



Civil Justice Subcommittee

Wednesday, January 25, 2012

8:00 AM

404 HOB

REVISED

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Wednesday, January 25, 2012 08:00 am
End Date and Time: Wednesday, January 25, 2012 10:30 am
Location: 404 HOB
Duration: 2.50 hrs

Consideration of the following bill(s):

CS/HB 119 Motor Vehicle Insurance by Insurance & Banking Subcommittee, Boyd
PCS for HB 213 -- Judicial Proceedings
HB 897 Construction Liens and Bonds by Moraitis
PCS for HB 935 -- Child Support Enforcement

NOTICE FINALIZED on 01/23/2012 16:22 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 119 Motor Vehicle Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Boyd and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1860

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 5 N, As CS	Reilly	Cooper
2) Civil Justice Subcommittee		Thomas	Bond
3) Health & Human Services Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

CS/HB 119 creates a new no-fault motor vehicle insurance system, the Emergency Care Coverage (ECC) Law, to replace the personal injury protection (PIP) system. While the ECC system represents a significantly different approach to no-fault law, it retains many aspects of PIP. ECC is identical to PIP with respect to persons covered by the no-fault policy, the amount of mandated coverage (\$10,000), and the availability of lost wage and funeral benefits.

The distinguishing feature of an ECC policy is that coverage for medical services is dependent upon the severity of the injury. Specifically, medical benefits are payable only for:

- Emergency transport and treatment by licensed ambulance providers within 24 hours after the accident.
- Emergency services and care rendered at a hospital within 72 hours after the accident.
- Services and care rendered to an insured who is admitted to a hospital within 72 hours after the accident.
- Services and care rendered to an insured who is determined more than 72 hours after the accident to have an emergency medical condition related to the initial diagnosis and arising from the motor vehicle accident.
- If the insured receives services and care pursuant to 2), 3), or 4), subsequent services and care directly related to the medical diagnosis arising from the accident, subject to the following:
 - The diagnosis must be rendered in a licensed hospital and rendered by a physician licensed under chapter 458, F.S., or a licensed osteopathic physician and
 - The care and services must be rendered by a physician licensed under chapter 458, a licensed osteopathic physician, or a licensed dentist, licensed physician assistant, or a licensed registered nurse practitioner.

The ECC Law also:

- Caps attorney fee awards in individual and class action no-fault disputes, and bars the use of contingency risk multipliers in such cases.
- Creates rebuttable presumption that a diagnosis of emergency medical condition is correct.
- Tolls the 30-day payment period when fraud is suspected under specified conditions.
- Bars payment of any ECC benefits to persons who submit false statements or false information.
- Provides that compliance with ECC policy terms is a condition precedent to receipt of benefits.
- Creates rebuttable presumption that an insured's failure to appear for two examinations (mental or physical) is an unreasonable refusal or failure to submit to examination.
- Provides that compliance with all ECC policy terms is a condition precedent to receipt of policy benefits, including submission to examination under oath.

The bill provides for a single motor vehicle crash report form and requires insurers to use forms and rates that reflect the ECC Law for no-fault policies issued or renewed on and after October 1, 2012.

By addressing costs drivers in the current PIP system, the bill is expected to have a positive fiscal impact on motor vehicle insurance policyholders. The fiscal impact on state and local governments is unknown.

Except as otherwise provided, the bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor Vehicle Accident Reports

For motor vehicle accidents, s. 316.066, F.S., provides for the filing of a Long-Form or Short-Form Crash Report. The more detailed long-form report must be completed by a law enforcement officer only when the accident:

- Results in injury or death; or
- Involves a hit and run or intoxicated driver.

Completed long-form reports must be filed with the Florida Department of Highway Safety and Motor Vehicles (DHSMV). In other cases, a short-form report may be completed by a law enforcement officer or the parties involved in the accident. Short-form reports prepared by law enforcement officers are maintained by the local law enforcement agency and are not submitted to the DHSMV.

No-Fault Motor Vehicle Insurance

Florida's Motor Vehicle No-Fault Law (the "No-Fault Law")¹ requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. Florida is one of 12 states² with no-fault motor vehicle³ insurance provisions. The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry a minimum of \$10,000 of PIP insurance and \$10,000 of property damage liability coverage.^{4,5}

Florida's PIP System

Legislative History

In 1971, Florida became the second state in the country to adopt a no-fault motor vehicle insurance plan, which took effect January 1, 1972. Since its enactment, various changes have been made to the No-Fault Law.

