.9541(1)(i)2.; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him or her a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out the examining physician's findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled, upon request, to receive from the person examined every written report available to him or her or his or her representative concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered, or by taking the deposition of the examiner, the person examined waives any privilege he or she may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined, or may thereafter examine, him or her in respect to the same mental or physical condition. If a person unreasonably refuses to submit to an examination, the personal injury protection carrier is no longer liable for subsequent personal injury protection benefits.

(8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S FEES.--With respect to any dispute under the provisions of ss.

627.730-627.7405 between the insured and the insurer, or between an assignee of an insured's rights and the insurer, the provisions of s. 627.428 shall apply, except as provided in subsection (10) ~~(11)~~.

~~(9)(a) Each insurer which has issued a policy providing personal injury protection benefits shall report the renewal, cancellation, or nonrenewal thereof to the Department of Highway Safety and Motor Vehicles within 45 days from the effective date of the renewal, cancellation, or nonrenewal. Upon the issuance of a policy providing personal injury protection benefits to a named insured not previously insured by the insurer thereof during that calendar year, the insurer shall report the issuance of the new policy to the Department of Highway Safety and Motor Vehicles within 30 days. The report shall be in such form and format and contain such information as may be required by the Department of Highway Safety and Motor Vehicles which shall include a format compatible with the data processing capabilities of said department, and the Department of Highway Safety and Motor Vehicles is authorized to adopt rules necessary with respect thereto. Failure by an insurer to file proper reports with the Department of Highway Safety and Motor Vehicles as required by this subsection or rules adopted with respect to the requirements of this subsection constitutes a violation of the Florida Insurance Code. Reports of cancellations and policy renewals and reports of the issuance of new policies received by the Department of Highway Safety and Motor Vehicles are confidential and exempt from the provisions of s. 119.07(1). These records are to be used for enforcement and regulatory~~

~~purposes only, including the generation by the department of data regarding compliance by owners of motor vehicles with financial responsibility coverage requirements. In addition, the Department of Highway Safety and Motor Vehicles shall release, upon a written request by a person involved in a motor vehicle accident, by the person's attorney, or by a representative of the person's motor vehicle insurer, the name of the insurance company and the policy number for the policy covering the vehicle named by the requesting party. The written request must include a copy of the appropriate accident form as provided in s. 316.065, s. 316.066, or s. 316.068.~~

~~(b) Every insurer with respect to each insurance policy providing personal injury protection benefits shall notify the named insured or in the case of a commercial fleet policy, the first named insured in writing that any cancellation or nonrenewal of the policy will be reported by the insurer to the Department of Highway Safety and Motor Vehicles. The notice shall also inform the named insured that failure to maintain personal injury protection and property damage liability insurance on a motor vehicle when required by law may result in the loss of registration and driving privileges in this state, and the notice shall inform the named insured of the amount of the reinstatement fees required by s. 627.733(7). This notice is for informational purposes only, and no civil liability shall attach to an insurer due to failure to provide this notice.~~

(9)~~(10)~~ An insurer may negotiate and enter into contracts with licensed health care providers for the benefits described in this section, referred to in this section as "preferred

providers," which shall include health care providers licensed under chapters 458, 459, 460, 461, and 463. The insurer may provide an option to an insured to use a preferred provider at the time of purchase of the policy for personal injury protection benefits, if the requirements of this subsection are met. If the insured elects to use a provider who is not a preferred provider, whether the insured purchased a preferred provider policy or a nonpreferred provider policy, the medical benefits provided by the insurer shall be as required by this section. If the insured elects to use a provider who is a preferred provider, the insurer may pay medical benefits in excess of the benefits required by this section and may waive or lower the amount of any deductible that applies to such medical benefits. If the insurer offers a preferred provider policy to a policyholder or applicant, it must also offer a nonpreferred provider policy. The insurer shall provide each policyholder with a current roster of preferred providers in the county in which the insured resides at the time of purchase of such policy, and shall make such list available for public inspection during regular business hours at the principal office of the insurer within the state.

(10) ~~(11)~~ DEMAND LETTER.--

(a) As a condition precedent to filing any action for benefits under this section, the insurer must be provided with written notice of an intent to initiate litigation. Such notice may not be sent until the claim is overdue, including any additional time the insurer has to pay the claim pursuant to paragraph (4)(b).

(b) The notice required shall state that it is a "demand letter under s. 627.736(10)~~(11)~~" and shall state with specificity:

1. The name of the insured upon which such benefits are being sought, including a copy of the assignment giving rights to the claimant if the claimant is not the insured.

2. The claim number or policy number upon which such claim was originally submitted to the insurer.

3. To the extent applicable, the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and an itemized statement specifying each exact amount, the date of treatment, service, or accommodation, and the type of benefit claimed to be due. A completed form satisfying the requirements of paragraph (5)(d) or the lost-wage statement previously submitted may be used as the itemized statement. To the extent that the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, the claimant shall attach a copy of the insurer's notice withdrawing such payment and an itemized statement of the type, frequency, and duration of future treatment claimed to be reasonable and medically necessary.

(c) Each notice required by this subsection must be delivered to the insurer by United States certified or registered mail, return receipt requested. Such postal costs shall be reimbursed by the insurer if so requested by the claimant in the notice, when the insurer pays the claim. Such notice must be sent to the person and address specified by the

insurer for the purposes of receiving notices under this subsection. Each licensed insurer, whether domestic, foreign, or alien, shall file with the office designation of the name and address of the person to whom notices pursuant to this subsection shall be sent which the office shall make available on its Internet website. The name and address on file with the office pursuant to s. 624.422 shall be deemed the authorized representative to accept notice pursuant to this subsection in the event no other designation has been made.

(d) If, within 15 days after receipt of notice by the insurer, the overdue claim specified in the notice is paid by the insurer together with applicable interest and a penalty of 10 percent of the overdue amount paid by the insurer, subject to a maximum penalty of $250, no action may be brought against the insurer. If the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, no action may be brought against the insurer if, within 15 days after its receipt of the notice, the insurer mails to the person filing the notice a written statement of the insurer's agreement to pay for such treatment in accordance with the notice and to pay a penalty of 10 percent, subject to a maximum penalty of $250, when it pays for such future treatment in accordance with the requirements of this section. To the extent the insurer determines not to pay any amount demanded, the penalty shall not be payable in any subsequent action. For purposes of this subsection, payment or the insurer's agreement shall be treated as being made on the date a draft or other valid instrument that is equivalent to payment, or the insurer's

written statement of agreement, is placed in the United States mail in a properly addressed, postpaid envelope, or if not so posted, on the date of delivery. The insurer shall not be obligated to pay any attorney's fees if the insurer pays the claim or mails its agreement to pay for future treatment within the time prescribed by this subsection.

(e) The applicable statute of limitation for an action under this section shall be tolled for a period of 15 business days by the mailing of the notice required by this subsection.

(f) Any insurer making a general business practice of not paying valid claims until receipt of the notice required by this subsection is engaging in an unfair trade practice under the insurance code.

(11) ~~(12)~~ CIVIL ACTION FOR INSURANCE FRAUD.--An insurer shall have a cause of action against any person convicted of, or who, regardless of adjudication of guilt, pleads guilty or nolo contendere to insurance fraud under s. 817.234, patient brokering under s. 817.505, or kickbacks under s. 456.054, associated with a claim for personal injury protection benefits in accordance with this section. An insurer prevailing in an action brought under this subsection may recover compensatory, consequential, and punitive damages subject to the requirements and limitations of part II of chapter 768, and attorney's fees and costs incurred in litigating a cause of action against any person convicted of, or who, regardless of adjudication of guilt, pleads guilty or nolo contendere to insurance fraud under s. 817.234, patient brokering under s. 817.505, or kickbacks under s. 456.054, associated with a claim for personal injury

protection benefits in accordance with this section.

