



Insurance & Banking Subcommittee

**Wednesday, December 7, 2011
9:00 AM
404 HOB**

**Dean Cannon
Speaker**

**Bryan Nelson
Chair**



The Florida House of Representatives

Economic Affairs Committee

Insurance & Banking Subcommittee

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AGENDA


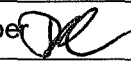
December 7, 2011
404 House Office Building
9:00 a.m. - 11:30 a.m.

- I. Introductory Remarks
- II. **CS/HB 483 Uniform Commercial Code** by *Civil Justice Subcommittee and Rep. Passidomo*
- III. **HB 511 Workers' Compensation** by *Rep. Hudson*
- IV. Workshop on the following:

Draft PCS for HB 119a Motor Vehicle Personal Injury Protection Insurance
- V. Public testimony
- VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 483 Uniform Commercial Code
SPONSOR(S): Civil Justice Subcommittee; Passidomo
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Caridad	Bond
2) Insurance & Banking Subcommittee		Read 	Cooper 
3) Judiciary Committee			

SUMMARY ANALYSIS

The Uniform Commercial Code is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commission (Commission), a group of scholars and business representatives. The term "uniform" refers to how the separate states of the Union have separately enacted the various parts of the Uniform Commercial Code in laws that are uniform to one another.

Article 9 of the UCC governs secured transactions of personal property. In 1998, Article 9 was substantially revised and adopted by all states. In Florida, it is codified in Ch. 679, F.S. In 2010, the Commission drafted and adopted amendments to Article 9. The 2010 amendments modify Article 9 to address filing issues and other matters that have arisen since the 1998 revision.

The bill adopts the 2010 amendments to Article 9. The most significant revision to Ch. 679, F.S., is changes governing the name of a debtor for purposes of filing a financing statement. The bill also provides the following changes:

- Makes minor revisions to s. 679.301, F.S., relating to the location of debtors;
- Modifies provisions relating to guidelines for the continued perfection of security interests that were perfected according to the law of another jurisdiction;
- Provides rules for transition to the proposed version of Article 9; and
- Makes numerous stylistic and grammatical changes.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Uniform Commercial Code (UCC) is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners (ULC), who are members of the National Conference of Commissioners on Uniform State Laws, a group of scholars and business representatives. "Conference members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical."¹

Participation in the Conference is not limited to lawyers since "stakeholder" meetings are held, where the opinions of all groups concerned with a particular area can be heard.² Every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands is assessed a specific amount for the maintenance of the ULC based upon state population. Florida's assessment for 2009-2010 is \$96,700.³

Article 9 of the UCC governs secured transactions in personal property. A secured transaction is a "business arrangement by which a buyer or borrower gives collateral to the seller or lender to guarantee payment of an obligation."⁴ In 1998, Article 9 was substantially revised and adopted by all states and U.S. territories except Puerto Rico where it is currently being considered. In 2010, the Commission drafted and adopted amendments to Article 9.

The 2010 amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following passage of the 1998 version of Article 9. The Article 9 amendments have been adopted in Connecticut, Indiana, Minnesota, Nebraska, Nevada, North Dakota, Rhode Island, Texas, and Washington. They are also currently being considered in a number of other states and U.S. territories.⁵

Issues Concerning Filing

Identifying the Debtor

The purpose of the UCC filing system is to give notice to creditors and other interested parties that there is a valid, perfected security interest in property of the debtor.⁶ A security interest is a "property interest created by agreement or by operation of law to secure performance of an obligation" (i.e. payment of a debt).⁷ An individual or entity files a financial statement to notify third parties — typically prospective buyers and lenders — of a secured party's security interest in goods or real property. Financing statements are indexed under the name of the debtor; therefore, an individual looking for a specific financing statement will search for it under the debtor's name.

¹ <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=9>

² *2008 Commission Annual Report*, p.10, available online: http://www.nccusl.org/nccusl/docs/AnnReport_08_web.pdf

³ *2009 Annual Report of the Florida Commissioners to the National Conference on Uniform State Laws, January 2010*, p. 4; the report was prepared by the Office of Legislative Services for submission to the Governor and both houses of the Legislature through their respective presiding officers.

⁴ Black's Law Dictionary (9th ed. 2009).

⁵ [http://www.nccusl.org/Act.aspx?title=UCC Article 9 Amendments \(2010\)](http://www.nccusl.org/Act.aspx?title=UCC Article 9 Amendments (2010)) (legislation has been introduced and is pending in Washington D.C., Kentucky, Massachusetts, Oklahoma, and Puerto Rico).

⁶ See *Matter of Glasco, Inc.*, 642 F.2d 793, 795 (5th Cir. 1981).

⁷ Black's Law Dictionary (9th ed. 2009).

Section 679.5031(1), F.S., explains what constitutes the debtor's name for purposes of a financing statement where the debtor is a registered organization,⁸ a decedent's estate, or a trust or trustee acting regarding property in trust. Under current law, a financing statement sufficiently provides the name of a debtor that is a registered organization if it provides the name as indicated on the public record of the jurisdiction where the debtor organized. If the debtor is a decedent's estate, the financing statement must provide the decedent's name and indicate that the debtor is an estate. If the debtor is a trust or trustee acting regarding property in trust, the financing statement must:

- Provide the name for the trust in its organic record or, if no name is specified, the settlor's name and additional information to distinguish the debtor from other trusts with one or more of the same settlors; and
- Indicate in the debtor's name or otherwise that the debtor is a trust or trustee acting for trust property.

In other cases, if the debtor has a name, current law requires the financing statement to provide the debtor's individual or organizational name. If the debtor does not have a name, it must provide the names of the partners, members, associates, or other persons comprising the debtor.

The bill revises standards regarding the name of a debtor to be provided on a financing statement. If the debtor is a registered organization, the financing statement sufficiently provides the name of the debtor where it lists the name of the registered organization provided on the most recent public organic record⁹ filed or issued by the registered organization's jurisdiction of organization. This also applies to a registered organization that holds collateral in trust.

Where the collateral is being administered by a personal representative of a decedent, the financing statement is sufficient if it provides the name of the decedent as the debtor and indicates that the collateral is being administered by a personal representative. The name of the decedent indicated on the order appointing the personal representative of the decedent, which was issued by a court having jurisdiction over the collateral, is sufficient as the name of the decedent.

If the collateral is held in a trust that is not a registered organization, the financing statement must indicate the name specified in the organic record of the trust and that the collateral is held in trust. If the organic record does not specify a name, the financing statement must indicate the name of the settlor or testator, additional information sufficient to distinguish the trust from other trusts that may have the same settlors or testator, and an indication that the collateral is held in a trust.

The bill also provides standards regarding the name of an individual debtor to be provided on a financing statement. If the debtor is an individual, the financing statement must provide the name on

⁸ Current law provides that a registered organization is "an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized." Section 679.1021(1)(qqq), F.S. The bill revises the definition to include a business trust that is formed or organized in a state where the public organic record of a business trust must be filed with such state.

⁹ The bill replaces all references to the "public record" with the "public organic record." It further creates a new definition for the term, as "public record" is not currently defined under the statute. The bill defines "public organic record" as:

[A] record that is available to the public for inspection and that is:

1. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;
2. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
3. A record consisting of legislation enacted by the legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization.

the debtor's driver's license if the license has not on its face expired. If the state has issued a non-driver's identification card in lieu of a driver's license, the name provided on the identification card may be used with the same effect as a driver's license name. If the state has issued to an individual more than one driver's license or more than one identification card, the most recent driver's license or identification card applies.

If the debtor does not have a driver's license or identification card, the financing statement must provide either the individual name of the debtor (i.e. whatever the debtor's name is under current law) or the debtor's surname and first personal name.

In other cases, if the debtor does not have a name, the financing statement must include the name of partners, members, associates, or others comprising the debtor. The names must be provided in a manner so that each name provided would be sufficient if the person named was the debtor.

The bill also defines the term "name of the settlor or testator" as follows:

- If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued by the registered organization's jurisdiction of organization; or
- In other cases, the name of the settlor or testator indicated in the trust's organic record.

Claim Concerning Inaccurate or Wrongfully Filed Record

Current law authorizes the debtor to file a correction statement: a claim that a financing statement filed against it was in fact unauthorized.¹⁰ While this filing has no legal effect on the underlying claim, it does put in the public record the debtor's claim that the financing statement was wrongfully filed.

The bill revises current law in two ways. First, the filing is no longer called a "correction statement," but is instead referred to as an "information statement." Second, the bill authorizes the secured party of record to also file an information statement if the secured party believes that an amendment to its financing statement was not authorized. The change addresses concerns of secured parties that an amendment to a different financing statement may be inadvertently filed on the secured party's financing statement because the amendment contains an error when referring to the file number of the financing statement to be amended. It is important to note that the secured party has no duty to file an information statement, even if it is aware of the unauthorized filing.

Perfection of Security Interests

"Perfection of a security interest gives constructive notice to the world of the claim or interest of the one asserting it."¹¹ Article 9 provides guidelines for the continued perfection of security interests that have been perfected according to the law of another jurisdiction.¹² Generally, a security interest perfected according to another jurisdiction, or state's law is not automatically "unperfected." Current law provides that a security interest perfected by filing continues for four months after the jurisdiction in which the debtor is located changes. However, this temporary period of perfection applies only with respect to collateral owned by the debtor at the time of the change. Even if the security interest attaches to after-acquired collateral, there is currently no perfection with respect to such new collateral unless and until the secured party perfects pursuant to the law of the new jurisdiction.

The bill provides the filer perfection for four months in collateral acquired post-move. A similar change is made with respect to a new debtor that is a successor by merger. The new rule provides for temporary perfection in collateral owned by the successor before the merger or collateral acquired by the successor within four months after the merger.

¹⁰ Section 679.518, F.S.

¹¹ *Bay Co. Sheriff's Office v. Tyndall Fed. Credit Union*, 738 So. 2d 456, 458 (Fla. 1st DCA 1999).

¹² Section 679.3161, F.S.

The bill also provides various minor and stylistic changes to provisions affecting perfection of security interests.

Control of Electronic Chattel Paper

Current law provides that control of electronic chattel paper is the functional equivalent of possession of tangible chattel paper. "Chattel paper" is a record or records that show both a monetary obligation and a security interest in specific goods.¹³ "Electronic chattel paper" is "chattel paper evidenced by record or records consisting of information stored in an electronic medium."¹⁴ Current law provides that a secured party has control of electronic chattel paper if the record comprising the chattel paper are created, stored and assigned according to six requirements.¹⁵

The bill provides a general test for establishing when a secured party has control of electronic chattel paper. Specifically, a party has control of electronic chattel paper "if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned." The bill also provides a safe harbor test that if satisfied, establishes control under the aforementioned general test. The safe harbor test is consistent with the original six requirements in current law.

Other Changes

The bill also makes the following changes to Article 9:

- Modifies the definitions of the terms "authenticate," "certificate of title," and "registered organization;" and creates a definition for "public organic record."
- Makes minor revisions to s. 679.301, F.S., relating to the location of debtors;
- Makes minor revisions to provisions governing priority of security interests;
- Makes minor revisions to provisions relating to the information that must be included in a financing statement;
- Provides additional rules regarding the enforceability of contractual provisions restricting the assignment of receivables;
- Provides various clarifying and conforming revisions to current law, and provides rules for transition to the proposed version of Article 9.
- Directs the Division of Statutory Revision to replace the phrase "the act" throughout the bill with the assigned chapter number of the act;
- Makes numerous stylistic and grammatical changes.

B. SECTION DIRECTORY:

Section 1 amends s. 679.1021, F.S., to provide definitions.

Section 2 amends s. 679.1051, F.S., relating to control of electronic chattel paper.

Section 3 amends s. 679.3071, F.S., relating to the location of the debtor.

Section 4 amends s. 679.3111, F.S., relating to the perfection of security interests in property subject to certain statutes, regulations, and treaties.

Section 5 amends s. 679.3161, F.S., relating to perfection of security interests following a change in governing law.

Section 6 amends s. 679.3171, F.S., relating to interests that take propriety over or take free of security interest or agricultural lien.

¹³ Section 679.1021(1)(k), F.S.

¹⁴ Section 679.1021(1)(ee), F.S.

¹⁵ See s. 679.1051, F.S.

Section 7 amends s. 679.326, F.S., to provide priority of security interests created by new debtor.

Section 8 amends s. 679.4061, F.S., relating to discharge of account debtor.

Section 9 amends s. 679.4081, F.S., relating to restrictions on assignment of promissory notes.

Section 10 amends s. 679.5021, F.S., relating to the contents of a financing statement.

Section 11 amends s. 679.5031, F.S., to provide guidelines for sufficiency of debtor name on financing statement.

Section 12 amends s. 679.5071, F.S., relating to the effect of certain events on effectiveness of financing statement.

Section 13 amends s. 679.515, F.S., relating to the duration and effectiveness of financing statement.

Section 14 amends s. 679.516, F.S., to provide what constitutes filing.

Section 15 amends s. 679.518, F.S., relating to inaccurate or wrongly filed record.

Section 16 amends s. 679.607 relating to collection and enforcement by secured party.

Section 17 creates ss. 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807, and 679.808, F.S., to provide guidelines for transition.