In 2000, a Statewide Grand Jury found rampant fraud in the PIP system. Reform legislation was enacted in 2001,⁶ which adopted many of the Grand Jury's recommendations. These included requiring certain health care clinics to register with the Department of Health and providing criteria for medical directors; applying fee schedules for specified procedures; limiting access to motor vehicle crash

¹ Sections 627.730-627.7405, F.S.

² Michigan, New Jersey, New York, Pennsylvania, Hawaii, Kansas, Kentucky, Massachusetts, Minnesota, North Dakota, and Utah also have no-fault automobile insurance. The systems in New Jersey, Pennsylvania, and Kentucky are sometimes separately categorized as "choice" no-fault states, as motorists in these states have the option to reject the no-fault limitation on lawsuits and retain the right to sue for their injuries. See the Insurance Information Institute's update on "No-Fault Auto Insurance." Available at: <http://www.iii.org/media/hottopics/insurance/nofault/> (last visited Jan. 23, 2012).

³ "Motor vehicle" is defined in s. 627.732, F.S., and includes private passenger motor vehicles and commercial motor vehicles.

⁴ Section 627.7275, F.S.

⁵ Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur.

⁶ Chapter 2001-271, L.O.F.

reports to curtail illegal solicitation; and providing that insurers/insureds are not required to pay claims of brokers.

Additional changes were enacted in 2003.⁷ These included strengthening health care clinic regulation; requiring agency licensure with the Agency for Health Care Administration (AHCA); requiring all PIP claimants to send a pre-suit demand letter to insurers for unpaid benefits; specifying criteria as to "reasonable" charges for services; strengthening various criminal penalties for PIP fraud; and providing for the repeal of the No-Fault Law on October 1, 2007, unless reenacted by the Legislature during the 2006 Regular Session.

In 2006, CS/CS/CS SB 2114, a bill that would have extended the sunset date of the No-Fault Law and made other changes, was passed by the Legislature and subsequently vetoed. The No-Fault Law then sunset on October 1, 2007.⁸

In Special Session C of 2007, the Legislature passed CS/HB 13C, which revived and reenacted the No-Fault Law effective January 1, 2008. The bill, signed into law as ch. 2007-324, L.O.F., limits medical reimbursement to services and care provided by specified health care providers and entities; authorizes insurers to use schedules of maximum charges in calculating reimbursement for medical services, supplies, and care; and provides that an insurer's failure to pay PIP claims as a general business practice is an unfair and deceptive trade practice.

Current Provisions

PIP provides \$10,000 of coverage (per person) for bodily injury sustained in a motor vehicle accident by the named insured, relatives residing in the same household as the named insured, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the motor vehicle. PIP benefits are payable as follows:

- 80 percent of reasonable medical expenses.
- 60 percent of loss of income.
- Death benefit of \$5,000 or the remainder of unused PIP benefits, whichever is less.

PIP provides the policyholder with immunity from liability for economic damages (medical expenses) up to the \$10,000 policy limits and for non-economic damages (pain and suffering) for most injuries. Specifically, the immunity provision protects the insured from tort actions by others (and conversely, the insured may not bring suit to recover damages) for pain, suffering, mental anguish, and inconvenience arising out of a vehicle accident, except in the following cases:⁹

- Significant and permanent loss of an important bodily function.
- Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- Significant and permanent scarring or disfigurement.
- Death.

Lawsuits for pain and suffering may commence only if the injuries meet these threshold levels.

PIP insurance benefits are payable by the insurer within 30 days after receipt of a covered loss and the amount due. Benefits not paid within this time are overdue.¹⁰ Before filing a lawsuit for overdue PIP benefits, the aggrieved person must give the insurer written notice of intent to sue.¹¹ If the insurer pays the claim (with interest and penalty) within 30 days of receipt of the pre-suit demand letter, a lawsuit cannot be brought against the insurer.

⁷ Chapter 2003-411, L.O.F.

⁸ The Motor Vehicle No-Fault Law was repealed pursuant to s. 19, ch. 2003-411, F.S.

⁹ Section 627.737, F.S.

¹⁰ Section 627.736(4)(b), F.S.

¹¹ Section 627.736(10), F.S.