(12) ~~(13)~~ MINIMUM BENEFIT COVERAGE.--If the Financial Services Commission determines that the cost savings under personal injury protection insurance benefits paid by insurers have been realized due to the provisions of this act, prior legislative reforms, or other factors, the commission may increase the minimum $10,000 benefit coverage requirement. In establishing the amount of such increase, the commission must determine that the additional premium for such coverage is approximately equal to the premium cost savings that have been realized for the personal injury protection coverage with limits of $10,000.

(13) ~~(14)~~ FRAUD ADVISORY NOTICE.--Upon receiving notice of a claim under this section, an insurer shall provide a notice to the insured or to a person for whom a claim for reimbursement for diagnosis or treatment of injuries has been filed, advising that:

(a) Pursuant to s. 626.9892, the Department of Financial Services may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Insurance Fraud arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

(b) Solicitation of a person injured in a motor vehicle crash for purposes of filing personal injury protection or tort claims could be a violation of s. 817.234, s. 817.505, or the rules regulating The Florida Bar and should be immediately reported to the Division of Insurance Fraud if such conduct has

taken place.

Section 14. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.737, Florida Statutes, is revived and reenacted to read:

627.737 Tort exemption; limitation on right to damages; punitive damages.--

(1) Every owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.7405, and every person or organization legally responsible for her or his acts or omissions, is hereby exempted from tort liability for damages because of bodily injury, sickness, or disease arising out of the ownership, operation, maintenance, or use of such motor vehicle in this state to the extent that the benefits described in s. 627.736(1) are payable for such injury, or would be payable but for any exclusion authorized by ss. 627.730-627.7405, under any insurance policy or other method of security complying with the requirements of s. 627.733, or by an owner personally liable under s. 627.733 for the payment of such benefits, unless a person is entitled to maintain an action for pain, suffering, mental anguish, and inconvenience for such injury under the provisions of subsection (2).

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.7405, or against any person or organization legally responsible for her or his acts or omissions, a plaintiff may

recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part of:

(a) Significant and permanent loss of an important bodily function.

(b) Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.

(c) Significant and permanent scarring or disfigurement.

(d) Death.

(3) When a defendant, in a proceeding brought pursuant to ss. 627.730-627.7405, questions whether the plaintiff has met the requirements of subsection (2), then the defendant may file an appropriate motion with the court, and the court shall, on a one-time basis only, 30 days before the date set for the trial or the pretrial hearing, whichever is first, by examining the pleadings and the evidence before it, ascertain whether the plaintiff will be able to submit some evidence that the plaintiff will meet the requirements of subsection (2). If the court finds that the plaintiff will not be able to submit such evidence, then the court shall dismiss the plaintiff's claim without prejudice.

(4) In any action brought against an automobile liability insurer for damages in excess of its policy limits, no claim for punitive damages shall be allowed.

Section 15. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007,

section 627.739, Florida Statutes, is revived and reenacted to read:

627.739 Personal injury protection; optional limitations; deductibles.--

(1) The named insured may elect a deductible or modified coverage or combination thereof to apply to the named insured alone or to the named insured and dependent relatives residing in the same household, but may not elect a deductible or modified coverage to apply to any other person covered under the policy.

(2) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of $250, $500, and $1,000. The deductible amount must be applied to 100 percent of the expenses and losses described in s. 627.736. After the deductible is met, each insured is eligible to receive up to $10,000 in total benefits described in s. 627.736(1). However, this subsection shall not be applied to reduce the amount of any benefits received in accordance with s. 627.736(1)(c).

(3) Insurers shall offer coverage wherein, at the election of the named insured, the benefits for loss of gross income and loss of earning capacity described in s. 627.736(1)(b) shall be excluded.

(4) The named insured shall not be prevented from electing a deductible under subsection (2) and modified coverage under subsection (3). Each election made by the named insured under this section shall result in an appropriate reduction of premium associated with that election.

(5) All such offers shall be made in clear and unambiguous language at the time the initial application is taken and prior to each annual renewal and shall indicate that a premium reduction will result from each election. At the option of the insurer, the requirements of the preceding sentence are met by using forms of notice approved by the office, or by providing the following notice in 10-point type in the insurer's application for initial issuance of a policy of motor vehicle insurance and the insurer's annual notice of renewal premium: For personal injury protection insurance, the named insured may elect a deductible and to exclude coverage for loss of gross income and loss of earning capacity ("lost wages"). These elections apply to the named insured alone, or to the named insured and all dependent resident relatives. A premium reduction will result from these elections. The named insured is hereby advised not to elect the lost wage exclusion if the named insured or dependent resident relatives are employed, since lost wages will not be payable in the event of an accident.

Section 16. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.7401, Florida Statutes, is revived and reenacted to read:

627.7401 Notification of insured's rights.--

(1) The commission, by rule, shall adopt a form for the notification of insureds of their right to receive personal injury protection benefits under the Florida Motor Vehicle No-Fault Law. Such notice shall include:

(a) A description of the benefits provided by personal

injury protection, including, but not limited to, the specific types of services for which medical benefits are paid, disability benefits, death benefits, significant exclusions from and limitations on personal injury protection benefits, when payments are due, how benefits are coordinated with other insurance benefits that the insured may have, penalties and interest that may be imposed on insurers for failure to make timely payments of benefits, and rights of parties regarding disputes as to benefits.

(b) An advisory informing insureds that:

1. Pursuant to s. 626.9892, the Department of Financial Services may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Insurance Fraud arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

2. Pursuant to s. 627.736(5)(e)1., if the insured notifies the insurer of a billing error, the insured may be entitled to a certain percentage of a reduction in the amount paid by the insured's motor vehicle insurer.

(c) A notice that solicitation of a person injured in a motor vehicle crash for purposes of filing personal injury protection or tort claims could be a violation of s. 817.234, s 817.505, or the rules regulating The Florida Bar and should be immediately reported to the Division of Insurance Fraud if such conduct has taken place.

(2) Each insurer issuing a policy in this state providing personal injury protection benefits must mail or deliver the

notice as specified in subsection (1) to an insured within 21 days after receiving from the insured notice of an automobile accident or claim involving personal injury to an insured who is covered under the policy. The office may allow an insurer additional time to provide the notice specified in subsection (1) not to exceed 30 days, upon a showing by the insurer that an emergency justifies an extension of time.

(3) The notice required by this section does not alter or modify the terms of the insurance contract or other requirements of this act.

Section 17. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.7403, Florida Statutes, is revived and reenacted to read:

627.7403 Mandatory joinder of derivative claim.--In any action brought pursuant to the provisions of s. 627.737 claiming personal injuries, all claims arising out of the plaintiff's injuries, including all derivative claims, shall be brought together, unless good cause is shown why such claims should be brought separately.

Section 18. Notwithstanding the repeal of the Florida Motor Vehicle No-Fault Law, which occurred on October 1, 2007, section 627.7405, Florida Statutes, is revived and reenacted to read:

627.7405 Insurers' right of reimbursement.--Notwithstanding any other provisions of ss. 627.730-627.7405, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall

have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle.

Section 19. This act revives and reenacts, with amendments, the Florida Motor Vehicle No-Fault Law, which expired by operation of law on October 1, 2007. This act is intended to be remedial and curative in nature and to minimize confusion concerning the changes made by this act to ss. 627.730-627.7405, Florida Statutes. Therefore, the Florida Motor Vehicle No-Fault Law shall continue to be codified as ss. 627.730-627.7405, Florida Statutes, notwithstanding the repeal of those sections contained in s. 19, chapter 2003-411, Laws of Florida.