Section 18 amends s. 680.1031, F.S., to provide a definition.

Section 19 provides a directive to the Division of Statutory Revision.

Section 20 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of the bill is July 1, 2013. This is consistent with the Commission's proposed amendments to Article 9. According to the Commission, the 2013 effective date is intended to allow states to adopt the amendments uniformly so the Article 9 revisions will become operative simultaneously thereby avoiding confusion with respect to interstate transactions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Directs the Division of Statutory Revision to replace the phrase "the act" throughout the bill with the assigned chapter number of the act;
- Corrects numerous minor errors, including reference errors, so that the bill is consistent with the 2010, Article 9 amendments;

The analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to the Uniform Commercial Code;
 3 revising and providing provisions of the Uniform
 4 Commercial Code relating to secured transactions to
 5 conform to the revised Article 9 of the Uniform
 6 Commercial Code as prepared by the National Conference
 7 of Commissioners on Uniform State Laws; amending s.
 8 679.1021, F.S.; revising and providing definitions;
 9 amending s. 679.1051, F.S.; revising provisions
 10 relating to control of electronic chattel paper;
 11 amending s. 679.3071, F.S.; revising provisions
 12 relating to the location of debtors; amending s.
 13 679.3111, F.S.; making editorial changes; amending s.
 14 679.3161, F.S.; providing rules that apply to certain
 15 collateral to which a security interest attaches;
 16 providing rules relating to certain financing
 17 statements; amending s. 679.3171, F.S.; revising
 18 provisions relating to interests that take priority
 19 over or take free of a security interest or
 20 agricultural lien; amending s. 679.326, F.S.; revising
 21 priority of security interests created by a new
 22 debtor; amending ss. 679.4061 and 679.4081, F.S.;
 23 revising application; amending s. 679.5021, F.S.;
 24 revising when a record of a mortgage satisfying the
 25 requirements of chapter 697 is effective as a filing
 26 statement; amending s. 679.5031, F.S.; revising when a
 27 financing statement sufficiently provides the name of
 28 the debtor; amending s. 679.5071, F.S.; revising the

29 effect of certain events on the effectiveness of a
 30 financing statement; amending s. 679.515, F.S.;
 31 revising the duration and effectiveness of a financing
 32 statement; amending s. 679.516, F.S.; revising
 33 instances when filing does not occur with respect to a
 34 record that a filing office refuses to accept;
 35 amending s. 679.518, F.S.; revising requirements for
 36 claims concerning an inaccurate or wrongfully filed
 37 record; amending s. 679.607, F.S.; revising recording
 38 requirements for the enforcement of mortgages
 39 nonjudicially outside this state; creating part VIII
 40 of chapter 679, F.S., relating to transition from
 41 prior law under the chapter to law under the chapter
 42 as amended by this act; creating s. 679.801, F.S.;
 43 providing scope of application and limitations;
 44 creating s. 679.802, F.S.; providing that security
 45 interests perfected under prior law that also satisfy
 46 the requirements for perfection under this act remain
 47 effective; creating s. 679.803, F.S.; providing that
 48 security interests unperfected under prior law but
 49 that satisfy the requirements for perfection under
 50 this act will become effective July 1, 2013; creating
 51 s. 679.804, F.S.; providing when financing statements
 52 effective under prior law in a different jurisdiction
 53 remain effective; creating s. 679.805, F.S.; requiring
 54 the recording of a financing statement in lieu of a
 55 continuation statement under certain conditions;
 56 providing for the continuation of the effectiveness of

57 a financing statement filed before the effective date
 58 of this act under certain conditions; creating s.
 59 679.806, F.S.; providing requirements for the
 60 amendment of financing statements filed before the
 61 effective date of this act; providing requirements for
 62 financing statements prior to amendment; creating s.
 63 679.807, F.S.; providing person entitled to file
 64 initial financing statement or continuation statement;
 65 creating s. 679.808, F.S.; providing priority of
 66 conflicting claims to collateral; amending s.
 67 680.1031, F.S.; conforming a cross-reference;
 68 providing a directive to the Division of Statutory
 69 Revision; providing an effective date.

70

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

72

73 Section 1. Paragraphs (ooo) through (aaaa) of subsection
 74 (1) of section 679.1021, Florida Statutes, are redesignated as
 75 paragraphs (ppp) through (bbbb), respectively, a new paragraph
 76 (ooo) is added to that subsection, and present paragraphs (g),
 77 (j), (xx), and (qqq) of subsection (1) of that section are
 78 amended to read:

79 679.1021 Definitions and index of definitions.—

80 (1) In this chapter, the term:

81 (g) "Authenticate" means:

82 1. To sign; or

83 2. ~~To execute or otherwise adopt a symbol, or encrypt or~~

84 ~~similarly process a record in whole or in part,~~ With the present

85 ~~intent of the authenticating person to identify the person and~~
 86 ~~adopt or accept a record,~~ to attach to or logically associate
 87 with the record an electronic sound, symbol, or process.

88 (j) "Certificate of title" means a certificate of title
 89 with respect to which a statute provides for the security
 90 interest in question to be indicated on the certificate as a
 91 condition or result of the security interest's obtaining
 92 priority over the rights of a lien creditor with respect to the
 93 collateral. The term includes another record maintained as an
 94 alternative to a certificate of title by the governmental unit
 95 that issues certificates of title if a statute permits the
 96 security interest in question to be indicated on the record as a
 97 condition or result of the security interest's obtaining
 98 priority over the rights of a lien creditor with respect to the
 99 collateral.

100 (xx) "Jurisdiction of organization," with respect to a
 101 registered organization, means the jurisdiction under whose law
 102 the organization is formed or organized.

103 (ooo) "Public organic record" means a record that is
 104 available to the public for inspection and that is:

105 1. A record consisting of the record initially filed with
 106 or issued by a state or the United States to form or organize an
 107 organization and any record filed with or issued by the state or
 108 the United States that amends or restates the initial record;

109 2. An organic record of a business trust consisting of the
 110 record initially filed with a state and any record filed with
 111 the state that amends or restates the initial record, if a
 112 statute of the state governing business trusts requires that the

113 record be filed with the state; or

114 3. A record consisting of legislation enacted by the
 115 Legislature of a state or the Congress of the United States that
 116 forms or organizes an organization, any record amending the
 117 legislation, and any record filed with or issued by the state or
 118 the United States that amends or restates the name of the
 119 organization.

120 (rrr) ~~(qqq)~~ "Registered organization" means an organization
 121 formed or organized solely under the law of a single state or
 122 the United States by the filing of a public organic record with,
 123 the issuance of a public organic record by, or the enactment of
 124 legislation by and as to which the state or the United States
 125 must maintain a public record showing the organization to have
 126 been organized. The term includes a business trust that is
 127 formed or organized under the law of a single state if a statute
 128 of the state governing business trusts requires that the
 129 business trust's organic record be filed with the state.

130 Section 2. Section 679.1051, Florida Statutes, is amended
 131 to read:

132 679.1051 Control of electronic chattel paper.—

133 (1) A secured party has control of electronic chattel
 134 paper if a system employed for evidencing the transfer of
 135 interests in the chattel paper reliably establishes the secured
 136 party as the person to which the chattel paper was assigned.

137 (2) A system satisfies subsection (1), and a secured party
 138 has control of electronic chattel paper, if the record or
 139 records comprising the chattel paper are created, stored, and
 140 assigned in such a manner that:

141 (a)~~(1)~~ A single authoritative copy of the record or
 142 records exists which is unique, identifiable and, except as
 143 otherwise provided in paragraphs (d), (e), and (f) ~~subsections~~
 144 ~~(4), (5), and (6)~~, unalterable;

145 (b)~~(2)~~ The authoritative copy identifies the secured party
 146 as the assignee of the record or records;

147 (c)~~(3)~~ The authoritative copy is communicated to and
 148 maintained by the secured party or its designated custodian;

149 (d)~~(4)~~ Copies or amendments ~~revisions~~ that add or change
 150 an identified assignee of the authoritative copy can be made
 151 only with the consent ~~participation~~ of the secured party;

152 (e)~~(5)~~ Each copy of the authoritative copy and any copy of
 153 a copy is readily identifiable as a copy that is not the
 154 authoritative copy; and

155 (f)~~(6)~~ Any amendment ~~revision~~ of the authoritative copy is
 156 readily identifiable as ~~an~~ authorized or unauthorized ~~revision~~.

157 Section 3. Subsection (6) of section 679.3071, Florida
 158 Statutes, is amended to read:

159 679.3071 Location of debtor.—

160 (6) Except as otherwise provided in subsection (9), a
 161 registered organization that is organized under the law of the
 162 United States and a branch or agency of a bank that is not
 163 organized under the law of the United States or a state are
 164 located:

165 (a) In the state that the law of the United States
 166 designates, if the law designates a state of location;

167 (b) In the state that the registered organization, branch,
 168 or agency designates, if the law of the United States authorizes

169 the registered organization, branch, or agency to designate its
 170 state of location, including by designating its main office,
 171 home office, or other comparable office; or

172 (c) In the District of Columbia, if neither paragraph (a)
 173 nor paragraph (b) applies.

174 Section 4. Paragraph (c) of subsection (1) of section
 175 679.3111, Florida Statutes, is amended to read:

176 679.3111 Perfection of security interests in property
 177 subject to certain statutes, regulations, and treaties.—

178 (1) Except as otherwise provided in subsection (4), the
 179 filing of a financing statement is not necessary or effective to
 180 perfect a security interest in property subject to:

181 (c) A ~~certificate of title~~ statute of another jurisdiction
 182 which provides for a security interest to be indicated on a ~~the~~
 183 certificate of title as a condition or result of the security
 184 interest's obtaining priority over the rights of a lien creditor
 185 with respect to the property.

186 Section 5. Subsections (8) and (9) are added to section
 187 679.3161, Florida Statutes, to read:

188 679.3161 Effect Continued perfection of security interest
 189 ~~following~~ change in governing law.—

190 (8) The following rules apply to collateral to which a
 191 security interest attaches within 4 months after the debtor
 192 changes its location to another jurisdiction:

193 (a) A financing statement filed before the change of the
 194 debtor's location pursuant to the law of the jurisdiction
 195 designated in s. 679.3011(1) or s. 679.3051(3) is effective to
 196 perfect a security interest in the collateral if the financing

197 statement would have been effective to perfect a security
 198 interest in the collateral if the debtor had not changed its
 199 location.

200 (b) If a security interest that is perfected by a
 201 financing statement that is effective under paragraph (a)
 202 becomes perfected under the law of the other jurisdiction before
 203 the earlier of the time the financing statement would have
 204 become ineffective under the law of the jurisdiction designated
 205 in s. 679.3011(1) or s. 679.3051(3) or the expiration of the 4-
 206 month period, it remains perfected thereafter. If the security
 207 interest does not become perfected under the law of the other
 208 jurisdiction before the earlier time or event, it becomes
 209 unperfected and is deemed never to have been perfected as
 210 against a purchaser of the collateral for value.

211 (9) If a financing statement naming an original debtor is
 212 filed pursuant to the law of the jurisdiction designated in s.
 213 679.3011(1) or s. 679.3051(3) and the new debtor is located in
 214 another jurisdiction, the following rules apply:

215 (a) The financing statement is effective to perfect a
 216 security interest in collateral in which the new debtor has or
 217 acquires rights before or within 4 months after the new debtor
 218 becomes bound under s. 679.2031(4), if the financing statement
 219 would have been effective to perfect a security interest in the
 220 collateral if the collateral had been acquired by the original
 221 debtor.

222 (b) A security interest that is perfected by the financing
 223 statement and that becomes perfected under the law of the other
 224 jurisdiction before the earlier of the expiration of the 4-month

225 period or the time the financing statement would have become
 226 ineffective under the law of the jurisdiction designated in s.
 227 679.3011(1) or s. 679.3051(3) remains perfected thereafter. A
 228 security interest that is perfected by the financing statement
 229 but that does not become perfected under the law of the other
 230 jurisdiction before the earlier time or event becomes
 231 unperfected and is deemed never to have been perfected as
 232 against a purchaser of the collateral for value.

233 Section 6. Subsections (2) and (4) of section 679.3171,
 234 Florida Statutes, are amended to read:

235 679.3171 Interests that take priority over or take free of
 236 security interest or agricultural lien.—

237 (2) Except as otherwise provided in subsection (5), a
 238 buyer, other than a secured party, of tangible chattel paper,
 239 tangible documents, goods, instruments, or a certificated
 240 security ~~certificate~~ takes free of a security interest or
 241 agricultural lien if the buyer gives value and receives delivery
 242 of the collateral without knowledge of the security interest or
 243 agricultural lien and before it is perfected.

244 (4) A licensee of a general intangible or a buyer, other
 245 than a secured party, of collateral accounts, electronic chattel
 246 paper, electronic documents, general intangibles, or investment
 247 property other than tangible chattel paper, tangible documents,
 248 goods, instruments, or a certificated security takes free of a
 249 security interest if the licensee or buyer gives value without
 250 knowledge of the security interest and before it is perfected.