Providers and Entities Eligible for PIP Reimbursement

Pursuant to s. 627.736, F.S., PIP provides medical reimbursement for services and care lawfully provided, supervised, ordered, or prescribed by a licensed physician, osteopath, chiropractor or dentist or provided by the following persons or entities:

- A hospital or ambulatory surgical center;
- An ambulance or emergency medical technician that provides emergency transport and treatment;
- An entity wholly owned by physicians, osteopaths, chiropractors, dentists, or such practitioners and their spouse, parent, child, or sibling;
- An entity wholly owned by a hospital or hospitals;
- Licensed health care clinics that are accredited by a specified accrediting organization;
- Licensed health care clinics that:
 - Have a medical director that is a Florida licensed physician, osteopath, or chiropractor;
 - Have been continuously licensed for more than 3 years or are publicly traded corporations; and
 - Provide at least four of the following medical specialties: general medicine; radiography; orthopedic medicine; physical medicine; physical therapy; physical rehabilitation; prescribing or dispensing outpatient prescription medication; or laboratory services.

Charges for Treatment and Services

The No-Fault law sets forth schedules of maximum reimbursement, each of which applies to specified care and services (e.g., emergency transport and treatment). For medical services, supplies, and care not addressed by a specific reimbursement schedule, the no-fault law provides for reimbursement at 80 percent of 200 percent of the physicians schedule of Medicare Part B,¹² developed by the Centers for Medicare and Medicaid Services (CMS). Currently, CMS develops annual fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.¹³

Recent Developments: Case law

Mental and Physical Examinations of PIP Claimants

In *Custer Medical Center v. United Automobile Insurance Co.*,¹⁴ a passenger injured in an automobile accident failed to appear for two medical examinations requested by the insurer. At the time the requests were made, the passenger had received all medical treatment and all bills had been submitted to the insurer. Due to the passenger's failure to attend the examinations, the insurer refused to pay the entity that provided treatment. The Florida Supreme Court remanded the case for reinstatement of a decision vacating a directed verdict for the insurer on the following grounds: attendance at a medical examination is not a condition precedent to the existence of an automobile insurance policy; a dispute concerning attendance at a medical examination concerns an insured's right to receive "subsequent" PIP benefits pursuant to s. 627.736(7)(b), F.S., under an existing insurance policy, and is not a dispute about the policy's existence; additionally, s. 627.736(7), F.S., provides that when a person "unreasonably refuses" to submit to an examination, the insurer is not liable for *subsequent* PIP benefits. Here, it was not shown that the injured passenger's failure to attend medical examinations constituted an "unreasonable refusal" to submit to examination. Further, the claim sought payment for

¹² Medicare Part B covers doctors' services (not routine physical exams), outpatient medical and surgical services and supplies, diagnostic tests, ambulatory surgery center facility fees for approved procedures, and durable medical equipment (such as wheelchairs, hospital beds, oxygen, and walkers). Also covers second surgical opinions, outpatient mental health care, outpatient physical and occupational therapy, including speech-language therapy.

¹³ The Centers for Medicare and Medicaid Services, "Fee Schedules – General Information," <http://www.cms.gov/FeeScheduleGenInfo/> (last visited Jan. 23, 2012).

¹⁴ 62 So.3d 1086 (Fla. 2010).

medical services that had been provided before, and not after, the passenger failed to appear for examination.

Recent Developments: Regulatory

PIP Data Call by Office of Insurance Regulation and Subsequent Report

Early in 2011, the Florida Office of Insurance Regulation (the OIR), pursuant to s. 624.316, F.S., requested data from insurers writing personal automobile lines of business in Florida. The requested data focused on PIP claims associated with policies bearing a Florida PIP endorsement. Thirty-one companies participated in the data call, which covered a scope period from 2006-2010. Twenty-five of the participating companies represented 80.1% of the marketplace based on 2009 Total Private Passenger Auto No-Fault Premiums reported to the National Association of Insurance Commissioners.