Section 20. Effective January 15, 2008, and applicable to policies issued or renewed on or after that date, subsections (1) and (4), paragraphs (a), (b), and (c) of subsection (5), subsection (8), and paragraphs (d) and (e) of subsection (10) of section 627.736, Florida Statutes, as reenacted and amended by this act, are amended, subsections (11), (12), and (13) of that section, as reenacted and amended by this act, are renumbered as subsections (12), (13), and (14), respectively, and a new subsection (11) and subsections (15) and (16) are added to that section, to read:

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

(1) REQUIRED BENEFITS.--Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to the provisions of subsection (2) and paragraph (4)(e) ~~(d)~~, to a limit of $10,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) Medical benefits.--Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and medically necessary ambulance, hospital, and nursing services. However, the medical benefits shall provide reimbursement only for such services and care that are provided, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459 or a dentist licensed under chapter 466 or that are provided by any of the following persons or entities:

1. A chiropractic physician licensed under chapter 460.

2. A hospital or ambulatory surgical center licensed under chapter 395.

3. A person or entity licensed under ss. 401.2101-401.45 that provides emergency transportation and treatment.

4. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, or dentists licensed under chapter 466 or by such practitioner or practitioners and the spouse, parent, child, or sibling of that practitioner or those practitioners.

5. An entity wholly owned, directly or indirectly, by a hospital or hospitals.

6. A health care clinic licensed under ss. 400.990-400.995 that is:

a. Accredited by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, or the Accreditation Association for Ambulatory Health Care, Inc.; or

b. A health care clinic that:

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

The Financial Services Commission shall adopt by rule the form that must be used by an insurer and a health care provider specified in subparagraph 4., subparagraph 5., or subparagraph 6. to document that the health care provider meets the criteria of this paragraph, which rule must include a requirement for a sworn statement or affidavit ~~Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his or her religious beliefs; however, this sentence does not affect the determination of what other services or procedures are medically necessary~~.

(b) Disability benefits.--Sixty percent of any loss of gross income and loss of earning capacity per individual from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his or her household. All disability benefits payable under this provision shall be paid not less than every 2 weeks.

(c) Death benefits.--Death benefits equal to the lesser of $5,000 or the remainder of unused personal injury protection benefits per individual. The insurer may pay such benefits to the executor or administrator of the deceased, to any of the deceased's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and no such insurer shall require the purchase of any other motor vehicle coverage other than the purchase of property damage liability coverage as required by s. 627.7275 as a condition for providing such required benefits. Insurers may not require that property damage liability insurance in an amount greater than $10,000 be purchased in conjunction with personal injury protection. Such insurers shall make benefits and required property damage liability insurance coverage available through normal marketing channels. Any insurer writing motor vehicle liability insurance in this state who fails to comply with such availability requirement as a general business practice shall be deemed to have violated part IX of chapter 626, and such violation shall constitute an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance; and any such insurer committing such violation shall be subject to the penalties afforded in such part, as well as those which may be afforded elsewhere in the insurance code.

(4) BENEFITS; WHEN DUE.--Benefits due from an insurer

under ss. 627.730-627.7405 shall be primary, except that benefits received under any workers' compensation law shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. When the Agency for Health Care Administration provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, benefits under ss. 627.730-627.7405 shall be subject to the provisions of the Medicaid program.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by ss. 627.730-627.7405.

(b) Personal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. When an insurer pays only a portion of a claim or rejects a claim, the insurer shall provide at the time of the

partial payment or rejection an itemized specification of each item that the insurer had reduced, omitted, or declined to pay and any information that the insurer desires the claimant to consider related to the medical necessity of the denied treatment or to explain the reasonableness of the reduced charge, provided that this shall not limit the introduction of evidence at trial; and the insurer shall include the name and address of the person to whom the claimant should respond and a claim number to be referenced in future correspondence. However, notwithstanding the fact that written notice has been furnished to the insurer, any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery. This paragraph does not preclude or limit the ability of the insurer to assert that the claim was unrelated, was not medically necessary, or was unreasonable or that the amount of the charge was in excess of that permitted under, or in violation of, subsection (5). Such assertion by the insurer may be made at any time, including after payment of the claim or after the 30-day time period for payment set forth in this paragraph.

(c) Upon receiving notice of an accident that is potentially covered by personal injury protection benefits, the insurer must reserve $5,000 of personal injury protection

benefits for payment to physicians licensed under chapter 458 or chapter 459 who provide emergency services and care, as defined in s. 395.002(9), or who provide hospital inpatient care. The amount required to be held in reserve may be used only to pay claims from such physicians until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice of a claim from a physician who provided emergency services and care or who provided hospital inpatient care may then be used by the insurer to pay other claims. The time periods specified in paragraph (b) for required payment of personal injury protection benefits shall be tolled for the period of time that an insurer is required by this paragraph to hold payment of a claim that is not from a physician who provided emergency services and care or who provided hospital inpatient care.

(d) ~~(c)~~ All overdue payments shall bear simple interest at the rate established under s. 55.03 or the rate established in the insurance contract, whichever is greater, for the year in which the payment became overdue, calculated from the date the insurer was furnished with written notice of the amount of covered loss. Interest shall be due at the time payment of the overdue claim is made.

(e) ~~(d)~~ The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical

contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state, but within the United States of America or its territories or possessions or Canada, by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1. or subparagraph 2., provided the relative at the time of the accident is domiciled in the owner's household and is not himself or herself the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself or herself:

a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.7405; or

b. Entitled to personal injury benefits from the insurer of the owner or owners of such a motor vehicle.

(f) ~~(e)~~ If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person, the maximum payable shall be as specified in subsection (1), and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing

the claim.

(g) ~~(f)~~ It is a violation of the insurance code for an insurer to fail to timely provide benefits as required by this section with such frequency as to constitute a general business practice.

(h) ~~(g)~~ Benefits shall not be due or payable to or on the behalf of an insured person if that person has committed, by a material act or omission, any insurance fraud relating to personal injury protection coverage under his or her policy, if the fraud is admitted to in a sworn statement by the insured or if it is established in a court of competent jurisdiction. Any insurance fraud shall void all coverage arising from the claim related to such fraud under the personal injury protection coverage of the insured person who committed the fraud, irrespective of whether a portion of the insured person's claim may be legitimate, and any benefits paid prior to the discovery of the insured person's insurance fraud shall be recoverable by the insurer from the person who committed insurance fraud in their entirety. The prevailing party is entitled to its costs and attorney's fees in any action in which it prevails in an insurer's action to enforce its right of recovery under this paragraph.

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.--

(a)1. Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and

supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment, if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like services or supplies. With respect to a determination of whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, and reimbursement levels in the community and various federal and state medical fee schedules applicable to automobile and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

2. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.

c. For emergency services and care rendered by a physician and related hospital inpatient services rendered by a physician,

the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the applicable Medicare Part B fee schedule. However, if such services, supplies, or care are not reimbursable under Medicare Part B, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care are provided. Services, supplies, or care that are not reimbursable under Medicare or workers' compensation are not required to be reimbursed by the insurer.

3. For purposes of subparagraph 2., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect at the time the services, supplies, or care were rendered and for the area in which such services were rendered.

4. Subparagraph 2. does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of

subparagraph 2. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider would be entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes.

5. If an insurer limits payment as authorized by subparagraph 2., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits.