251 Section 7. Section 679.326, Florida Statutes, is amended
 252 to read:

253 679.326 Priority of security interests created by new
 254 debtor.—

255 (1) Subject to subsection (2), a security interest that is
 256 created by a new debtor in collateral in which the new debtor
 257 has or acquires rights and ~~which is~~ perfected by a filed
 258 financing statement that would be ineffective to perfect the
 259 security interest but for the application of s. 679.508 or ss.
 260 679.508 and 679.3161(9)(a) is effective solely under s. 679.508
 261 ~~in collateral in which a new debtor has or acquires rights is~~
 262 subordinate to a security interest in the same collateral which
 263 is perfected other than by such a filed financing statement ~~that~~
 264 ~~is effective solely under s. 679.508.~~

265 (2) The other provisions of this part determine the
 266 priority among conflicting security interests in the same
 267 collateral perfected by filed financing statements described in
 268 subsection (1) ~~that are effective solely under s. 679.508.~~
 269 However, if the security agreements to which a new debtor became
 270 bound as debtor were not entered into by the same original
 271 debtor, the conflicting security interests rank according to
 272 priority in time of the new debtor's having become bound.

273 Section 8. Subsection (5) of section 679.4061, Florida
 274 Statutes, is amended to read:

275 679.4061 Discharge of account debtor; notification of
 276 assignment; identification and proof of assignment; restrictions
 277 on assignment of accounts, chattel paper, payment intangibles,
 278 and promissory notes ineffective.—

279 (5) Subsection (4) does not apply to the sale of a payment
 280 intangible or promissory note, other than a sale pursuant to a

281 | disposition under s. 679.610 or an acceptance of collateral
 282 | under s. 679.620.

283 | Section 9. Subsection (2) of section 679.4081, Florida
 284 | Statutes, is amended to read:

285 | 679.4081 Restrictions on assignment of promissory notes,
 286 | health-care-insurance receivables, and certain general
 287 | intangibles ineffective.—

288 | (2) Subsection (1) applies to a security interest in a
 289 | payment intangible or promissory note only if the security
 290 | interest arises out of a sale of the payment intangible or
 291 | promissory note, other than a sale pursuant to a disposition
 292 | under s. 679.610 or an acceptance of collateral under s.
 293 | 679.620.

294 | Section 10. Subsection (3) of section 679.5021, Florida
 295 | Statutes, is amended to read:

296 | 679.5021 Contents of financing statement; record of
 297 | mortgage as financing statement; time of filing financing
 298 | statement.—

299 | (3) A record of a mortgage satisfying the requirements of
 300 | chapter 697 is effective, from the date of recording, as a
 301 | financing statement filed as a fixture filing or as a financing
 302 | statement covering as-extracted collateral or timber to be cut
 303 | only if:

304 | (a) The record of a mortgage indicates the goods or
 305 | accounts that it covers;

306 | (b) The goods are or are to become fixtures related to the
 307 | real property described in the record of a mortgage or the
 308 | collateral is related to the real property described in the

309 mortgage and is as-extracted collateral or timber to be cut;

310 (c) The record of a mortgage satisfies ~~complies with~~ the
 311 requirements for a financing statement in this section,
 312 although:

313 1. The record of a mortgage need not indicate ~~other than~~
 314 ~~an indication~~ that it is to be filed in the real property
 315 records; and

316 2. The record of a mortgage sufficiently provides the name
 317 of a debtor who is an individual if it provides the individual
 318 name of the debtor or the surname and first personal name of the
 319 debtor, even if the debtor is an individual to whom s.
 320 679.5031(1)(d) or (e) applies; and

321 (d) The record of a mortgage is recorded as required by
 322 chapter 697.

323 Section 11. Subsections (1) and (2) of section 679.5031,
 324 Florida Statutes, are amended, and subsections (6), (7), and (8)
 325 are added to that section, to read:

326 679.5031 Name of debtor and secured party.—

327 (1) A financing statement sufficiently provides the name
 328 of the debtor:

329 (a) Except as otherwise provided in paragraph (c), if the
 330 debtor is a registered organization or the collateral is held in
 331 a trust that is a registered organization, only if the financing
 332 statement provides the name that is stated to be the registered
 333 organization's name ~~of the debtor indicated~~ on the public
 334 organic record most recently filed with or issued or enacted by
 335 ~~of the~~ registered organization's ~~debtor's~~ jurisdiction of
 336 organization that purports to state, amend, or restate the

337 registered organization's name ~~which shows the debtor to have~~
 338 ~~been organized;~~

339 (b) Subject to subsection (6), if the collateral is being
 340 administered by the personal representative of a decedent debtor
 341 ~~is a decedent's estate,~~ only if the financing statement
 342 provides, as the name of the debtor, the name of the decedent
 343 and, in a separate part of the financing statement, indicates
 344 that the collateral is being administered by a personal
 345 representative debtor is an estate;

346 (c) If the collateral debtor is held in a trust that is
 347 not a registered organization or a trustee acting with respect
 348 ~~to property held in trust,~~ only if the financing statement:

349 1. Provides, as the name of the debtor:

350 a. If the organic record of the trust specifies a name, if
 351 ~~any, specified for the trust, the in its organic documents or,~~
 352 ~~if no name so is specified; or~~

353 b. If the organic record of the trust does not specify a
 354 name for the trust, provides the name of the settlor or testator
 355 ~~and additional information sufficient to distinguish a debtor~~
 356 ~~from other trusts having one or more of the same settlors; and~~

357 2. In a separate part of the financing statement:

358 a. If the name is provided in accordance with sub-
 359 subparagraph 1.a., indicates, in the debtor's name or otherwise,
 360 that the collateral debtor is held in a trust or is a trustee
 361 ~~acting with respect to property held in trust; or~~

362 b. If the name is provided in accordance with sub-
 363 subparagraph 1.b., provides additional information sufficient to
 364 distinguish the trust from other trusts having one or more of

365 the same settlors or the same testator and indicates that the
 366 collateral is held in a trust, unless the additional information
 367 so indicates;

368 (d) Subject to subsection (7), if the debtor is an
 369 individual to whom this state has issued a driver license that
 370 has not expired or to whom the agency of this state that issues
 371 driver licenses has issued, in lieu of a driver license, a
 372 personal identification card that has not expired, only if the
 373 financing statement provides the name of the individual that is
 374 indicated on the driver license or personal identification card;

375 (e) If the debtor is an individual to whom paragraph (d)
 376 does not apply, only if the financing statement provides the
 377 individual name of the debtor or the surname and first personal
 378 name of the debtor; and

379 (f)~~(d)~~ In other cases:

380 1. If the debtor has a name, only if it provides the
 381 ~~individual or~~ organizational name of the debtor; and

382 2. If the debtor does not have a name, only if it provides
 383 the names of the partners, members, associates, or other persons
 384 comprising the debtor, in a manner that each name provided would
 385 be sufficient if the person named were the debtor.

386 (2) A financing statement that provides the name of the
 387 debtor in accordance with subsection (1) is not rendered
 388 ineffective by the absence of:

389 (a) A trade name or other name of the debtor; or

390 (b) Unless required under subparagraph (1) (f) 2. ~~(1) (d) 2.~~,
 391 names of partners, members, associates, or other persons
 392 comprising the debtor.

393 (6) The name of the decedent indicated on the order
 394 appointing the personal representative of the decedent issued by
 395 the court having jurisdiction over the collateral is sufficient
 396 as the name of the decedent under paragraph (1)(b).

397 (7) If this state has issued to an individual more than
 398 one driver license or, if none, more than one identification
 399 card, of a kind described in paragraph (1)(d), the driver
 400 license or identification card, as applicable, that was issued
 401 most recently is the one to which paragraph (1)(d) refers.

402 (8) As used in this section, the term "name of the settlor
 403 or testator" means:

404 (a) If the settlor is a registered organization, the name
 405 of the registered organization indicated on the public organic
 406 record filed with or issued or enacted by the registered
 407 organization's jurisdiction of organization; or

408 (b) In other cases, the name of the settlor or testator
 409 indicated in the trust's organic record.

410 Section 12. Subsection (3) of section 679.5071, Florida
 411 Statutes, is amended to read:

412 679.5071 Effect of certain events on effectiveness of
 413 financing statement.—

414 (3) If the ~~a debtor so changes its~~ name that a filed
 415 financing statement provides for a debtor becomes insufficient
 416 as the name of the debtor under s. 679.5031(1) so that the
 417 financing statement becomes seriously misleading under the
 418 standard set forth in s. 679.5061:

419 (a) The financing statement is effective to perfect a
 420 security interest in collateral acquired by the debtor before,

421 or within 4 months after, the filed financing statement becomes
 422 seriously misleading ~~change~~; and

423 (b) The financing statement is not effective to perfect a
 424 security interest in collateral acquired by the debtor more than
 425 4 months after the filed financing statement becomes seriously
 426 misleading ~~change~~, unless an amendment to the financing
 427 statement which renders the financing statement not seriously
 428 misleading is filed within 4 months after that event ~~the change~~.

429 Section 13. Subsection (6) of section 679.515, Florida
 430 Statutes, is amended to read:

431 679.515 Duration and effectiveness of financing statement;
 432 effect of lapsed financing statement.—

433 (6) If a debtor is a transmitting utility and a filed
 434 initial financing statement so indicates, the financing
 435 statement is effective until a termination statement is filed.

436 Section 14. Subsection (2) of section 679.516, Florida
 437 Statutes, is amended to read:

438 679.516 What constitutes filing; effectiveness of filing.—

439 (2) Filing does not occur with respect to a record that a
 440 filing office refuses to accept because:

441 (a) The record is not communicated by a method or medium
 442 of communication authorized by the filing office;

443 (b) An amount equal to or greater than the applicable
 444 processing fee is not tendered;

445 (c) The filing office is unable to index the record
 446 because:

447 1. In the case of an initial financing statement, the
 448 record does not provide an organization's name or, if an

449 individual, the individual's last name and first name;

450 2. In the case of an amendment or information ~~correction~~
 451 statement, the record:

452 a. Does not correctly identify the initial financing
 453 statement as required by s. 679.512 or s. 679.518, as
 454 applicable; or

455 b. Identifies an initial financing statement the
 456 effectiveness of which has lapsed under s. 679.515;

457 3. In the case of an initial financing statement that
 458 provides the name of a debtor identified as an individual or an
 459 amendment that provides a name of a debtor identified as an
 460 individual which was not previously provided in the financing
 461 statement to which the record relates, the record does not
 462 identify the debtor's surname ~~last name~~ and first personal name;
 463 or

464 4. In the case of a record filed or recorded in the filing
 465 office described in s. 679.5011(1)(a), the record does not
 466 provide a sufficient description of the real property to which
 467 it relates;

468 (d) In the case of an initial financing statement or an
 469 amendment that adds a secured party of record, the record does
 470 not provide an organization's name or, if an individual, the
 471 individual's last name and first name and mailing address for
 472 the secured party of record;

473 (e) In the case of an initial financing statement or an
 474 amendment that provides a name of a debtor which was not
 475 previously provided in the financing statement to which the
 476 amendment relates, the record does not:

- 477 1. Provide a mailing address for the debtor; or
 478 2. Indicate whether the name provided as the name of the
 479 debtor is the name of an individual or an organization; ~~or~~
 480 ~~3. If the financing statement indicates that the debtor is~~
 481 ~~an organization, provide:~~
 482 ~~a. A type of organization for the debtor;~~
 483 ~~b. A jurisdiction of organization for the debtor; or~~
 484 ~~c. An organizational identification number for the debtor~~
 485 ~~or indicate that the debtor has none;~~
 486 (f) In the case of an assignment reflected in an initial
 487 financing statement under s. 679.514(1) or an amendment filed
 488 under s. 679.514(2), the record does not provide an
 489 organization's name or, if an individual, the individual's last
 490 name and first name and mailing address for the assignee;
 491 (g) In the case of a continuation statement, the record is
 492 not filed within the 6-month period prescribed by s. 679.515(4);
 493 (h) In the case of an initial financing statement or an
 494 amendment, which amendment requires the inclusion of a
 495 collateral statement but the record does not provide any, the
 496 record does not provide a statement of collateral; or
 497 (i) The record does not include the notation required by
 498 s. 201.22 indicating that the excise tax required by chapter 201
 499 had been paid or is not required.

500 Section 15. Section 679.518, Florida Statutes, is amended
 501 to read:

502 679.518 Claim concerning inaccurate or wrongfully filed
 503 record.—

504 (1) A person may file in the filing office an information

505 ~~a correction~~ statement with respect to a record indexed there
 506 under the person's name if the person believes that the record
 507 is inaccurate or was wrongfully filed.

508 (2) An information ~~A correction~~ statement under subsection
 509 (1) must:

510 (a) Identify the record to which it relates by the file
 511 number assigned to the initial financing statement, the debtor,
 512 and the secured party of record to which the record relates;

513 (b) Indicate that it is an information ~~a correction~~
 514 statement; and

515 (c) Provide the basis for the person's belief that the
 516 record is inaccurate and indicate the manner in which the person
 517 believes the record should be amended to cure any inaccuracy or
 518 provide the basis for the person's belief that the record was
 519 wrongfully filed.

520 (3) A person may file in the filing office an information
 521 statement with respect to a record filed there if the person is
 522 a secured party of record with respect to the financing
 523 statement to which the record relates and believes that the
 524 person that filed the record was not entitled to do so under s.
 525 679.509(3).