On April 11, 2011, the OIR published "Report on Review of the 2011 Personal Injury Protection Data Call."¹⁵ The report noted over the past several years the number of drivers in Florida has remained stable, the number of accidents has decreased, but that the frequency and severity of PIP claims has increased significantly. Other findings include the following:

- The number of PIP claims opened or recorded in 2010 increased by 28% since 2006.
- From 2006-2010, insurers paid \$8.7 billion for PIP claims and the number of PIP lawsuits pending at year end in which the insurer was the defendant increased by 387%.
- From 2008 to 2010, PIP benefits paid by insurers increased by 70% (\$1.43 billion to \$2.37 billion).¹⁶
- As of 2010, 87% of PIP claims opened originated in South Florida, Tampa/St. Peterburg, Northeast Florida, Southwest Florida, and Central Florida.
- PIP fraud is a significant issue, with Tampa, Miami, Orlando, Hialeah, and West Palm Beach having the highest numbers of staged accidents/questionable claims. Additionally, from July 1, 2007 to April 25, 2010, the number of PIP referrals to the Division of Fraud within the Department of Financial Services increased by more than 60% (from 2,669 referrals to 4,271 referrals).
- In 2010, insurers paid out over \$1.04 for every premium dollar collected.
- Based on current trends, a 19% increase in PIP claims paid, a 9% increase in claim severity, and a 29% increase in pure premium can be expected this year.
- Florida exceeds the national average for number of health care provider charges per PIP claim and the average number of procedures per claim.
- For physical medicine and rehabilitation:
 - The median number of procedures per claim increased by 59% from 2006 to 2010.
 - Frequency of procedures increased 22%.
 - The amount billed increased 173% from 2008 to 2010.
 - The number of massages increased 251% from 2007 to 2010, and the amount reimbursed for massages increased 202%.
- For chiropractic treatment:
 - Median number of treatments and duration of treatment decreased by 10% and 13%, respectively, since 2007, and the median frequency has remained constant.
 - The total billed amount for chiropractic manipulative treatment increased 46% since 2007, and total allowed reimbursement increased 23%.

¹⁵ Available at: www.florir.com/siteDocuments/PIP_04-08-2011.pdf (last visited Jan. 23, 2012).

¹⁶ Presentation on PIP fraud and overview of findings of the PIP data call report by Insurance Commissioner McCarty at the Aug. 16, 2011 meeting of the Florida Cabinet. Recording of the meeting, available at: <http://www.myflorida.com/myflorida/cabinet/agenda11/0816/audioindex.html> (last visited Jan. 23, 2012).

Personal Injury Protection Working Group and Subsequent Report¹⁷

In September and October 2011, at a series of three meetings, a PIP Working Group assembled by the Insurance Consumer Advocate (ICA) met to discuss issues of concern in the PIP system. In addition to the ICA, the working group included representatives of various system stakeholders, including hospitals, medical doctors, osteopaths, chiropractors, insurers, and attorneys. The group heard presentations on PIP fraud, results of the OIR's PIP data call, benefits and disadvantages of the current no-fault system, health care clinic licensure (and exemptions from licensure) and fraud, independent medical examinations, and delivery of emergency services, among other matters.

At the conclusion of these meetings, the ICA, in December 2011, published "Report on Florida Motor Vehicle No-Fault Insurance (*Personal Injury Protection*)." The report contains data and information collected from various sources, including the OIR, National Association of Insurance Commissioners, Insurance Research Council, National Insurance Crime Bureau, Mitchell International, Inc., other state agencies, etc. Among the reported findings:

- Strains and sprains were the most serious injury reported by 70% of PIP claimants.¹⁸
- The number of PIP claimants treated in emergency room settings declined from 57% in 1997 to 54% in 2007.¹⁹
- In 2010, average charges per PIP claimant (by provider) were lowest for emergency medicine (\$1,613). The highest average charges per PIP claimant were by chiropractors (\$3,482), acupuncturists (\$3,674), and massage therapists (\$4,350).²⁰
- The number of new massage therapist licenses increased from 2,843 in 2010 to an estimated 4,892 in 2011.
- The percentage of PIP claimants visiting chiropractors increased from 30% in 1997 to 43% in 2007.²¹

Attorney Fee Awards to "Prevailing Claimants" in Litigation Against Insurers

Lodestar Calculation

Pursuant to s. 627.428, F.S., parties that prevail against insurers in court, including PIP claimants, are entitled to an award of reasonable attorney fees. In determining a fee award, a court calculates the lodestar, which is the reasonable number of hours the attorney worked multiplied by a reasonable hourly rate.²²

In determining a reasonable fee, courts should consider the following factors set forth by the Florida Bar.²³

- Time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
- The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.
- The fee customarily charged.
- The amount involved and the results obtained.