(b)1. An insurer or insured is not required to pay a claim or charges:

a. Made by a broker or by a person making a claim on behalf of a broker;

b. For any service or treatment that was not lawful at the time rendered;

c. To any person who knowingly submits a false or misleading statement relating to the claim or charges;

d. With respect to a bill or statement that does not substantially meet the applicable requirements of paragraph (d);

e. For any treatment or service that is upcoded, or that is unbundled when such treatment or services should be bundled, in accordance with paragraph (d). To facilitate prompt payment of lawful services, an insurer may change codes that it determines to have been improperly or incorrectly upcoded or unbundled, and may make payment based on the changed codes,

without affecting the right of the provider to dispute the change by the insurer, provided that before doing so, the insurer must contact the health care provider and discuss the reasons for the insurer's change and the health care provider's reason for the coding, or make a reasonable good faith effort to do so, as documented in the insurer's file; and

f. For medical services or treatment billed by a physician and not provided in a hospital unless such services are rendered by the physician or are incident to his or her professional services and are included on the physician's bill, including documentation verifying that the physician is responsible for the medical services that were rendered and billed.

~~2. Charges for medically necessary cephalic thermograms, peripheral thermograms, spinal ultrasounds, extremity ultrasounds, video fluoroscopy, and surface electromyography shall not exceed the maximum reimbursement allowance for such procedures as set forth in the applicable fee schedule or other payment methodology established pursuant to s. 440.13.~~

~~3. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing when done in conjunction with a needle electromyography procedure and both are performed and billed solely by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 who is also certified by the American Board of Electrodiagnostic Medicine or by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or who holds diplomate status with the American Chiropractic Neurology Board or its~~

~~predecessors shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor.~~

~~4. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing that does not meet the requirements of subparagraph 3. shall not exceed the applicable fee schedule or other payment methodology established pursuant to s. 440.13.~~

~~5. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services shall not exceed 175 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year, except that allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services provided in facilities accredited by the Accreditation Association for~~

~~Ambulatory Health Care, the American College of Radiology, or the Joint Commission on Accreditation of Healthcare Organizations shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year. This paragraph does not apply to charges for magnetic resonance imaging services and nerve conduction testing for inpatients and emergency services and care as defined in chapter 395 rendered by facilities licensed under chapter 395.~~

2.~~6.~~ The Department of Health, in consultation with the appropriate professional licensing boards, shall adopt, by rule, a list of diagnostic tests deemed not to be medically necessary for use in the treatment of persons sustaining bodily injury covered by personal injury protection benefits under this section. The initial list shall be adopted by January 1, 2004, and shall be revised from time to time as determined by the Department of Health, in consultation with the respective professional licensing boards. Inclusion of a test on the list of invalid diagnostic tests shall be based on lack of demonstrated medical value and a level of general acceptance by the relevant provider community and shall not be dependent for results entirely upon subjective patient response.

Notwithstanding its inclusion on a fee schedule in this subsection, an insurer or insured is not required to pay any charges or reimburse claims for any invalid diagnostic test as determined by the Department of Health.

(c)1. With respect to any treatment or service, other than medical services billed by a hospital or other provider for emergency services as defined in s. 395.002 or inpatient services rendered at a hospital-owned facility, the statement of charges must be furnished to the insurer by the provider and may not include, and the insurer is not required to pay, charges for treatment or services rendered more than 35 days before the postmark date or electronic transmission date of the statement, except for past due amounts previously billed on a timely basis under this paragraph, and except that, if the provider submits to the insurer a notice of initiation of treatment within 21 days after its first examination or treatment of the claimant, the statement may include charges for treatment or services rendered up to, but not more than, 75 days before the postmark date of the statement. The injured party is not liable for, and the provider shall not bill the injured party for, charges that are unpaid because of the provider's failure to comply with this paragraph. Any agreement requiring the injured person or insured to pay for such charges is unenforceable.

2. If, however, the insured fails to furnish the provider with the correct name and address of the insured's personal injury protection insurer, the provider has 35 days from the date the provider obtains the correct information to furnish the insurer with a statement of the charges. The insurer is not

required to pay for such charges unless the provider includes with the statement documentary evidence that was provided by the insured during the 35-day period demonstrating that the provider reasonably relied on erroneous information from the insured and either:

a. A denial letter from the incorrect insurer; or

b. Proof of mailing, which may include an affidavit under penalty of perjury, reflecting timely mailing to the incorrect address or insurer.

3. For emergency services and care as defined in s. 395.002 rendered in a hospital emergency department or for transport and treatment rendered by an ambulance provider licensed pursuant to part III of chapter 401, the provider is not required to furnish the statement of charges within the time periods established by this paragraph; and the insurer shall not be considered to have been furnished with notice of the amount of covered loss for purposes of paragraph (4)(b) until it receives a statement complying with paragraph (d), or copy thereof, which specifically identifies the place of service to be a hospital emergency department or an ambulance in accordance with billing standards recognized by the Health Care Finance Administration.

4. Each notice of insured's rights under s. 627.7401 must include the following statement in type no smaller than 12 points:

BILLING REQUIREMENTS.--Florida Statutes provide that with respect to any treatment or services, other than certain

hospital and emergency services, the statement of charges furnished to the insurer by the provider may not include, and the insurer and the injured party are not required to pay, charges for treatment or services rendered more than 35 days before the postmark date of the statement, except for past due amounts previously billed on a timely basis, and except that, if the provider submits to the insurer a notice of initiation of treatment within 21 days after its first examination or treatment of the claimant, the statement may include charges for treatment or services rendered up to, but not more than, 75 days before the postmark date of the statement.

(8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S FEES.--With respect to any dispute under the provisions of ss. 627.730-627.7405 between the insured and the insurer, or between an assignee of an insured's rights and the insurer, the provisions of s. 627.428 shall apply, except as provided in subsections ~~subsection~~ (10) and (15).

(10) DEMAND LETTER.--

(d) If, within 30 ~~15~~ days after receipt of notice by the insurer, the overdue claim specified in the notice is paid by the insurer together with applicable interest and a penalty of 10 percent of the overdue amount paid by the insurer, subject to a maximum penalty of $250, no action may be brought against the insurer. If the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, no action may be brought against the insurer if, within 30 ~~15~~ days after its receipt of the notice, the insurer mails to the person filing the notice a written statement of the

insurer's agreement to pay for such treatment in accordance with the notice and to pay a penalty of 10 percent, subject to a maximum penalty of $250, when it pays for such future treatment in accordance with the requirements of this section. To the extent the insurer determines not to pay any amount demanded, the penalty shall not be payable in any subsequent action. For purposes of this subsection, payment or the insurer's agreement shall be treated as being made on the date a draft or other valid instrument that is equivalent to payment, or the insurer's written statement of agreement, is placed in the United States mail in a properly addressed, postpaid envelope, or if not so posted, on the date of delivery. The insurer is ~~shall~~ not ~~be~~ obligated to pay any attorney's fees if the insurer pays the claim or mails its agreement to pay for future treatment within the time prescribed by this subsection.

(e) The applicable statute of limitation for an action under this section shall be tolled for a period of 30 ~~15~~ business days by the mailing of the notice required by this subsection.

(11) FAILURE TO PAY VALID CLAIMS; UNFAIR OR DECEPTIVE PRACTICE.--

(a) If an insurer fails to pay valid claims for personal injury protection with such frequency so as to indicate a general business practice, the insurer is engaging in a prohibited unfair or deceptive practice that is subject to the penalties provided in s. 626.9521 and the office has the powers and duties specified in ss. 626.9561-626.9601 with respect thereto.