526 (4) An information statement under subsection (3) must:

527 (a) Identify the record to which it relates by file number
 528 assigned to the initial financing statement to which the record
 529 relates;

530 (b) Indicate that it is an information statement; and

531 (c) Provide the basis for the person's belief that the
 532 record is inaccurate and indicate the manner in which the person

533 | believes the record should be amended to cure any inaccuracy or
 534 | provide the basis for the person's belief that the record was
 535 | wrongfully filed.

536 | ~~(5)(3)~~ The filing of an information ~~a correction~~ statement
 537 | does not affect the effectiveness of an initial financing
 538 | statement or other filed record.

539 | Section 16. Subsection (2) of section 679.607, Florida
 540 | Statutes, is amended to read:

541 | 679.607 Collection and enforcement by secured party.—

542 | (2) If necessary to enable a secured party to exercise
 543 | under paragraph (1)(c) the right of a debtor to enforce a
 544 | mortgage nonjudicially outside this state, the secured party may
 545 | record in the office in which a record of the mortgage is
 546 | recorded:

547 | (a) A copy of the security agreement that creates or
 548 | provides for a security interest in the obligation secured by
 549 | the mortgage; and

550 | (b) The secured party's sworn affidavit in recordable form
 551 | stating that:

552 | 1. A default has occurred with respect to the obligation
 553 | secured by the mortgage; and

554 | 2. The secured party is entitled to enforce the mortgage
 555 | nonjudicially outside this state.

556 | Section 17. Part VIII of chapter 679, Florida Statutes,
 557 | consisting of sections 679.801, 679.802, 679.803, 679.804,
 558 | 679.805, 679.806, 679.807, and 679.808, Florida Statutes, is
 559 | created to read:

560 | 679.801 Saving clause.—

561 (1) Except as otherwise provided in this part, this part
 562 applies to a transaction or lien within its scope, even if the
 563 transaction or lien was entered into or created before July 1,
 564 2013.

565 (2) The amendments to this chapter by this act do not
 566 affect an action, case, or proceeding commenced before July 1,
 567 2013.

568 679.802 Security interest perfected before effective
 569 date.-

570 (1) A security interest that is a perfected security
 571 interest immediately before July 1, 2013, is a perfected
 572 security interest under this chapter, as amended by this act, on
 573 July 1, 2013, if the applicable requirements for attachment and
 574 perfection under this chapter, as amended by this act, are
 575 satisfied without further action.

576 (2) Except as otherwise provided in s. 679.804, if a
 577 security interest is a perfected security interest immediately
 578 before July 1, 2013, but the applicable requirements for
 579 perfection under this chapter, as amended by this act, are not
 580 satisfied on July 1, 2013, the security interest remains
 581 perfected thereafter only if the applicable requirements for
 582 perfection under this chapter, as amended by this act, are
 583 satisfied no later than July 1, 2014.

584 679.803 Security interest unperfected before effective
 585 date.-A security interest that is an unperfected security
 586 interest immediately before July 1, 2013, becomes a perfected
 587 security interest:

588 (1) Without further action, on July 1, 2013, if the

589 applicable requirements for perfection under this chapter, as
 590 amended by this act, are satisfied before or at that time; or

591 (2) When the applicable requirements for perfection are
 592 satisfied if the requirements are satisfied after that time.

593 679.804 Effectiveness of action taken before effective
 594 date.—

595 (1) The filing of a financing statement before July 1,
 596 2013, is effective to perfect a security interest to the extent
 597 the filing would satisfy the applicable requirements for
 598 perfection under this chapter, as amended by this act.

599 (2) The amendments to this chapter by this act do not
 600 render ineffective an effective financing statement that was
 601 filed before July 1, 2013, and satisfies the applicable
 602 requirements for perfection under the law of the jurisdiction
 603 governing perfection as provided in this chapter as it existed
 604 before July 1, 2013. However, except as otherwise provided in
 605 subsections (3) and (4) and s. 679.805, the financing statement
 606 ceases to be effective:

607 (a) If the financing statement is filed in this state, at
 608 the time the financing statement would have ceased to be
 609 effective had this act not taken effect; or

610 (b) If the financing statement is filed in another
 611 jurisdiction, at the earlier of:

612 1. The time the financing statement would have ceased to
 613 be effective under the law of that jurisdiction; or

614 2. By June 30, 2018.

615 (3) The filing of a continuation statement on or after
 616 July 1, 2013, does not continue the effectiveness of the

617 financing statement filed before July 1, 2013. However, on the
 618 timely filing of a continuation statement on or after July 1,
 619 2013, and in accordance with the law of the jurisdiction
 620 governing perfection as provided in this chapter, as amended by
 621 this act, the effectiveness of a financing statement filed in
 622 the same office in that jurisdiction before July 1, 2013,
 623 continues for the period provided by the law of that
 624 jurisdiction.

625 (4) Subparagraph (2)(b)2., applies to a financing
 626 statement that was filed before July 1, 2013, against a
 627 transmitting utility and satisfies the applicable requirements
 628 for perfection under the law of the jurisdiction governing
 629 perfection as provided in this chapter as it existed before July
 630 1, 2013, only to the extent that this chapter, as amended by
 631 this act, provides that the law of a jurisdiction other than the
 632 jurisdiction in which the financing statement is filed governs
 633 perfection of a security interest in collateral covered by the
 634 financing statement.

635 (5) A financing statement that includes a financing
 636 statement filed before July 1, 2013, or a continuation statement
 637 filed on or after July 1, 2013, is effective only to the extent
 638 that it satisfies the requirements of part V, as amended by this
 639 act, for an initial financing statement. A financing statement
 640 that indicates that the debtor is a decedent's estate indicates
 641 that the collateral is being administered by a personal
 642 representative within the meaning of s. 679.5031(1)(b), as
 643 amended by this act. A financing statement that indicates that
 644 the debtor is a trust or is a trustee acting with respect to

645 property held in trust indicates that the collateral is held in
 646 a trust within the meaning of s. 679.5031(1)(c), as amended by
 647 this act.

648 679.805 When initial financing statement suffices to
 649 continue effectiveness of financing statement.-

650 (1) The filing of an initial financing statement in the
 651 office specified in s. 679.5011 continues the effectiveness of a
 652 financing statement filed before July 1, 2013, if:

653 (a) The filing of an initial financing statement in that
 654 office would be effective to perfect a security interest under
 655 this chapter, as amended by this act;

656 (b) The financing statement filed before July 1, 2013, was
 657 filed in an office in another state; and

658 (c) The initial financing statement satisfies subsection
 659 (3).

660 (2) The filing of an initial financing statement under
 661 subsection (1) continues the effectiveness of the financing
 662 statement filed before July 1, 2013, if:

663 (a) The initial financing statement is filed before July
 664 1, 2013, for the period provided in s. 679.515, as it existed
 665 before its amendment by this act, with respect to an initial
 666 financing statement; and

667 (b) The initial financing statement is filed on or after
 668 July 1, 2013, for the period provided in s. 679.515, as amended
 669 by this act, with respect to an initial financing statement.

670 (3) To be effective for purposes of subsection (1), an
 671 initial financing statement must:

672 (a) Satisfy the requirements of part IV, as amended by

673 this act, for an initial financing statement;

674 (b) Identify the financing statement filed before July 1,
 675 2013, by indicating the office in which the financing statement
 676 was filed and providing the dates of filing and file numbers, if
 677 any, of the financing statement and of the most recent
 678 continuation statement filed with respect to the financing
 679 statement; and

680 (c) Indicate that the financing statement filed before
 681 July 1, 2013, remains effective.

682 679.806 Amendment of financing statement filed before July
 683 1, 2013.-

684 (1) On or after July 1, 2013, a person may add or delete
 685 collateral covered by, continue or terminate the effectiveness
 686 of, or otherwise amend the information provided in, a financing
 687 statement only filed before July 1, 2013, in accordance with the
 688 law of the jurisdiction governing perfection as provided in this
 689 chapter, as amended by this act. However, the effectiveness of a
 690 financing statement filed before July 1, 2013, also may be
 691 terminated in accordance with the law of the jurisdiction in
 692 which the financing statement is filed.

693 (2) Except as otherwise provided in subsection (3), if the
 694 law of this state governs perfection of a security interest, the
 695 information in a financing statement filed before July 1, 2013,
 696 may be amended after July 1, 2013, only if:

697 (a) The financing statement filed before July 1, 2013, and
 698 an amendment are filed in the office specified in s. 679.5011;

699 (b) An amendment is filed in the office specified in s.
 700 679.5011 concurrently with, or after the filing in that office

701 | of, an initial financing statement that satisfies s. 679.805(3);

702 | or

703 | (c) An initial financing statement that provides the
 704 | information as amended and satisfies s. 679.805(3) is filed in
 705 | the office specified in s. 679.5011.

706 | (3) If the law of this state governs perfection of a
 707 | security interest, the effectiveness of a financing statement
 708 | filed before July 1, 2013, may be continued only under s.
 709 | 679.804(3) and (5) or s. 679.805.

710 | (4) Whether or not the law of this state governs
 711 | perfection of a security interest, the effectiveness of a
 712 | financing statement filed in this state before July 1, 2013, may
 713 | be terminated on or after July 1, 2013, by filing a termination
 714 | statement in the office in which the financing statement filed
 715 | before July 1, 2013, is filed, unless an initial financing
 716 | statement that satisfies s. 679.805(3) has been filed in the
 717 | office specified by the law of the jurisdiction governing
 718 | perfection as provided in this chapter, as amended by this act,
 719 | as the office in which to file a financing statement.

720 | 679.807 Person entitled to file initial financing
 721 | statement or continuation statement.-A person may file an
 722 | initial financing statement or a continuation statement under
 723 | this part if:

724 | (1) The secured party of record authorizes the filing; and

725 | (2) The filing is necessary under this part:

726 | (a) To continue the effectiveness of a financing statement
 727 | filed before July 1, 2013; or

728 | (b) To perfect or continue the perfection of a security

729 interest.

730 679.808 Priority.--This part and the amendments to this
 731 chapter made by this act determine the priority of conflicting
 732 claims to collateral. However, if the relative priorities of the
 733 claims were established before July 1, 2013, this chapter as it
 734 existed before July 1, 2013, determines priority.

735 Section 18. Paragraph (m) of subsection (3) of section
 736 680.1031, Florida Statutes, is amended to read:

737 680.1031 Definitions and index of definitions.--

738 (3) The following definitions in other chapters of this
 739 code apply to this chapter:



740 (m) "Pursuant to a commitment," s. 679.1021(1)(ppp)
 741 ~~679.1021(1)(ooo).~~

742 Section 19. The Division of Statutory Revision is directed
 743 to replace the phrase "this act" wherever it occurs in sections
 744 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807,
 745 and 679.808, Florida Statutes, with the assigned chapter number
 746 of this act.

747 Section 20. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 511 Workers' Compensation
SPONSOR(S): Hudson and others
TIED BILLS: IDEN./SIM. BILLS: SB 668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Reilly 	Cooper 
2) Health & Human Services Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Florida's workers' compensation law, ch. 440, F.S., provides medically necessary treatment and care for injured employees, including medications. Reimbursement for prescription drugs (generally to dispensing physicians and pharmacies) is the average wholesale price (AWP) plus a \$4.18 dispensing fee, or at a contract rate, whichever is lower. AWP is not defined in the worker's compensation law and does not have a universally accepted definition.

Prescription drug repackaging companies are licensed by the Department of Business and Professional Regulation. Drug repackagers purchase pharmaceuticals in bulk from the manufacturer and relabel and repackage the drugs into individual prescription sizes. The repackaged drugs are then assigned a different average wholesale price than the manufacturer's suggested AWP, which is often substantially higher than the manufacturer's AWP. As such, the cost for a prescription filled with repackaged drugs in the workers' compensation system is generally much higher than it would have been if the prescription had been filled with the same drug that had not been repackaged. The overwhelming majority of repackaged drugs in Florida's workers' compensation system are dispensed by physicians who are authorized to dispense drugs at their office.

It is estimated that higher reimbursements for repackaged or relabeled drugs add \$62 million annually to workers' compensation costs, and that providing the same reimbursement for the same prescription drug, regardless of whether the dispensed drug is repackaged, relabeled, or non-repackaged, will decrease system costs by 2.5%. The Division of Risk Management within the Department of Financial Services, which provides workers' compensation benefits for state employees, reports that repackaged or relabeled drugs add \$1.2 million to its annual costs. Recently, the Office of Insurance Regulation approved a workers' compensation rate filing that provides for an overall 8.9% increase in workers' compensation premiums effective January 1, 2012.