¹⁷ Meeting materials, presentations and Personal Injury Protection Working Group Report available at: <http://www.myfloridacfo.com/ICA/PIPWorkingGroup.htm> (last visited Jan. 23, 2012).

¹⁸ Insurance Research Council, "PIP Claiming Behavior and Claim Outcomes in Florida's No-Fault Insurance System," Feb. 2011, based on claims data for 2007.

¹⁹ Analysis updated in Insurance Research Council, "PIP Claiming Behavior and Claim Outcomes in Florida's No-Fault Insurance System," p.11, Feb. 2011.

²⁰ Analysis based on information secured from Mitchell International Inc., that is representative of approximately 70% of the current Florida PIP insurer marketshare.

²¹ Insurance Research Council, "Florida Auto Injury Insurance Claim Environment 2007 Final Report, Feb. 2007.

²² The federal lodestar approach to determining fee awards was adopted by the Florida Supreme Court in *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985).

²³ See Rule 4-1.5(b) of the Rules Regulating the Florida Bar.

- The time limitations imposed.
- The nature and length of the professional relationship with the client.
- The experience, reputation, and ability of the lawyer(s) performing the services.
- Whether the fee is fixed or contingent.

Contingency Risk Multiplier

In personal injury cases in which the prevailing claimant's attorney has worked on a contingency fee basis, it is within the court's discretion whether or not to use a contingency risk multiplier of up to 2.5 times the lodestar in determining the fee award.²⁴ For example, if the lodestar were \$20,000 and the court determined it appropriate to apply a contingency risk multiplier of 2.5, the fee award would be \$50,000 (\$20,000 lodestar x 2.5).

The Florida Supreme Court, in *Florida Patient's Compensation Fund v. Rowe*,²⁵ authorized the use of contingency risk multipliers in personal injury cases on two grounds:

- It provides personal injury claimants with increased access to courts.
- Since attorneys working on a contingency fee basis are not paid if they do not prevail, they must charge more for their services than an attorney who is guaranteed payment.

Subsequently, in *Standard Guaranty Insurance Co. v. Quanstrom*,²⁶ the Court clarified that use of a contingency risk multiplier was not mandatory, but was within the trial court's discretion.

In federal cases, the use of a contingency risk multiplier in computing attorney fee awards under federal fee-shifting statutes was effectively eliminated in 1987.²⁷

Currently, there is a split of authority between the First and Fifth District Courts of Appeal with respect to the evidence required to support the use of a contingency risk multiplier in calculating a fee award under s. 627.428, F.S. In *Progressive Express Insurance Co. v. Schultz*,²⁸ the 5th DCA held that use of a contingency risk multiplier in a PIP action was improper because the policyholder did not testify that he had any difficulty obtaining legal representation, there was no evidence presented on the issue, and the lawsuit was essentially a straightforward contract case involving \$1,315. In *Massie v. Progressive Express Insurance Co.*,²⁹ the issue before the 1st DCA was whether use of a contingency risk multiplier was proper when the PIP claimant did not testify that she had difficulty obtaining counsel, but expert testimony was offered that the claimant would have had such difficulty without the opportunity for a multiplier. On direct appeal, the Circuit Court reversed the trial judge, relying on *Schultz*, holding that the use of a multiplier was improper, and the claimant petitioned for certiorari review. Based on its own precedent, the 1st DCA granted the petition, quashed the order on direct appeal, and affirmed the trial court's use of a contingency risk multiplier based on expert testimony.

Effect of Bill

Motor Vehicle Crash Reports

The bill provides for a single crash report form, rather than a long-form report and a short-form report. In addition to other required information, a completed form must clearly identify the driver of each vehicle, the passengers, and the vehicle in which each passenger was traveling. For motor vehicle accidents that result in death, personal injury, or involve a driver who leaves the accident scene or is driving under the influence, the crash report must be submitted to the Florida Department of Highway

²⁴ *Standard Guaranty Insurance Co. v. Quanstrom*, 555 So.2d 828 (Fla. 1990).

²⁵ 472 So.2d 1145 (Fla. 1985).

²⁶ 555 So.2d 828 (Fla. 1990).

²⁷ See *Pennsylvania v. Delaware Valley Citizens Council for Clean Air*, 483 U.S. 711 (1987).

²⁸ 948 So.2d 1027 (Fla. 5th DCA 2007).

²⁹ 25 So.3d 584 (Fla. 1st DCA 2009).