(b) Notwithstanding s. 501.212, the Department of Legal Affairs may investigate and initiate actions for a violation of this subsection, including, but not limited to, the powers and duties specified in part II of chapter 501.

(15) ALL CLAIMS BROUGHT IN A SINGLE ACTION.--In any civil action to recover personal injury protection benefits brought by a claimant pursuant to this section against an insurer, all claims related to the same health care provider for the same injured person shall be brought in one action, unless good cause is shown why such claims should be brought separately. If the court determines that a civil action is filed for a claim that should have been brought in a prior civil action, the court may not award attorney's fees to the claimant.

(16) SECURE ELECTRONIC DATA TRANSFER.--An electronic notice, documentation, transmission, or communication of any kind required or authorized under ss. 627.730-627.7405 must be transmitted by secure electronic data transfer that is consistent with state and federal privacy and security laws.

Section 21. Effective January 15, 2008, and applicable to policies issued or renewed on or after that date, section 627.739, Florida Statutes, as reenacted by this act, is amended to read:

627.739 Personal injury protection; optional limitations~~,~~ ~~deductibles~~.--

(1) The named insured may elect ~~a deductible or~~ modified coverage as specified in subsection (2) ~~or combination thereof~~ to apply to the named insured alone or to the named insured and dependent relatives residing in the same household~~,~~ but may not

elect ~~a deductible or~~ modified coverage to apply to any other person covered under the policy.

~~(2) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of $250, $500, and $1,000. The deductible amount must be applied to 100 percent of the expenses and losses described in s. 627.736. After the deductible is met, each insured is eligible to receive up to $10,000 in total benefits described in s. 627.736(1). However, this subsection shall not be applied to reduce the amount of any benefits received in accordance with s. 627.736(1)(c).~~

(2) ~~(3)~~ Insurers shall offer coverage wherein, at the election of the named insured, the benefits for loss of gross income and loss of earning capacity described in s. 627.736(1)(b) shall be excluded.

(3) ~~(4)~~ The named insured shall not be prevented from electing ~~a deductible under subsection (2) and~~ modified coverage under subsection (2) ~~(3)~~. Each election made by the named insured under this section shall result in an appropriate reduction of premium associated with that election.

(4) ~~(5)~~ ~~All~~ Such offer ~~offers~~ shall be made in clear and unambiguous language at the time the initial application is taken and prior to each annual renewal and shall indicate that a premium reduction will result from such ~~each~~ election. At the option of the insurer, the requirements of the preceding sentence are met by using forms of notice approved by the office~~,~~ or by providing the following notice in 10-point type in the insurer's application for initial issuance of a policy of

motor vehicle insurance and the insurer's annual notice of renewal premium:

For personal injury protection insurance, the named insured may elect ~~a deductible and~~ to exclude coverage for loss of gross income and loss of earning capacity ("lost wages"). This election applies ~~These elections apply~~ to the named insured alone~~,~~ or to the named insured and all dependent resident relatives. A premium reduction will result from this election ~~these elections~~. The named insured is hereby advised not to elect the lost wage exclusion if the named insured or dependent resident relatives are employed, since lost wages will not be payable in the event of an accident.

Section 22. (1) The Legislature intends that the provisions of this act reviving and reenacting the Florida Motor Vehicle No-Fault Law apply to policies issued on or after the effective date of this act.

(2) Each insurer that issued coverage for a motor vehicle that is subject to the Florida Motor Vehicle No-Fault Law shall, within 30 days after the effective date of this act, mail or deliver a revised notice of the premium and policy changes to each policyholder whose policy has an effective date on or after the effective date of this act and who was previously issued a motor vehicle insurance policy or sent a renewal notice based on the assumption that the Florida Motor Vehicle No-Fault Law would be repealed on October 1, 2007. For a renewal policy, the coverage must provide the same limits of personal injury protection coverage, the same deductible from personal injury

protection coverage, and the same limits of medical payments coverage as provided in the prior policy, unless the policyholder elects different limits that are available. The effective date of the revised policy or renewal shall be the same as the effective date specified in the prior notice. The revised notice of premium and coverage changes is exempt from the requirements of ss. 627.7277, 627.728, and 627.7282, Florida Statutes. The policyholder has a period of 30 days, or a longer period if specified by the insurer, following receipt of the revised notice within which to pay any additional amount of premium due and thereby maintain the policy in force as specified in this section. Alternatively, the policyholder may cancel the policy within this time period and obtain a refund of the unearned premium. If the policyholder fails to timely respond to the notice, the insurer must cancel the policy and return any unearned premium to the insured. The date on which the policy will be canceled shall be stated in the notice and may not be less than 35 days after the date of the notice. The amount of unearned premium due to the policyholder shall be calculated on a pro rata basis. The failure of an insurer to timely mail or deliver a revised notice as required by this subsection does not affect the other requirements of this section.

(3) With respect to a policy providing personal injury protection coverage having an effective date between the effective date of this act and January 14, 2008, inclusive, the insurer shall use the forms and rates it had in effect on September 30, 2007, for all coverages in that policy unless the

insurer makes a new rate or form filing that is approved by the Office of Insurance Regulation or otherwise legally allowed.

(4) The Legislature recognizes that some persons have been issued a motor vehicle insurance policy effective on or after October 1, 2007, and before the effective date of this act, which does not include personal injury protection, based upon the expected repeal of the Florida Motor Vehicle No-Fault Law on October 1, 2007, pursuant to s. 19, chapter 2003-411, Laws of Florida. Any such person:

(a) May continue to own and operate a motor vehicle in this state without being subject to any sanction for failing to maintain personal injury protection coverage if that person continues to meet statutory requirements relating to property damage liability coverage and obtains personal injury protection coverage that takes effect no later than December 1, 2007.

(b) Is not subject to the provisions of s. 627.737, Florida Statutes, relating to the exemption from tort liability with respect to injuries sustained by the person in a motor vehicle crash occurring while the policy without personal injury protection coverage is in effect but not later than November 30, 2007. This paragraph also applies during such period to any person who would have been covered under a personal injury protection policy if such a policy had been maintained on such motor vehicle.

(5) Each insurer shall, by October 31, 2007, provide written notification to each insured referred to in subsection (4) informing the insured that he or she must obtain personal injury protection coverage that takes effect no later than

December 1, 2007. Such notice must include the premium for such coverage and the premium credit, if any, which will be provided for other coverage, such as bodily injury liability coverage or uninsured motorist coverage, as required by subsection (4). Alternatively, the insurer may add an endorsement to the policy to provide personal injury protection coverage as required by law, effective no later than December 1, 2007, without requiring any additional payment from the insured, and shall provide written notification to the insured of such endorsement by October 31, 2007.

Section 23. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0013C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	X	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

A

Council/Committee hearing bill: Committee on Insurance

Representative(s) Taylor offered the following:

Amendment (with title amendment)

Remove line(s) 2371-2421.

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

Remove line(s) 87-90 and insert:

security laws; providing legislative intent concerning

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0013C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Bogdanoff offered the following:

Amendment

Remove line 1840 and insert:

reimbursement only for such services and care that are provided, lawfully supervised,

000000

amendmentdraft22486.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0013C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Bogdanoff offered the following:

Amendment

Between line(s) 1882 and 1883 insert:

7. A person or entity providing magnetic resonance imaging services if such services have been lawfully ordered by a licensed health care practitioner.