The bill provides the same rate of reimbursement for repackaged or relabeled drugs as for non-repackaged drugs. Specifically, reimbursement for repackaged or relabeled drugs is to be calculated by multiplying the number of units of the drug dispensed by the per-unit AWP set by the original manufacturer of the drug (which may not be the manufacturer of the repackaged or relabeled drug), plus a \$4.18 dispensing fee, unless the carrier has contracted for a lower amount. The bill expressly prohibits the price of repackaged or relabeled drugs from exceeding the amount that would otherwise be payable had the drug not been repackaged or relabeled. This reimbursement formula had previously been included in House Bill 5603 of 2010, which was passed by the Legislature and subsequently vetoed by Governor Crist on the ground that the issue had not been fully vetted during the Legislative Session.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Workers' Compensation Benefits¹

Chapter 440, F.S., is Florida's workers' compensation law. For work-related injuries, workers' compensation provides:

- Medically necessary remedial treatment, care, and attendance, including medicines,² medical supplies, durable medical equipment, and prosthetics.³
- Compensation for disability when the injury causes an employee to miss more than 7 days of work.⁴

The Division of Workers' Compensation within the Department of Financial Services (DFS) provides regulatory oversight of Florida's workers' compensation system.

Reimbursement for Prescription Drugs in Workers' Compensation

Reimbursement (to pharmacies and dispensing physicians) for prescription drugs in workers' compensation is provided for in s. 440.13(12)(c), F.S. Under current law, prescription drugs are reimbursed at the average wholesale price (AWP) plus a \$4.18 dispensing fee, or at a contract rate, whichever is lower.^{5,6} AWP is not defined in the workers' compensation statute (ch. 440, F.S.) and does not appear to have a universally accepted definition.^{7,8}

¹ Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (construction, non-construction, or agricultural) and the number of employees.

² Many workers' compensation insurers have implemented prescription drug programs (sometimes called "first fill" programs) designed to avoid out-of-pocket pharmacy expenses to injured employees for the initial prescription filled at the pharmacy as well as subsequent prescriptions. Under such a program, an injured employee may be given a form or card to show at a pharmacy to avoid out-of-pocket expense.

³ See s. 440.13(2) (a), F.S.

⁴ See s. 440.12(1), F.S.

⁵ Section 440.13(12)(c), F.S., states: As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus \$4.18 for the dispensing fee, except where the carrier has contracted for a lower amount. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower. No such contract shall rely on a provider that is not reasonably accessible to the employee.

⁶ In response to inquiries received by the Florida Division of Workers' Compensation (the Division) as to whether employers/carriers may appropriately deny authorization or reimbursement for prescription medication that is dispensed by a physician instead of a pharmacist, the Florida Department of Financial Services issued Informational Bulletin DFS-02-2009 on August 12, 2009. The bulletin informs in part that the Division is unaware of any specific provisions of the workers' compensation law that address the issue presented. Available at: <http://www.myfloridacfo.com/wc/> (last accessed November 28, 2011).

⁷ See, for example, "Prescription Benchmarks for Florida, 2nd Edition," a 2011 study by the Workers' Compensation Research Institute (WCRI study) compared with "Impact of Physician-Dispensing of Repackaged Drugs on California Workers' Compensation, Employers Cost, and Workers' Access to Quality Care," a 2006 study conducted by Frank Neuhauser and colleagues for the California Commission on Health and Safety and Workers' Compensation (California study). The WCRI defines average wholesale price as: "Published by First DataBank and Medi-Span ®. The AWP operates as an available price index that represents the most common wholesaler price charged to customers. The AWP does not necessarily represent the actual sales price in any single transaction. The payors may negotiate for lower prices. In workers' compensation systems, however, the AWP is often used as a price benchmark for pharmacy reimbursements of prescription drugs." [Note: On September 28, 2011, First DataBank discontinued publication of the "Blue Book on Average Wholesale Price." See <http://www.firstdatabank.com/Support/drug-pricing-policy.aspx>.] The California study states that: "AWP is probably the most widely quoted pricing benchmark, but the least meaningful.... unlike what the name implies, the price has no relation to a wholesale price, average or otherwise. It is simply a price point established by the manufacturer, wholesaler, or repackager.... The AWP... is typically much higher than the actual amounts that are paid by pharmacies and other wholesale drug purchasers...." For details on the WCRI study, see <http://www.wcrinet.org/>. The California study is available at: <http://www.dir.ca.gov/chswc/search/query.asp?SearchType=0> (last accessed November 28, 2011).

⁸ The Florida Division of Workers' Compensation informs that in the event of a reimbursement dispute it would rely on the "Drug Topics Red Book," published by Thomson Reuters (New York) to determine the average wholesale price. The "Red Book" is listed

Physician Dispensing of Drugs

The authority for practitioners to dispense Schedule II-V⁹ medicinal drugs is found in s. 465.0276, F.S. To dispense Schedule II-IV medicinal drugs, physicians must register with their professional licensing board and pay a fee of \$100.¹⁰ There are exemptions to the registration requirement. For example, physicians who only dispense complimentary medications, and who receive no direct or indirect payment or remuneration for the medications, are not required to register. Also, a physician dispensing a controlled substance listed in Schedule II or Schedule III in connection with the performance of a surgical procedure, clinical trial, methadone clinic licensed under s.397.427, F.S., or hospice care facilities licensed under ch. 400, F.S., is not required to register. Currently, there are 6,795 registered dispensing practitioners in Florida.¹¹ Physician dispensing is regulated by the relevant licensing boards with the Department of Health.

To be eligible for payment under the workers' compensation law, health care providers that treat injured employees, except for emergency treatment, must apply for and be certified by the DFS and receive authorization from the insurer before providing treatment.¹² As of October, 25, 2011, there were 37,694 certified health care providers in the workers' compensation system.¹³ The number of certified workers' compensation health care providers who are also authorized to dispense drugs is unknown.

Relabeled or Repacked Drugs

The term "repackaged" drugs refers to pharmaceuticals that have been purchased in bulk by a relabeler from a manufacturer, relabeled, and repackaged into individual prescription sizes that can be dispensed directly by physicians to patients.¹⁴ (Pharmacies also dispense repackaged drugs, but at a much lower frequency than dispensing physicians.) Repackagers assign an AWP for a repackaged drug that differs from the AWP suggested by the original manufacturer of the drug.¹⁵ Frequently, the AWP assigned by the drug repackager is significantly greater than the AWP suggested by the drug's manufacturer. Thus, the cost of the repackaged drug, in terms of reimbursement paid by an insurer, is often significantly greater than it would have been if the prescription had been filled with the identical non-repackaged drug.

The Florida Department of Business and Professional Regulation (DBPR), which regulates prescription drug repackagers, reports that there are 29 licensed prescription drug repackagers in the state.¹⁶

The Cost of Repackaged or Relabeled Prescription Drugs to Florida's Workers' Compensation System

Findings of the National Council on Compensation Insurance

as a reference source in the "Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2008 Edition." The Reimbursement Manual is available at: <http://www.myfloridacfo.com/wc/> (last accessed November 30, 2011).

⁹ These drugs are often opiates with a high tendency and possibility for abuse such as Perkoset, Oxycodone, and Oxycotin

¹⁰ See s. 465.0276(2)(a), F.S.; Rule 64B8-3.006, F.A.C.

¹¹ Correspondence from the Florida Department of Health on file with staff of the Insurance & Banking Subcommittee.

¹² Section 440.13(3)(a), F.S.; Rule 69L-29.002, F.A.C.

¹³ Correspondence from the Division of Workers' Compensation on file with staff of the Insurance & Banking Subcommittee.

¹⁴ California study, *supra* note 7, at 6.

¹⁵ United States Government Accountability Office, "Brand-Name Prescription Drug Pricing: Lack of Therapeutically Equivalent Drugs and Limited Competition May Contribute to Extraordinary Price Increases" (GAO-10-201, December 2009). Available at: <http://www.gao.gov/products/GAO-10-201> (last accessed November 30, 2011).

¹⁶ Correspondence from the Department of Business and Professional Regulation (DBPR) on file with staff of the Insurance & Banking Subcommittee. The DBPR also reports that as of October 1, 2011, there were 268 "out-of-state prescription wholesaler distributor" permits issued. Such distributors are able to repack drugs. However, the DBPR does not collect information as to whether applicants for such permits repack drugs, as it does not have legal authority to regulate repackaging outside of the state of Florida.

The National Council on Compensation Insurance (NCCI) is the designated licensed rating and statistical organization for workers' compensation in Florida. Among its responsibilities, NCCI collects data from workers' compensation insurers in Florida and makes rate filings on the insurers' behalf. The workers' compensation rate filing for 2012, which was recently approved after a public hearing and subsequent review by the Office of Insurance Regulation (OIR), provides for an overall increase in workers' compensation rates of 8.9% effective January 1, 2012.¹⁷

Based on current pricing with 2009 data, the NCCI has estimated that reimbursements for repackaged or relabeled prescription drugs add \$62 million in annual costs to the workers' compensation system, and that elimination of the higher reimbursements available for these drugs, as compared to non-repackaged drugs, would decrease system costs by 2.5%.¹⁸

Additional findings by the NCCI about Florida's workers' compensation system include the following:¹⁹

- The 15 most frequently dispensed drugs are 45% to 679% more expensive when a repackaged drug (rather than the identical nonrepacked drug)²⁰ is dispensed.²¹
- Physician-dispensed drugs account for 50% of all prescription drug dollars; the highest percentage of the 46 states studied by NCCI.
- Physician-dispensed repackaged drugs account for 36% of overall prescription drug costs (by comparison, repackaged drugs dispensed by pharmacies account for approximately 4% of overall drug costs).

When California enacted a reform to eliminate higher reimbursements for repackaged or relabeled drugs and provide for the same rate of reimbursement as for non-repackaged drugs, physician dispensing remained fairly stable. Pre-reform (2003-2006), physician dispensing in California ranged from 38% to 53%; after the 2007 reform, physician dispensing has ranged from 47% to 50%. While prescription dispensing of repackaged drugs by California physicians has decreased since the reform (from over 49% of overall prescription dollars in 2006 to less than 5% of prescription drug dollars in 2009), physician dispensing of non-repackaged drugs increased (from less than 5% in 2006 to approximately 43% in 2009).²²

Findings of the Workers' Compensation Research Institute (WCRI)²³

In July 2011, the Workers' Compensation Research Institute (WCRI) published "Prescription Benchmarks for Florida, 2nd Edition,"²⁴ a study that compares the cost, price, and use of pharmaceuticals in workers' compensation in Florida with 16 other states.²⁵ Among the study's findings on Florida:

¹⁷ See the Office of Insurance Regulation's website at <http://www.flor.com/PressReleases/index.aspx> (last accessed November 30, 2011).

¹⁸ Testimony by NCCI at the 2012 workers' compensation rate hearing, held October 11, 2011. A videotape of the meeting is available at www.flor.com/sections/pandc/productreview/ratehearingvideo.aspx (last accessed November 30, 2011).

¹⁹ Correspondence from NCCI on file with staff of the Insurance & Banking Subcommittee.

²⁰ NCCI's cost analysis compared brand name drugs to brand name drugs and generic drugs to generic drugs. Accordingly, the calculations did not involve a comparison of brand name drugs with generic drugs, which would have inflated the price increases that were reported for repackaged drugs.

²¹ The 15 drugs are Carisoprodol, Meloxicam, Ranitidine HCL, Tramadol HCL, Lidoderm®, Omeprazole, Hydrocodone-Acetaminophen, Etodolac, Skelaxin®, Oxycodone-Acetaminophen, Cyclobenzaprine HCL, Cephalexin, Zolpidem Tartrate, and Ibuprofen.

²² Correspondence from NCCI on file with the Insurance & Banking Subcommittee.

²³ WCRI is an independent research organization that analyzes workers' compensation systems for states with which it contracts. WCRI provides information through studies and data collection efforts, and does not take positions on the issues it researches.

²⁴ WCRI study, *supra* note 7.

²⁵ The 17 states in the WCRI study are California, Florida, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, and Wisconsin.

- For 2007/2008, the average payment per workers' compensation claim for prescription drugs was \$536, the second highest cost of the 17 states studied, and 45% higher than the median²⁶ of the states studied.²⁷
- Between 2005/2006 and 2007/2008, the average cost per claim for prescription drugs in Florida increased by 14%, but remained relatively stable in the other study states.
- Higher and growing costs of prescription drugs in Florida were largely due to more frequent and higher-priced physician dispensing.
- Over a four-year period (from 2004/2005 and 2007/2008), the percentage of payments for physician-dispensed prescriptions increased from 17% to 46% of all prescription payments.
- In 2007/2008, for many common drugs, physicians were paid 40% to 80% more than pharmacies for the same prescription.
- 65% of physician-dispensed prescriptions were for pain medications.

Further, the WCRI study identifies and addresses two concerns that have been raised in response to proposals to eliminate higher reimbursements for repackaged drugs, and to provide the same rate of reimbursement for the same drug, whether it is repackaged or nonrepackaged. The first concern is that prescription costs would increase as a result of such a change. This position is based on the following assumptions: that physician dispensing would decrease and that physicians dispense generic drugs more frequently than pharmacies. For the most commonly dispensed drugs, the WCRI found that physicians and pharmacies almost always dispense generic drugs, and that physicians are paid much higher prices per pill than pharmacies for the same prescription.