000000

amendmentdraft22488.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0013C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Bogdanoff offered the following:

Amendment

Remove line(s) 1989-2004 and insert:

benefits for payment to physicians licensed under chapter 458 or chapter 459 or dentists licensed under chapter 466 who provide emergency services and care, as defined in s. 395.002(9), or who provide hospital inpatient care. The amount required to be held in reserve may be used only to pay claims from such physicians or dentists until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice of a claim from a physician or dentist who provided emergency services and care or who provided hospital inpatient care may then be used by the insurer to pay other claims. The time periods specified in paragraph (b) for required payment of personal injury protection benefits shall be tolled for the period of time that an insurer is required by this paragraph to hold payment of a claim that is not from a physician or dentist who provided emergency services and care or who provided

hospital inpatient care to the extent that the personal injury protection benefits not held in reserve are insufficient to pay the claim. This paragraph does not require an insurer to establish a claim reserve for insurance accounting purposes.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0013C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Bogdanoff offered the following:

Amendment

Remove line 2124 and insert:

which services were rendered, except that it may not be less than the applicable Medicare Part B fee schedule for medical services, supplies, and care subject to Medicare Part B.

000000

amendmentdraft22485.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0013C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Bogdanoff offered the following:

Amendment (with title amendment)

Remove line(s) 2366-2370 and insert:

(16) SECURE ELECTRONIC DATA TRANSFER.--If all parties mutually and expressly agree, a notice, documentation, transmission, or communication of any kind required or authorized under ss. 627.730-627.7405 may be transmitted electronically if it is transmitted by secure electronic data transfer that is consistent with state and federal privacy and security laws.

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

Remove line(s) 83-87 and insert:

unless good cause is shown; authorizing notices and communications required or authorized under the Florida Motor Vehicle No-Fault Law to be transmitted electronically under certain conditions; amending s. 627.739, F.S., as reenacted;

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0013C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Bogdanoff offered the following:

Amendment (with title amendment)

Remove line(s) 2422-2504 and insert:

Section 22. Application of the Florida Motor Vehicle No-Fault Law.--

(1) The requirements of ss. 627.730-627.7405, Florida Statutes, the Florida Motor Vehicle No-Fault Law, as revived, reenacted, and amended by this act, apply to all motor vehicle owners who are subject to such law on or after February 15, 2008, and to all motor vehicle insurance policies in effect on or after February 15, 2008. The Legislature finds that in order to protect the public health, safety, and welfare, it is necessary to require insurers to revise or endorse policies that are in effect on February 15, 2008, to add personal injury protection as required by subsection (2), and to provide a uniform date for motor vehicle owners to obtain or continue such security and for insurance policies to provide such coverage. In order to avoid revising in-force policies, enforcement would depend on policyholders electing to add such coverage, which

would result in a much greater number of uninsured vehicles, an inability of accident victims to obtain medical care, a greater level of uncompensated medical care, higher costs to public and private health care systems, and greater numbers of persons being subject to penalties for noncompliance. Alternatively, in order to avoid amending in-force policies, the effective date would have to be delayed for at least 1 year, during which time no mandatory coverage requirements would apply for injuries sustained in a motor vehicle accident, which would cause even greater harm to the public health, safety, and welfare for the reasons mentioned.

(2) Effective February 15, 2008, each insurer that has issued coverage for a motor vehicle that is subject to the Florida Motor Vehicle No-Fault Law shall endorse or revise such policy to add personal injury protection coverage as required by such law and to make any other related coverage changes to optional medical payments or similar coverage. The insurer shall provide notice to the policyholder of the coverage and premium changes as otherwise required by law. Insurers shall make rate filings with the Office of Insurance Regulation as required by law to revise rates for all affected coverages, including bodily injury liability coverage and uninsured motorist coverage, which shall take effect February 15, 2008. Revised rates shall be applied on a pro rata basis for the remainder of the policy term for policies in force on February 15, 2008.

(3) The Legislature recognizes that the Florida Motor Vehicle No-Fault Law was repealed on October 1, 2007, and that vehicle owners are not required to maintain personal injury protection coverage on or after that date until February 15, 2008. Notwithstanding any other law, an insurer is not required

to report the issuance, cancellation, or nonrenewal of personal injury protection coverage occurring between October 1, 2007, and February 14, 2008, inclusive, to the Department of Highway Safety and Motor Vehicles. Any law requiring personal injury protection coverage or providing sanctions for failure to maintain or demonstrate proof of such coverage does not apply during this time period. However, this subsection does not relieve a motor vehicle owner from responsibility for maintaining property damage liability coverage as required by law and does not relieve an insurer from reporting the issuance, cancellation, or nonrenewal of property damage liability coverage as required by law.

Section 23. This act shall take effect upon becoming a law, except that sections 8 through 21 of this act shall take effect February 15, 2008.

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

Remove line(s) 90-107 and insert:

injury protection; providing for application of the Florida Motor Vehicle No-Fault Law, as revived, reenacted, and amended; providing legislative findings; requiring insurers to revise or endorse motor vehicle insurance policies that are in force on a specified date; providing requirements for notice and rate filings; requiring that revised rates be applied on a pro rata basis for the remainder of the term of such policies; clarifying the nonapplication of certain laws governing reports to the Department of Highway Safety and Motor Vehicles and requiring personal injury protection coverage; specifying that the act does not abrogate requirements for a vehicle

owner to maintain property damage liability coverage or an insurer to report to the department the issuance, cancellation, or nonrenewal of such coverage; providing effective dates.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0013C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Bogdanoff offered the following:

Amendment

Remove line(s) 1811-1813 and insert:

Section 20. Subsections (1) and (4), paragraphs (a), (b), and (c) of subsection (5),

000000

amendmentdraft22490.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0013C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Bogdanoff offered the following:

Amendment

Remove line(s) 2371-2373 and insert:

Section 21. Section 627.739, Florida Statutes, as reenacted by this act, is amended

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **13C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Chestnut offered the following:

Amendment (with directory and title amendments)

Remove line(s) 1905 and insert:

(c) Death benefits.--Death benefits equal to the greater of

000000

Chestnut Amd ln 1905.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **13C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Simmons offered the following:

Amendment

Remove line(s) 2127 and insert:

limits that apply under Medicare or workers' compensation; however, medically necessary treatment and care does not include chiropractic services in excess of 24 treatments or rendered 12 weeks beyond the date of the initial chiropractic treatment, whichever comes first, unless the carrier authorizes additional treatment and medically necessary treatment and care does not include physical therapy services in excess of 24 treatments or rendered 12 weeks beyond the date of the initial treatment, whichever comes first, unless the carrier authorizes additional treatment.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **13C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Simmons offered the following:

Amendment (with title amendment)

Remove line(s) 2312-2313 and insert:

provisions of s. 627.428 shall apply, except:

(a) As provided in subsections ~~subsection~~ (10) and (15).

(b) That attorney's fees chargeable under this subsection shall be calculated without regard to any contingency risk multiplier.

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

Remove line(s) 74 and insert:

transmission of certain statements; prohibiting attorney's fees contingency risk multiplier; extending the period

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

12.

Amendment No. (for drafter's use only)

Bill No. **13C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Simmons offered the following:

Amendment (with title amendment)

Remove line(s) 2313 and insert:

subsections ~~subsection~~ (10) and (15) and except that any attorney's fees recovered under ss. 627.730- 627.7405 shall be limited to the greater of $10,000 or three (3) times the amount of benefits secured by the attorney under ss. 627.730-627.7405.

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

Remove line(s) 74 and insert:

transmission of certain statements; restricting the amount of attorney's fees; extending the period

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

13

Amendment No. (for drafter's use only)

Bill No. **13C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Simmons offered the following:

Amendment (with title amendment)

Remove line(s) 2313 and insert:

subsections ~~section~~(10) and (15) and except that any attorney's fees recovered under 627.730 - 627.7405 shall be limited as follows:

(a) For pre-suit efforts, the attorney's fees shall be limited to no more than $500;

(b) From the time of filing a suit through the courts dispensation of any motions for summary judgment, the attorneys' fees shall be limited to no more than $2,500 in total;

(c) For efforts up until the commencement of the trial, the attorneys' fees shall be limited to no more than $5,000 in total;

(d) For all efforts through the entry of a judgment, if any, the attorneys' fees shall be limited to no more than $10,000 in total; and

(e) For post trial motions and any appeals, the attorneys' fees shall be limited to no more than $5,000.

000000

Amendment No. (for drafter's use only)

22

23

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

25 Remove line(s) 74 and insert:

26 transmission of certain statements; restricting attorney's fees;

27 extending the period

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

14

Amendment No. (for drafter's use only)

Bill No. **13C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Simmons offered the following:

Amendment

Between line(s) 2502 and 2503 and insert:

Section 23. Effective January 15, 2008, subsections (1) and (7) of section 324.021, Florida Statutes, are amended to read:

324.021 Definitions; minimum insurance required.--The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.--Every self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or moped.

However, the term "motor vehicle" shall not include any motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.

(7) PROOF OF FINANCIAL RESPONSIBILITY.--That proof of ability to respond in damages for liability on account of crashes arising out of the use of a motor vehicle:

(a) In the amount of $25,000 $10,000 because of bodily injury to, or death of, one person in any one crash;

(b) Subject to such limits for one person, in the amount of $50,000 $20,000 because of bodily injury to, or death of, two or more persons in any one crash;

(c) In the amount of $10,000 because of injury to, or destruction of, property of others in any one crash; and

(d) With respect to commercial motor vehicles and nonpublic sector buses, in the amounts specified in ss. 627.7415 and 627.742, respectively.

Section 24. Effective January 15, 2008, section 324.023, Florida Statutes, is created to read:

324.023 Financial responsibility for bodily injury or death.--Every owner of a motor vehicle that is required to be registered in this state and every operator of any motor vehicle located within this state shall establish and maintain, by one of the methods established in s. 324.031, the ability to respond in damages for liability on account of accidents arising out of the use of the motor vehicle in at least the amounts prescribed in s. 324.021(7)(a) and (b). This section does not apply to any motor vehicle that has been continuously and exclusively used

for a commercial purpose since being acquired by its current owner. The requirement of this section shall be in addition to any other financial responsibility required of the owner of a motor vehicle.

Section 25. Effective January 15, 2008, section 324.031, Florida Statutes, is amended to read:

324.031 Manner of proving financial responsibility.--The owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association. The operator or owner of any other vehicle may prove his or her financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) and 324.151;

(2) Posting with the department a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in s. 324.021(7);

(3) Furnishing a certificate of the department showing a deposit of cash or securities in accordance with s. 324.161; or

(4) Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

Any person, including any firm, partnership, association, corporation, or other person, other than a natural person, electing to use the method of proof specified in subsection (2)

or subsection (3) shall post a bond or deposit equal to the number of vehicles owned times $60,000 $30,000, to a maximum of $240,000 $120,000; in addition, any such person, other than a natural person, shall maintain insurance providing coverage in excess of limits of $25,000/50,000/10,000 $10,000/20,000/10,000 or $60,000 $30,000 combined single limits, and such excess insurance shall provide minimum limits of $125,000/250,000/50,000 or $300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1).

Section 26. Effective January 15, 2008, section 324.161, Florida Statutes, is amended to read:

324.161 Proof of financial responsibility; surety bond or deposit.--The certificate of the department of a deposit may be obtained by depositing with it $60,000 $30,000 cash or securities such as may be legally purchased by savings banks or for trust funds, of a market value of $60,000 $30,000 and which deposit shall be held by the department to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages because of bodily injury to or death of any person or for damages because of injury to or destruction of property resulting from the use or operation of any motor vehicle occurring after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

Section 27. Effective January 15, 2008, paragraphs (a) and (b) of subsection (1) of section 324.171, Florida Statutes, are amended to read:

324.171 Self-insurer.--

(1) Any person may qualify as a self-insurer by obtaining a certificate of self-insurance from the department which may, in its discretion and upon application of such a person, issue said certificate of self-insurance when such person has satisfied the requirements of this section to qualify as a self-insurer under this section:

(a) A private individual with private passenger vehicles shall possess unencumbered assets of at least $100,000 that could be subject to a judgment creditor's writ of execution and a net unencumbered worth of at least $100,000 $40,000.

(b) A person, including any firm, partnership, association, corporation, or other person, other than a natural person, shall:

1. Possess unencumbered assets of at least $100,000 that could be subject to a judgment creditor's writ of execution and a net unencumbered worth of at least $100,000 $40,000 for the first motor vehicle and $50,000 $20,000 for each additional motor vehicle; or

2. Maintain sufficient net worth, as determined annually by the department, pursuant to rules promulgated by the department, with the assistance of the Office of Insurance Regulation of the Financial Services Commission, to be financially responsible for potential losses. The rules shall take into consideration excess insurance carried by the applicant. The department's determination shall be based upon reasonable actuarial principles considering the frequency, severity, and loss development of claims incurred by casualty insurers writing coverage on the type of motor vehicles for which a certificate of self-insurance is desired.

Section 28. Effective January 15, 2008, subsections (1) and (3) of section 316.646, Florida Statutes, are amended to read:

316.646 Security required; proof of security and display thereof; dismissal of cases.--

(1) Any person required by s. 324.023 to maintain liability coverage for bodily injury or death or any person required by s. 627.733 to maintain personal injury protection security on a motor vehicle shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the security required by ss. 324.023 and s. 627.733. Such proof shall be either a uniform proof-of-insurance card in a form prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by the department.

(3) Any person who violates this section is guilty of a nonmoving traffic infraction subject to the penalty provided in chapter 318 and shall be required to furnish proof of security as provided in this section. If any person charged with a violation of this section fails to furnish proof, at or before the scheduled court appearance date, that security was in effect at the time of the violation, the court may immediately suspend the registration and driver's license of such person. Such license and registration may only be reinstated as provided in ss. 324.023 and s. 627.733.

Section 29. Effective January 15, 2008, subsection (7) of section 627.733, Florida Statutes, is amended to read:

627.733 Required security.--

(7) Any operator or owner whose driver's license or registration has been suspended pursuant to this section or s. 316.646 may effect its reinstatement upon compliance with the requirements of this section and upon payment to the Department of Highway Safety and Motor Vehicles of a nonrefundable reinstatement fee of $150 for the first reinstatement. Such reinstatement fee shall be $250 for the second reinstatement and $500 for each subsequent reinstatement during the 3 years following the first reinstatement. Any person reinstating her or his insurance under this subsection must also secure noncancelable coverage as described in ss. 324.021(8) and s. 627.7275(2) and present to the appropriate person proof that the coverage is in force on a form promulgated by the Department of Highway Safety and Motor Vehicles, such proof to be maintained for 2 years. If the person does not have a second reinstatement within 3 years after her or his initial reinstatement, the reinstatement fee shall be $150 for the first reinstatement after that 3-year period. In the event that a person's license and registration are suspended pursuant to this section or s. 316.646, only one reinstatement fee shall be paid to reinstate the license and the registration. All fees shall be collected by the Department of Highway Safety and Motor Vehicles at the time of reinstatement. The Department of Highway Safety and Motor Vehicles shall issue proper receipts for such fees and shall promptly deposit those fees in the Highway Safety Operating Trust Fund. One-third of the fee collected under this subsection shall be distributed from the Highway Safety Operating Trust Fund to the local government entity or state agency which employed the law enforcement officer who seizes a license plate

pursuant to s. 324.201. Such funds may be used by the local government entity or state agency for any authorized purpose.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

(15)

Amendment No. (for drafter's use only)

Bill No.