A second concern with providing the same reimbursement for repackaged and nonrepackaged drugs is that physicians would stop dispensing drugs, and patients who do not have prescriptions filled by their doctor are less likely to take their medicine as prescribed, which would be detrimental to the patient. For California, the WCRI reports that physician dispensing decreased from 50% to 25% of all prescriptions immediately following enactment of a reform to provide the same reimbursement for repackaged and nonrepackaged drugs.²⁸

Effect of bill

The bill provides the same rate of reimbursement for repackaged or relabeled drugs as for non-repackaged drugs. Specifically, reimbursement for repackaged or relabeled drugs is to be calculated by multiplying the number of units of the drug dispensed by the per-unit AWP set by the original manufacturer of the drug (which may not be the manufacturer of the repackaged or relabeled drug), plus a \$4.18 dispensing fee, unless the carrier has contracted for a lower amount. The bill expressly prohibits the price of repackaged or relabeled drugs from exceeding the amount that would otherwise be payable had the drug not been repackaged or relabeled.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.13, F.S., to provide the same rate of reimbursement for repackaged or relabeled drugs as for non-repackaged drugs in Florida's workers' compensation system.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

²⁶ The Merriam-Webster Dictionary online defines median as "a value in an ordered set of values below and above which there is an equal number of values or which is the arithmetic mean of the two middle values if there is no one middle number...." See <http://www.merriam-webster.com/dictionary.htm>.

²⁷ WCRI study, *supra* note 7, informs that physician dispensing is not generally allowed in three of the states in its study - Massachusetts, New York, and Texas.

²⁸ Data from the first quarter of 2008. Subsequent dispensing patterns are not addressed in this study.

1. Revenues:

None.

2. Expenditures:

According to the Department of Financial Services, providing the same rate of reimbursement for repackaged, relabeled, and non-repackaged drugs dispensed to injured state employees will reduce costs incurred by the Division of Risk Management by \$1.2 million annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent that repackaged drugs are dispensed by physicians to local government employees who suffer a workplace injury, the bill will lower the costs that local governments pay for prescription drugs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providing the same rate of reimbursement for repackaged or relabeled drugs as for non-repackaged drugs will save Florida employers \$62 million annually in workers' compensation costs, a 2.5% system savings.

Physicians that dispense prescription drugs under the workers' compensation system will continue to receive a \$4.18 dispensing fee for each prescription they fill, but will no longer derive additional income from the higher reimbursements that had been provided for these drugs.

D. FISCAL COMMENTS:

The bill will result in significant savings to state and local governments and lower workers' compensation costs for Florida employers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to workers' compensation; amending s.
 3 440.13, F.S.; revising requirements for determining
 4 the amount of a reimbursement for repackaged or
 5 re-labeled prescription medication; providing
 6 limitations; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (c) of subsection (12) of section
 11 440.13, Florida Statutes, is amended to read:

12 440.13 Medical services and supplies; penalty for
 13 violations; limitations.—

14 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
 15 REIMBURSEMENT ALLOWANCES.—

16 (c) As to reimbursement for a prescription medication,
 17 regardless of the location from which or the provider from whom
 18 the claimant receives the prescription medication, the
 19 reimbursement amount ~~for a prescription~~ shall be the average
 20 wholesale price plus \$4.18 for the dispensing fee, unless ~~except~~
 21 ~~where~~ the carrier has contracted for a lower amount. If the drug
 22 has been repackaged or relabeled, the reimbursement amount shall
 23 be calculated by multiplying the number of units dispensed times
 24 the per-unit average wholesale price set by the original
 25 manufacturer of the underlying drug, which may not be the
 26 manufacturer of the repackaged or relabeled drug, plus a \$4.18
 27 dispensing fee, unless the carrier has contracted for a lower
 28 amount. The repackaged or relabeled drug price may not exceed

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29 the amount otherwise payable had the drug not been repackaged or
 30 re-labeled. Fees for pharmaceuticals and pharmaceutical services
 31 shall be reimbursable at the applicable fee schedule amount. If
 32 ~~where~~ the employer or carrier has contracted for such services
 33 and the employee elects to obtain them through a provider not a
 34 party to the contract, the carrier shall reimburse at the
 35 schedule, negotiated, or contract price, whichever is lower. ~~No~~
 36 Such contract may not ~~shall~~ rely on a provider that is not
 37 reasonably accessible to the employee.

38 Section 2. This act shall take effect July 1, 2012.

1 A bill to be entitled
 2 An act relating to motor vehicle personal injury
 3 protection insurance; providing a short title;
 4 amending s. 316.066, F.S.; revising provisions
 5 relating to the contents of written reports of motor
 6 vehicle crashes; authorizing the investigating officer
 7 to testify at trial or provide an affidavit concerning
 8 the content of the reports; amending s. 400.9905,
 9 F.S.; eliminating an exemption from certain
 10 regulations for clinics that receive more than a
 11 specified percentage of income from motor vehicle
 12 personal injury protection insurance policy benefits;
 13 authorizing rulemaking; amending s. 627.736, F.S.;
 14 limiting payments for services provided by
 15 chiropractic physicians and massage therapists;
 16 deleting provisions authorizing reimbursement to
 17 certain providers for services; deleting provisions
 18 relating to forms for certain providers; revising
 19 provisions relating to a prohibition on payment of
 20 benefits if the insured, claimant, medical provider,
 21 or attorney has committed certain acts; revising
 22 provisions relating to charges for treatment of
 23 injured persons; requiring claimants to submit to
 24 examinations under oath or sworn statements; providing
 25 procedures; requiring reimbursement to providers;
 26 providing that refusal or failure to appear for two
 27 medical examinations raises a rebuttable presumption
 28 that such refusal or failure was unreasonable;

29 providing restrictions on attorney fees; requiring
 30 attorney fees under no-fault provisions to be
 31 calculated without regard to any contingency risk
 32 multiplier; eliminating certain providers from
 33 provisions relating to the establishment of preferred
 34 providers; providing that if an insurer offers a
 35 preferred provider option, it must also offer a
 36 nonpreferred provider policy; authorizing an insurer
 37 to offer an actuarially appropriate premium discount
 38 to an insured who selects the preferred provider
 39 option; authorizing such policies to limit payment for
 40 nonemergency services in certain circumstances;
 41 authorizing an insurer to contract with another
 42 insurer for the right to use an existing preferred
 43 provider network to implement the preferred provider
 44 option; conforming cross-references; amending s.
 45 627.7407, F.S.; repealing the Florida Motor Vehicle
 46 No-Fault Law on a date certain unless reviewed by the
 47 Legislature and reenacted prior to that date;
 48 requiring the Office of Insurance Regulation to
 49 perform a personal injury protection data call and
 50 publish results within a specified period; providing
 51 requirements for the data call; requiring each insurer
 52 transacting motor vehicle insurance to decrease rates
 53 through a "use and file" filing or make a full annual
 54 base rate filing within a specified period; providing
 55 for severability; providing an effective date.

56

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

58

59 Section 1. This act may be cited as the "Comprehensive
 60 Motor Vehicle Accountability Act."

61 Section 2. Subsection (1) of section 316.066, Florida
 62 Statutes, is amended to read:

63 316.066 Written reports of crashes.—

64 (1)(a) A Florida Traffic Crash Report must, ~~Long Form is~~
 65 ~~required to~~ be completed and submitted to the department within
 66 10 days after ~~completing~~ an investigation is completed by the
 67 ~~every~~ law enforcement officer who in the regular course of duty
 68 investigates a motor vehicle crash ~~that:~~

- 69 1. ~~Resulted in death or personal injury.~~
- 70 2. ~~Involved a violation of s. 316.061(1) or s. 316.193.~~

71 (b) ~~In every crash for which a Florida Traffic Crash~~
 72 ~~Report, Long Form is not required by this section, the law~~
 73 ~~enforcement officer may complete a short form crash report or~~
 74 ~~provide a driver exchange of information form to be completed by~~
 75 ~~each party involved in the crash. The short form report must~~
 76 include:

- 77 1. The date, time, and location of the crash.
- 78 2. A description of the vehicles involved.
- 79 3. The names and addresses of the parties involved,
 80 including all drivers and passengers, each clearly identified as
 81 being either a driver or a passenger and specifying the vehicle
 82 in which each person was a driver or passenger.
- 83 4. The names and addresses of witnesses.
- 84 5. The name, badge number, and law enforcement agency of

85 | the officer investigating the crash.

86 | 6. The names of the insurance companies for the respective
87 | parties involved in the crash.

88 | (c) Each party to the crash must provide the law
89 | enforcement officer with proof of insurance, which must be
90 | documented in the crash report. If a law enforcement officer
91 | submits a report on the crash, proof of insurance must be
92 | provided to the officer by each party involved in the crash. Any
93 | party who fails to provide the required information commits a
94 | noncriminal traffic infraction, punishable as a nonmoving
95 | violation as provided in chapter 318, unless the officer
96 | determines that due to injuries or other special circumstances
97 | such insurance information cannot be provided immediately. If
98 | the person provides the law enforcement agency, within 24 hours
99 | after the crash, proof of insurance that was valid at the time
100 | of the crash, the law enforcement agency may void the citation.

101 | (d) The driver of a vehicle that was in any manner
102 | involved in a crash resulting in damage to any vehicle or other
103 | property in an amount of \$500 or more which was not investigated
104 | by a law enforcement agency⁷ shall, within 10 days after the
105 | crash, submit a written report of the crash to the department.
106 | The entity receiving the report may require witnesses of the
107 | crash to render reports and may require any driver of a vehicle
108 | involved in a crash of which a written report must be made to
109 | file supplemental written reports if the original report is
110 | deemed insufficient by the receiving entity.

111 | (e) The investigating law enforcement officer may testify
112 | at trial or provide a signed affidavit to confirm or supplement

113 the information included on the Florida Traffic Crash Report or
 114 driver exchange-of-information report ~~Short form crash reports~~
 115 ~~prepared by law enforcement shall be maintained by the law~~
 116 ~~enforcement officer's agency.~~

117 Section 3. Subsection (4) of section 400.9905, Florida
 118 Statutes, is amended to read:

119 400.9905 Definitions.—

120 (4) "Clinic" means an entity at which health care services
 121 are provided to individuals and which tenders charges for
 122 reimbursement for such services, including a mobile clinic and a
 123 portable equipment provider. For purposes of this part, the term
 124 does not include and the licensure requirements of this part do
 125 not apply to:

126 (a) Entities licensed or registered by the state under
 127 chapter 395; or entities licensed or registered by the state and
 128 providing only health care services within the scope of services
 129 authorized under their respective licenses granted under ss.
 130 383.30-383.335, chapter 390, chapter 394, chapter 397, this
 131 chapter except part X, chapter 429, chapter 463, chapter 465,
 132 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
 133 chapter 651; end-stage renal disease providers authorized under
 134 42 C.F.R. part 405, subpart U; or providers certified under 42
 135 C.F.R. part 485, subpart B or subpart H; or any entity that
 136 provides neonatal or pediatric hospital-based health care
 137 services or other health care services by licensed practitioners
 138 solely within a hospital licensed under chapter 395.

139 (b) Entities that own, directly or indirectly, entities
 140 licensed or registered by the state pursuant to chapter 395; or

141 entities that own, directly or indirectly, entities licensed or
142 registered by the state and providing only health care services
143 within the scope of services authorized pursuant to their
144 respective licenses granted under ss. 383.30-383.335, chapter
145 390, chapter 394, chapter 397, this chapter except part X,
146 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
147 part I of chapter 483, chapter 484, chapter 651; end-stage renal
148 disease providers authorized under 42 C.F.R. part 405, subpart
149 U; or providers certified under 42 C.F.R. part 485, subpart B or
150 subpart H; or any entity that provides neonatal or pediatric
151 hospital-based health care services by licensed practitioners
152 solely within a hospital licensed under chapter 395.

153 (c) Entities that are owned, directly or indirectly, by an
154 entity licensed or registered by the state pursuant to chapter
155 395; or entities that are owned, directly or indirectly, by an
156 entity licensed or registered by the state and providing only
157 health care services within the scope of services authorized
158 pursuant to their respective licenses granted under ss. 383.30-
159 383.335, chapter 390, chapter 394, chapter 397, this chapter
160 except part X, chapter 429, chapter 463, chapter 465, chapter
161 466, chapter 478, part I of chapter 483, chapter 484, or chapter
162 651; end-stage renal disease providers authorized under 42
163 C.F.R. part 405, subpart U; or providers certified under 42
164 C.F.R. part 485, subpart B or subpart H; or any entity that
165 provides neonatal or pediatric hospital-based health care
166 services by licensed practitioners solely within a hospital
167 under chapter 395.

168 (d) Entities that are under common ownership, directly or

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169 indirectly, with an entity licensed or registered by the state
170 pursuant to chapter 395; or entities that are under common
171 ownership, directly or indirectly, with an entity licensed or
172 registered by the state and providing only health care services
173 within the scope of services authorized pursuant to their
174 respective licenses granted under ss. 383.30-383.335, chapter
175 390, chapter 394, chapter 397, this chapter except part X,
176 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
177 part I of chapter 483, chapter 484, or chapter 651; end-stage
178 renal disease providers authorized under 42 C.F.R. part 405,
179 subpart U; or providers certified under 42 C.F.R. part 485,
180 subpart B or subpart H; or any entity that provides neonatal or
181 pediatric hospital-based health care services by licensed
182 practitioners solely within a hospital licensed under chapter
183 395.