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Simmons offered the following:

Amendment (with directory and title amendments)

Between lines 2502 and 2503 insert:

Section 23. For the 2007-2008 fiscal year, the nonrecurring sum of $2 million is appropriated from the General Revenue Fund to the Insurance Regulatory Trust Fund for the purpose of providing grants to local law enforcement agencies for the prevention and prosecution of automobile insurance claims fraud. The Department of Financial Services shall administer the grants and shall give priority to local law enforcement agencies within regions of the state with the highest incident of fraud related to the Florida Motor Vehicle No-Fault Law.

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

Remove line(s) 107 and insert:

Coverage; providing appropriation; requiring the Department of Financial Services to administer grants and prioritize grant

distribution for the prevention and prosecution of automobile insurance claims fraud; providing effective dates.

HB 15C
Bogdanoff

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 15C Pub. Rec./Personal Identifying Information & Property Damage Liability Insurance Policies/DHSMV
SPONSOR(S): Bogdanoff
TIED BILLS: HB 13C **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Insurance	12 Y, 0 N	Overton	Overton
2) Jobs & Entrepreneurship Council		Overton	Thorn
3)			
4)			
5)			

SUMMARY ANALYSIS

On October 1, 2007, the Florida Motor Vehicle No-Fault Law and accompanying public records exemption sunsetted. This bill is tied to the passage of HB 13C which revives and reenacts the Florida Motor Vehicle No-Fault Law.

HB 13C requires every owner or registrant of a motor vehicle, which is required to be registered and licensed in Florida, to maintain personal injury protection coverage insurance and property damage liability insurance coverage in effect continuously throughout the registration or licensing period. It also requires every insurer issuing a policy providing personal injury protection benefits or property damage liability coverage to report information regarding renewal, cancellation, or nonrenewal to the Department of Highway Safety and Motor Vehicles.

HB 15C creates a public records exemption for certain information held by the Department of Highway Safety and Motor Vehicles regarding personal injury protection and property damage liability insurance policies. The following information is confidential and exempt from public records requirements: personal identifying information of an insured or former insured; an insurance policy number; and information that identifies the insurer. The bill provides for limited release of the name of the insurer and the policy number.

Also, HB 15C provides for future review and repeal of the exemption and provides a public necessity statement.

The bill requires a two-thirds vote of the members present and voting to be enacted as a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[1] provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

HB 13C – Motor Vehicle Insurance

HB 13C revives and reenacts the Florida Motor Vehicle No-Fault Law. That bill requires every owner or registrant of a motor vehicle, which is required to be registered and licensed in Florida, to maintain personal injury protection coverage insurance and property damage liability insurance coverage in effect continuously throughout the registration or licensing period. It also requires every insurer issuing a policy providing personal injury protection benefits or property damage liability coverage to report information regarding renewal, cancellation, or nonrenewal to the Department of Highway Safety and Motor Vehicles. The intent is to use the information for enforcement and regulatory purposes only, including the generation by the department of data regarding compliance by owners of motor vehicles with coverage requirements.

Current Public Records Exemptions

On October 1, 2007, the Florida Motor Vehicle No-Fault Law and accompanying public records exemption sunsetted. The law required every insurer issuing a policy providing personal injury protection benefits to report information regarding renewal, cancellation, or nonrenewal to the

[1] Section 119.15, F.S.

Department of Highway Safety and Motor Vehicles. The reports were confidential and exempt from public records requirements.[2]

EFFECT OF BILL

The bill creates a public records exemption for certain information held by the Department of Highway Safety and Motor Vehicles regarding personal injury protection and property damage liability insurance policies. The following information is confidential and exempt[3] from public records requirements:

- Personal identifying information of an insured or former insured;
- An insurance policy number; and
- Information that identifies the insurer.

The bill provides for limited release of the name of the insurer and the policy number. Upon receipt of a written request and a copy of a crash report,[4] the department may release such information regarding a policy covering a vehicle involved in a motor vehicle accident to: any person involved in the accident; the attorney of any person involved in the accident; or a representative of the insurer of any person involved in the accident.

The bill provides for retroactive application of the public records exemption. It also provides for future review and repeal of the exemption on October 2, 2012. As required by the State Constitution, the bill provides a public necessity statement.

The bill provides an effective date that is contingent upon the passage of HB 13C or similar legislation adopted in the same legislative session or an extension thereof.

C. SECTION DIRECTORY:

Section 1 creates s. 324.242, F.S., to create a public records exemption for certain information regarding personal injury protection and property damage liability insurance policies.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

---

[2] Section 627.736(9), F.S.

[3] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62, Aug. 1, 1985.

[4] Sections 316.065, 316.066, and 316.068, F.S., provide crash report requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for enactment into law.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Subject Limitation

Article I, s. 24(c) of the Florida Constitution requires a bill making exemptions to public access to records and meetings to contain only exemptions from s. 24(a) and (b) and provisions governing enforcement of those exemptions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a public records exemption; creating s. 324.242, F.S.; creating a public records exemption for certain information regarding personal injury protection and property damage liability insurance policies held by the Department of Highway Safety and Motor Vehicles; authorizing conditional release of confidential and exempt information to specified persons; providing for retroactive application of the exemption; providing for future review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 324.242, Florida Statutes, is created to read:

324.242 Personal injury protection and property damage liability insurance policies; public records exemption.--

(1) The following information regarding personal injury protection and property damage liability insurance policies held by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Personal identifying information of an insured or former insured;

(b) An insurance policy number; and

(c) Information that identifies the insurer.

(2) Upon receipt of a written request and a copy of a crash report as required under s. 316.065, s. 316.066, or s. 316.068, the department shall release the name of the insurer and the policy number for a policy covering a vehicle involved in a motor vehicle accident to:

(a) Any person involved in such accident;

(b) The attorney of any person involved in such accident; or

(c) A representative of the insurer of any person involved in such accident.

(3) This exemption applies to personal identifying information of an insured or former insured, insurance policy numbers, and information that identifies an insurer held by the department before, on, or after the effective date of this section.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements certain information regarding personal injury protection and property damage liability insurance policies held by the Department of Highway Safety and Motor Vehicles. In order to effectively and efficiently administer and enforce personal injury protection and property damage liability insurance coverage requirements, the Legislature finds that it is a public necessity to protect the release of personal identifying

information of an insured or former insured, the insurance policy number of an insured, and information identifying an insurer. In order to ensure public safety on the roads and highways of this state, it is imperative that automobile drivers be properly insured for damage to personal and real property, as well as personal injury. As such, insurers are required to report to the Department of Highway Safety and Motor Vehicles and verify the issuance of a new policy to a driver, as well as the renewal, nonrenewal, or cancellation of that policy. When this information is compiled it could result in a customer list of every insurer in the state. Customer lists contain detailed client and policy information that is traditionally considered proprietary business information because such lists could be used by competitors to solicit customers. Consequently, the release of that information could injure the insurer in the marketplace by diminishing the advantage the insurer maintains over those who do not possess such information. Therefore, the Legislature finds that it is a public necessity to prevent the release of such information held by the Department of Highway Safety and Motor Vehicles and thereby makes such information confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution.

Section 3. This act shall take effect on the same date that HB 13C or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 15C**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Jobs & Entrepreneurship Council

Representative(s) Bogdanoff offered the following:

Amendment

Remove line(s) 27.

000000

Bogdanoff Amd ln 27.doc