184 (e) An entity that is exempt from federal taxation under
185 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
186 under 26 U.S.C. s. 409 that has a board of trustees not less
187 than two-thirds of which are Florida-licensed health care
188 practitioners and provides only physical therapy services under
189 physician orders, any community college or university clinic,
190 and any entity owned or operated by the federal or state
191 government, including agencies, subdivisions, or municipalities
192 thereof.

193 (f) A sole proprietorship, group practice, partnership, or
194 corporation that provides health care services by physicians
195 covered by s. 627.419, that is directly supervised by one or
196 more of such physicians, and that is wholly owned by one or more

197 of those physicians or by a physician and the spouse, parent,
 198 child, or sibling of that physician.

199 (g) A sole proprietorship, group practice, partnership, or
 200 corporation that provides health care services by licensed
 201 health care practitioners under chapter 457, chapter 458,
 202 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
 203 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
 204 chapter 490, chapter 491, or part I, part III, part X, part
 205 XIII, or part XIV of chapter 468, or s. 464.012, which are
 206 wholly owned by one or more licensed health care practitioners,
 207 or the licensed health care practitioners set forth in this
 208 paragraph and the spouse, parent, child, or sibling of a
 209 licensed health care practitioner, so long as one of the owners
 210 who is a licensed health care practitioner is supervising the
 211 business activities and is legally responsible for the entity's
 212 compliance with all federal and state laws. However, a health
 213 care practitioner may not supervise services beyond the scope of
 214 the practitioner's license, except that, for the purposes of
 215 this part, a clinic owned by a licensee in s. 456.053(3)(b) that
 216 provides only services authorized pursuant to s. 456.053(3)(b)
 217 may be supervised by a licensee specified in s. 456.053(3)(b).

218 (h) Clinical facilities affiliated with an accredited
 219 medical school at which training is provided for medical
 220 students, residents, or fellows.

221 (i) Entities that provide only oncology or radiation
 222 therapy services by physicians licensed under chapter 458 or
 223 chapter 459 or entities that provide oncology or radiation
 224 therapy services by physicians licensed under chapter 458 or

225 chapter 459 which are owned by a corporation whose shares are
 226 publicly traded on a recognized stock exchange.

227 (j) Clinical facilities affiliated with a college of
 228 chiropractic accredited by the Council on Chiropractic Education
 229 at which training is provided for chiropractic students.

230 (k) Entities that provide licensed practitioners to staff
 231 emergency departments or to deliver anesthesia services in
 232 facilities licensed under chapter 395 and that derive at least
 233 90 percent of their gross annual revenues from the provision of
 234 such services. Entities claiming an exemption from licensure
 235 under this paragraph must provide documentation demonstrating
 236 compliance.

237 (l) Orthotic or prosthetic clinical facilities that are a
 238 publicly traded corporation or that are wholly owned, directly
 239 or indirectly, by a publicly traded corporation. As used in this
 240 paragraph, a publicly traded corporation is a corporation that
 241 issues securities traded on an exchange registered with the
 242 United States Securities and Exchange Commission as a national
 243 securities exchange.

244
 245 Notwithstanding these exemptions, any legal entity deriving more
 246 than 30 percent of its gross income, as measured each calendar
 247 year, beginning January 1, 2013, from motor vehicle personal
 248 injury protection insurance policy benefits is a clinic as
 249 defined by this subsection and does not qualify for an
 250 exemption. The agency may prescribe rules by which it can
 251 collect revenue information from such entities and require the
 252 reporting thereof on an annual basis.

253 Section 4. Subsection (1), paragraph (h) of subsection
 254 (4), paragraph (a) of subsection (5), subsection (6), paragraph
 255 (b) of subsection (7), and subsections (8) and (9) of section
 256 627.736, Florida Statutes, are amended to read:

257 627.736 Required personal injury protection benefits;
 258 exclusions; priority; claims.—

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

271 (a)1. Medical benefits.—Eighty percent of ~~all reasonable~~
 272 expenses for medically necessary medical, surgical, X-ray,
 273 dental, and rehabilitative services, including prosthetic
 274 devices, and for medically necessary ambulance, hospital, and
 275 nursing services. However, the medical benefits shall provide
 276 reimbursement only for such services and care that are lawfully
 277 provided, supervised, ordered, or prescribed by a physician
 278 licensed under chapter 458 or chapter 459, a dentist licensed
 279 under chapter 466, or a chiropractic physician licensed under
 280 chapter 460.

281 2. Chiropractic and massage.—Reimbursement for services
 282 provided by chiropractic physicians licensed under chapter 460
 283 and massage therapists licensed under chapter 480, limited to
 284 the lesser of 24 treatments or to services rendered within 12
 285 weeks after the date of the initial chiropractic or massage
 286 therapy treatment, whichever comes first. However, an insurer
 287 may authorize additional chiropractic or massage therapy
 288 services. ~~or that are provided by any of the following persons~~
 289 ~~or entities:~~

290 ~~1. A hospital or ambulatory surgical center licensed under~~
 291 ~~chapter 395.~~

292 ~~2. A person or entity licensed under ss. 401.2101-401.45~~
 293 ~~that provides emergency transportation and treatment.~~

294 ~~3. An entity wholly owned by one or more physicians~~
 295 ~~licensed under chapter 458 or chapter 459, chiropractic~~
 296 ~~physicians licensed under chapter 460, or dentists licensed~~
 297 ~~under chapter 466 or by such practitioner or practitioners and~~
 298 ~~the spouse, parent, child, or sibling of that practitioner or~~
 299 ~~those practitioners.~~

300 ~~4. An entity wholly owned, directly or indirectly, by a~~
 301 ~~hospital or hospitals.~~

302 ~~5. A health care clinic licensed under ss. 400.990-400.995~~
 303 ~~that is:~~

304 ~~a. Accredited by the Joint Commission on Accreditation of~~
 305 ~~Healthcare Organizations, the American Osteopathic Association,~~
 306 ~~the Commission on Accreditation of Rehabilitation Facilities, or~~
 307 ~~the Accreditation Association for Ambulatory Health Care, Inc.,~~
 308 ~~or~~

309 | ~~b. A health care clinic that:~~
 310 | ~~(I) Has a medical director licensed under chapter 458,~~
 311 | ~~chapter 459, or chapter 460;~~
 312 | ~~(II) Has been continuously licensed for more than 3 years~~
 313 | ~~or is a publicly traded corporation that issues securities~~
 314 | ~~traded on an exchange registered with the United States~~
 315 | ~~Securities and Exchange Commission as a national securities~~
 316 | ~~exchange; and~~
 317 | ~~(III) Provides at least four of the following medical~~
 318 | ~~specialties:~~
 319 | ~~(A) General medicine.~~
 320 | ~~(B) Radiography.~~
 321 | ~~(C) Orthopedic medicine.~~
 322 | ~~(D) Physical medicine.~~
 323 | ~~(E) Physical therapy.~~
 324 | ~~(F) Physical rehabilitation.~~
 325 | ~~(G) Prescribing or dispensing outpatient prescription~~
 326 | ~~medication.~~
 327 | ~~(H) Laboratory services.~~
 328 |
 329 | ~~The Financial Services Commission shall adopt by rule the form~~
 330 | ~~that must be used by an insurer and a health care provider~~
 331 | ~~specified in subparagraph 3., subparagraph 4., or subparagraph~~
 332 | ~~5. to document that the health care provider meets the criteria~~
 333 | ~~of this paragraph, which rule must include a requirement for a~~
 334 | ~~sworn statement or affidavit.~~
 335 | (b) Disability benefits.—Sixty percent of any loss of
 336 | gross income and loss of earning capacity per individual from

337 inability to work proximately caused by the injury sustained by
 338 the injured person, plus all expenses reasonably incurred in
 339 obtaining from others ordinary and necessary services in lieu of
 340 those that, but for the injury, the injured person would have
 341 performed without income for the benefit of his or her
 342 household. All disability benefits payable under this paragraph
 343 ~~provision~~ shall be paid not less than every 2 weeks.

344 (c) Death benefits.—Death benefits equal to the lesser of
 345 \$5,000 or the remainder of unused personal injury protection
 346 benefits per individual. The insurer may pay such benefits to
 347 the executor or administrator of the deceased, to any of the
 348 deceased's relatives by blood or legal adoption or connection by
 349 marriage, or to any person appearing to the insurer to be
 350 equitably entitled thereto.

351
 352 Only insurers writing motor vehicle liability insurance in this
 353 state may provide the required benefits of this section, and ~~no~~
 354 such an insurer may not shall require the purchase of any other
 355 motor vehicle coverage other than the purchase of property
 356 damage liability coverage as required by s. 627.7275 as a
 357 condition for providing such required benefits. Insurers may not
 358 require that property damage liability insurance in an amount
 359 greater than \$10,000 be purchased in conjunction with personal
 360 injury protection. Such insurers shall make benefits and
 361 required property damage liability insurance coverage available
 362 through normal marketing channels. Any insurer writing motor
 363 vehicle liability insurance in this state who fails to comply
 364 with such availability requirement as a general business

365 | practice violates ~~shall be deemed to have violated~~ part IX of
 366 | chapter 626, which constitutes ~~and such violation shall~~
 367 | ~~constitute~~ an unfair method of competition or an unfair or
 368 | deceptive act or practice involving the business of insurance;
 369 | and any such insurer committing such violation is ~~shall be~~
 370 | subject to the penalties authorized ~~afforded~~ in such part, as
 371 | well as those authorized ~~which may be afforded~~ elsewhere in the
 372 | insurance code.

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

386 | (h) Benefits shall not be due or payable to or on the
 387 | behalf of an insured, claimant, medical provider, or attorney
 388 | ~~person~~ if the insured, claimant, medical provider, or attorney
 389 | has:

- 390 | 1. Submitted a false or misleading statement, document,
- 391 | record, or bill;
- 392 | 2. Submitted false or misleading information; or

393 | 3. Otherwise committed or attempted to commit a fraudulent
 394 | insurance act as defined in s. 626.989.

395 |
 396 | A claimant who violates this paragraph is not entitled to any
 397 | personal injury protection benefits or payment for any bills and
 398 | services, regardless of whether a portion of the claim may be
 399 | legitimate. However, a medical provider who does not violate
 400 | this paragraph may not be denied benefits solely due to a
 401 | violation by another claimant that person has committed, by a
 402 | material act or omission, any insurance fraud relating to
 403 | personal injury protection coverage under his or her policy, if
 404 | the fraud is admitted to in a sworn statement by the insured or
 405 | if it is established in a court of competent jurisdiction. Any
 406 | insurance fraud shall void all coverage arising from the claim
 407 | related to such fraud under the personal injury protection
 408 | coverage of the insured person who committed the fraud,
 409 | irrespective of whether a portion of the insured person's claim
 410 | may be legitimate, and any benefits paid prior to the discovery
 411 | of the insured person's insurance fraud shall be recoverable by
 412 | the insurer from the person who committed insurance fraud in
 413 | their entirety. The prevailing party is entitled to its costs
 414 | and attorney's fees in any action in which it prevails in an
 415 | insurer's action to enforce its right of recovery under this
 416 | paragraph.

417 | (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

418 | (a)~~1~~. Any physician, hospital, clinic, or other person or
 419 | institution lawfully rendering treatment to an injured person
 420 | for a bodily injury covered by personal injury protection

421 insurance may charge the insurer and injured party only an a
 422 ~~reasonable~~ amount pursuant to this section for the services and
 423 supplies rendered, and the insurer providing such coverage may
 424 pay for such charges directly to such person or institution
 425 lawfully rendering such treatment, if the insured receiving such
 426 treatment or his or her guardian has countersigned the properly
 427 completed invoice, bill, or claim form approved by the office
 428 upon which such charges are to be paid for as having actually
 429 been rendered, to the best knowledge of the insured or his or
 430 her guardian. ~~In no event,~~ However, ~~may~~ such a charge may not
 431 exceed ~~be in excess of~~ the amount the person or institution
 432 customarily charges for like services or supplies. When
 433 determining ~~With respect to a determination of~~ whether a charge
 434 for a particular service, treatment, or otherwise is reasonable,
 435 consideration may be given to evidence of usual and customary
 436 charges and payments accepted by the provider involved in the
 437 dispute, ~~and~~ reimbursement levels in the community and various
 438 federal and state medical fee schedules applicable to motor
 439 vehicle ~~automobile~~ and other insurance coverages, and other
 440 information relevant to the reasonableness of the reimbursement
 441 for the service, treatment, or supply.

442 ~~1.2.~~ The insurer may limit reimbursement to 80 percent of
 443 the following schedule of maximum charges:

- 444 a. For emergency transport and treatment by providers
 445 licensed under chapter 401, 200 percent of Medicare.
- 446 b. For emergency services and care provided by a hospital
 447 licensed under chapter 395, 75 percent of the hospital's usual
 448 and customary charges.

449 c. For emergency services and care as defined by s.
 450 395.002 ~~395.002(9)~~ provided in a facility licensed under chapter
 451 395 rendered by a physician or dentist, and related hospital
 452 inpatient services rendered by a physician or dentist, the usual
 453 and customary charges in the community.

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

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

462 f. For all other medical services, supplies, and care,
 463 including durable medical equipment, care, and services rendered
 464 by a clinical laboratory, 200 percent of the allowable amount
 465 under the participating physicians schedule of Medicare Part B.
 466 However, if such services, supplies, or care is not reimbursable
 467 under Medicare Part B, or if the care and services are rendered
 468 in an ambulatory surgical center, the insurer may limit
 469 reimbursement to 80 percent of the maximum reimbursable
 470 allowance under workers' compensation, as determined under s.
 471 440.13 and rules adopted thereunder which are in effect at the
 472 time such services, supplies, or care is provided. Services,
 473 supplies, or care that is not reimbursable under Medicare or
 474 workers' compensation is not required to be reimbursed by the
 475 insurer.

476 ~~2.3-~~ For purposes of subparagraph 1. 2-, the applicable

477 fee schedule or payment limitation under Medicare is the fee
 478 schedule or payment limitation in effect on January 1 of the
 479 year in which ~~at the time~~ the services, supplies, or care was
 480 rendered and for the area in which such services were rendered,
 481 notwithstanding any subsequent changes made to such fee schedule
 482 or payment limitation, except that it may not be less than the
 483 allowable amount under the participating physicians schedule of
 484 Medicare Part B for 2007 for medical services, supplies, and
 485 care subject to Medicare Part B.

486 ~~3.4.~~ Subparagraph 1. ~~2.~~ does not allow the insurer to
 487 apply any limitation on the number of treatments or other
 488 utilization limits that apply under Medicare or workers'
 489 compensation. An insurer that applies the allowable payment
 490 limitations of subparagraph 1. ~~2.~~ must reimburse a provider who
 491 lawfully provided care or treatment under the scope of his or
 492 her license, regardless of whether such provider would be
 493 entitled to reimbursement under Medicare due to restrictions or
 494 limitations on the types or discipline of health care providers
 495 who may be reimbursed for particular procedures or procedure
 496 codes.

497 ~~4.5.~~ If an insurer limits payment as authorized by
 498 subparagraph 1. ~~2.~~, the person providing such services,
 499 supplies, or care may not bill or attempt to collect from the
 500 insured any amount in excess of such limits, except for amounts
 501 that are not covered by the insured's personal injury protection
 502 coverage due to the coinsurance amount or maximum policy limits.

- 503 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—
 504 (a) An insurer may require a claimant to submit to an

505 examination under oath or sworn statement. The insurer is not
 506 liable for benefits under the no-fault law if the claimant fails
 507 to fully and truthfully answer all questions relating to the
 508 claim for benefits or violates any provision of paragraph
 509 (4) (h).

510 1. The insurer may conduct the examination outside the
 511 presence of any other person seeking benefits or reimbursement.

512 2. If an insurer requests an examination of a claimant
 513 that is in a hospital, clinic, or other medical institution,
 514 such claimant shall produce the persons with the most knowledge
 515 relating to the issues set forth by the insurer in the notice of
 516 examination.

517 3. The claimant must provide the insurer at the
 518 examination with all documents, papers, receipts, invoices,
 519 bills, records, or other tangible items requested by the insurer
 520 that are related to the claim.

521 4. The examination may be recorded by audio, video, or
 522 court reporter or any combination thereof. The claimant may
 523 record the examination at the claimant's expense.

524 5. The claimant may have an attorney present at the
 525 examination at the claimant's expense.

526 6. An insurer must coordinate with the claimant to ensure
 527 an appropriate time and location for the examination. A
 528 claimant's failure to agree to attend an examination after an
 529 insurer presents two documented offers of a reasonable time and
 530 location allows the insurer to suspend benefits, until such time
 531 that the claimant agrees to submit to, and does actually submit
 532 to, an examination.

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533 7. If the claimant is a medical provider that is not the
534 insured, the insurer must pay the claimant reasonable
535 compensation for attending the examination under oath. Such
536 compensation shall be based upon a good faith estimate of the
537 time required to conduct the examinations under oath. If
538 additional time is necessary for completion of the examination
539 under oath, the insurer must provide compensation to the medical
540 provider for the time that exceeds the good faith estimate
541 within 15 days after the examination under oath so long as the
542 medical provider completes the examination. The medical provider
543 may have an attorney present at the examination under oath at
544 his or her own expense.

545 (b)-(a) Every employer shall, if a request is made by an
546 insurer providing personal injury protection benefits under ss.
547 627.730-627.7405 against whom a claim has been made, furnish
548 forthwith, in a form approved by the office, a sworn statement
549 of the earnings, since the time of the bodily injury and for a
550 reasonable period before the injury, of the person upon whose
551 injury the claim is based.

552 (c)-(b) Every physician, hospital, clinic, or other medical
553 institution providing, before or after bodily injury upon which
554 a claim for personal injury protection insurance benefits is
555 based, any products, services, or accommodations in relation to
556 that or any other injury, or in relation to a condition claimed
557 to be connected with that or any other injury, shall, if
558 requested to do so by the insurer against whom the claim has
559 been made, furnish forthwith a written report of the history,
560 condition, treatment, dates, and costs of such treatment of the

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561 | injured person and why the items identified by the insurer were
562 | reasonable in amount and medically necessary, together with a
563 | sworn statement that the treatment or services rendered were
564 | reasonable and necessary with respect to the bodily injury
565 | sustained and identifying which portion of the expenses for such
566 | treatment or services was incurred as a result of such bodily
567 | injury, and produce forthwith, and permit the inspection and
568 | copying of, his or her or its records regarding such history,
569 | condition, treatment, dates, and costs of treatment; provided
570 | that this shall not limit the introduction of evidence at trial.
571 | Such sworn statement shall read as follows: "Under penalty of
572 | perjury, I declare that I have read the foregoing, and the facts
573 | alleged are true, to the best of my knowledge and belief." No
574 | cause of action for violation of the physician-patient privilege
575 | or invasion of the right of privacy shall be permitted against
576 | any physician, hospital, clinic, or other medical institution
577 | complying with the provisions of this section. The person
578 | requesting such records and such sworn statement shall pay all
579 | reasonable costs connected therewith. If an insurer makes a
580 | written request for documentation or information under this
581 | paragraph within 30 days after having received notice of the
582 | amount of a covered loss under paragraph (4)(a), the amount or
583 | the partial amount which is the subject of the insurer's inquiry
584 | shall become overdue if the insurer does not pay in accordance
585 | with paragraph (4)(b) or within 10 days after the insurer's
586 | receipt of the requested documentation or information, whichever
587 | occurs later. For purposes of this paragraph, the term "receipt"
588 | includes, but is not limited to, inspection and copying pursuant

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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589 to this paragraph. Any insurer that requests documentation or
590 information pertaining to reasonableness of charges or medical
591 necessity under this paragraph without a reasonable basis for
592 such requests as a general business practice is engaging in an
593 unfair trade practice under the insurance code.

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

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

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

613 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;
614 REPORTS.—

615 (b) If requested by the person examined, a party causing
616 an examination to be made shall deliver to him or her a copy of

617 every written report concerning the examination rendered by an
 618 examining physician, at least one of which reports must set out
 619 the examining physician's findings and conclusions in detail.
 620 After such request and delivery, the party causing the
 621 examination to be made is entitled, upon request, to receive
 622 from the person examined every written report available to him
 623 or her or his or her representative concerning any examination,
 624 previously or thereafter made, of the same mental or physical
 625 condition. By requesting and obtaining a report of the
 626 examination so ordered, or by taking the deposition of the
 627 examiner, the person examined waives any privilege he or she may
 628 have, in relation to the claim for benefits, regarding the
 629 testimony of every other person who has examined, or may
 630 thereafter examine, him or her in respect to the same mental or
 631 physical condition. If a person unreasonably refuses to submit
 632 to or fails to appear at an examination, the personal injury
 633 protection carrier is no longer liable for subsequent personal
 634 injury protection benefits. Refusal or failure to appear for two
 635 examinations raises a rebuttable presumption that such refusal
 636 or failure was unreasonable.

637 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY
 638 ATTORNEY'S FEES.—

639 (a) With respect to any dispute under ~~the provisions of~~
 640 ss. 627.730-627.7405 between the insured and the insurer, or
 641 between an assignee of an insured's rights and the insurer, ~~the~~
 642 ~~provisions of~~ s. 627.428 applies shall apply, except as provided
 643 in paragraphs (b) and (c) and subsections (10) and (15) and
 644 except that any attorney fees recovered are limited to the

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645 lesser of \$200 per billable hour or:

646 1. For any disputed amount of less than \$500, 15 times any
647 disputed amount recovered by the attorney under ss. 627.730-
648 627.7405, limited to a total of \$5,000.

649 2. For any disputed amount of \$500 or more and less than
650 \$5,000, 10 times any disputed amount recovered by the attorney
651 under ss. 627.730-627.7405, limited to a total of \$10,000.

652 3. For any disputed amount of \$5,000 or more and up to
653 \$10,000, 5 times any disputed amount recovered by the attorney
654 under ss. 627.730-627.7405, limited to a total of \$15,000.

655

656 Fees incurred in litigating or quantifying the amount of fees
657 due to the prevailing party under ss. 627.730-627.7405 are not
658 recoverable.

659 (b) Notwithstanding s. 627.428, the attorney fees
660 recovered under ss. 627.730-627.7405 shall be calculated without
661 regard to any contingency risk multiplier.

662 (c) Attorney fees in a class action under ss. 627.730-
663 627.7405 are limited to the lesser of \$50,000 or 3 times the
664 total of any disputed amount recovered in the class action
665 proceeding.

666 (9) PREFERRED PROVIDERS.-An insurer may negotiate and
667 enter into contracts with preferred ~~licensed health care~~
668 providers for the benefits described in this section, ~~referred~~
669 ~~to in this section as "preferred providers,"~~ which shall include
670 health care providers licensed under chapters 458, 459, ~~460,~~
671 ~~461,~~ and 466 ~~463.~~

672 (a) The insurer may provide an option to an insured to use

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673 a preferred provider at the time of purchase of the policy for
674 personal injury protection benefits, if the requirements of this
675 subsection are met. However, if the insurer offers a preferred
676 provider option, it must also offer a nonpreferred provider
677 policy ~~If the insured elects to use a provider who is not a~~
678 ~~preferred provider, whether the insured purchased a preferred~~
679 ~~provider policy or a nonpreferred provider policy, the medical~~
680 ~~benefits provided by the insurer shall be as required by this~~
681 ~~section.~~

682 (b) If the insured elects the ~~to use a provider who is a~~
683 ~~preferred provider option,~~ the insurer may pay medical benefits
684 in excess of the benefits required by this section and may waive
685 or lower the amount of any deductible that applies to such
686 medical benefits. As an alternative, or in addition to such
687 benefits, waiver, or reduction, the insurer may provide an
688 actuarially appropriate premium discount as specified in an
689 approved rate filing to an insured who selects the preferred
690 provider option. If the preferred provider option provides a
691 premium discount, the policy may provide that charges for
692 nonemergency services provided within this state are payable
693 only if performed by members of the preferred provider network
694 unless there is no member of the preferred provider network
695 located within 15 miles of the insured's place of residence
696 whose scope of practice includes the required services ~~If the~~
697 ~~insurer offers a preferred provider policy to a policyholder or~~
698 ~~applicant, it must also offer a nonpreferred provider policy.~~

699 (c) The insurer shall provide each insured ~~policyholder~~
700 with a current roster of preferred providers in the county in

701 | which the insured resides at the time of purchasing ~~purchase of~~
 702 | such policy, and ~~shall~~ make such list available for public
 703 | inspection during regular business hours at the principal office
 704 | ~~of the insurer~~ within the state. The insurer may contract with
 705 | another insurer for the right to use an existing preferred
 706 | provider network to implement the preferred provider option. Any
 707 | other arrangement is subject to the approval of the Office of
 708 | Insurance Regulation.

709 | Section 5. Subsection (9) is added to section 627.7407,
 710 | Florida Statutes, to read:

711 | 627.7407 Application of the Florida Motor Vehicle No-Fault
 712 | Law.—

713 | (9) Sections 627.730-627.7405, the Florida Motor Vehicle
 714 | No-Fault Law, and this section are repealed effective July 1,
 715 | 2015, unless reviewed by the Legislature and reenacted prior to
 716 | that date.

717 | Section 6. The Office of Insurance Regulation shall
 718 | perform a personal injury protection data call, with results
 719 | published not later than 24 months after the effective date of
 720 | this act. Elements of the data call shall include, but are not
 721 | limited to, the number of personal injury protection claims
 722 | filed, the number of independent medical examinations requested
 723 | and completed, the number of examinations under oath requested
 724 | and completed, and the number of denied claims.

725 | Section 7. Notwithstanding section 627.0645, Florida
 726 | Statutes, each insurer transacting motor vehicle insurance must,
 727 | within 18 months after the effective date of this act, decrease
 728 | rates through a "use and file" filing or make a full annual base

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729 | rate filing with the Office of Insurance Regulation. An insurer
730 | may not be exempted from this requirement by certification of an
731 | existing rate level that is actuarially sound and not inadequate
732 | pursuant to s. 627.0645(3)(b), Florida Statutes.

733 | Section 8. If any provision of this act or its application
734 | to any person or circumstance is held invalid, the invalidity
735 | does not affect other provisions or applications of the act
736 | which can be given effect without the invalid provision or
737 | application, and to this end the provisions of this act are
738 | severable.

739 | Section 9. This act shall take effect July 1, 2012.