Safety and Motor Vehicles. All other crash reports are to be maintained by the law enforcement officer's agency.

No-Fault Motor Vehicle Insurance

The Florida Motor Vehicle Emergency Care Coverage Law (ECC Law), a no-fault motor vehicle insurance system, is created to replace PIP, effective for no-fault insurance policies issued or renewed on and after October 1, 2012. The ECC Law provides a significantly different approach to no-fault insurance, particularly as to the scope of injuries covered, but retains, with varying degrees of change, many aspects of the current no-fault system (demand letters, schedule of maximum charges, etc.). The bill provides that it is the Legislature's intent that the provisions, schedules, and procedures of the ECC Law be given full force and effect, regardless of their inclusion in an insurer's forms, on the effective date of the bill.

No-fault insurers will continue to use current forms and rates for all policies issued or renewed before October 1, 2012. All forms and rates for policies used or renewed on or after this date must reflect the provisions of the ECC Law and must be approved by the OIR prior to being used.

The following provides an overview of significant features of the ECC Law.

Mandatory Insurance Coverage

Florida motorists are required to secure and maintain \$10,000 of no-fault, emergency care coverage insurance (ECC insurance) and \$10,000 of property damage liability insurance. Insurers may not require motorists to purchase other types of motor vehicle insurance or coverage in amounts greater than that required by law.

ECC Insurance

ECC insurance provides \$10,000 of coverage (per person) for bodily injury sustained in a motor vehicle accident by the named insured, relatives residing in the same household as the named insured, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the motor vehicle. ECC insurance benefits are payable as follows.

- 80 percent of reasonable medical expenses for:
 1. Emergency transport and treatment rendered by a licensed ambulance provider within 24 hours after the motor vehicle accident.
 2. "Emergency services and care" rendered within 72 hours after the motor vehicle accident in a licensed hospital.
 3. Services and care rendered when an insured is admitted to a hospital within 72 hours after the motor vehicle accident.
 4. Services and care rendered to an insured who is determined more than 72 hours after the motor vehicle accident to have an "emergency medical condition" related to the initial diagnosis and arising from the motor vehicle accident.
 5. If the insured receives services and care pursuant to 2., 3., or 4., subsequent services and care directly related to the medical diagnosis arising from the motor vehicle accident, subject to the following:
 - a) The diagnosis must be rendered in a licensed hospital and rendered by a physician licensed under chapter 458, F.S., or a licensed osteopathic physician; and
 - b) The care and services must be rendered by a physician licensed under chapter 458, a licensed osteopathic physician, a licensed dentist, a physician assistant licensed under chapter 458 or 459, F.S., or a licensed advanced registered nurse practitioner.
- 60 percent of loss of income.
- Death benefit of \$5,000 or the remainder of unused ECC benefits, whichever is less.

“Emergency services and care” means medical screening, examination and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists, and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.

“Emergency medical condition” is defined as a medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

- Serious jeopardy to patient health, including a pregnant woman or fetus.
- Serious impairment to bodily functions.
- Serious dysfunction of any bodily organ or part.

With respect to a pregnant woman, an emergency medical condition exists:

- When there is inadequate time to effect safe transfer to another hospital prior to delivery;
- When a transfer may pose a threat to the health and safety of the patient or fetus; or
- There is evidence of the onset and persistence of uterine contractions or rupture of the membranes.

For purposes of the ECC law, a medical diagnosis that an emergency medical condition exists is presumed to be correct, unless rebutted by clear and convincing evidence to the contrary.

ECC insurance provides the policyholder with immunity from liability for covered injuries, for economic damages (medical expenses) up to the \$10,000 policy limits, and for non-economic damages (pain and suffering). The immunity provision protects the insured, for covered injuries, from tort actions by others (and conversely, the insured may not bring suit to recover damages) for pain, suffering, mental anguish, and inconvenience arising out of a vehicle accident, except in the following cases:

- Significant and permanent loss of an important bodily function.
- Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- Significant and permanent scarring or disfigurement.
- Death.

Lawsuits for pain and suffering may commence for covered injuries only if the injuries meet these threshold levels.

Payment of Benefits

ECC insurance benefits are payable by the insurer within 30 days after receipt of a covered loss and the amount due. Benefits not paid within this time are overdue. Before filing a lawsuit for overdue ECC benefits, the aggrieved person must give the insurer written notice of intent to sue. If the insurer pays the claim (with interest and penalty) within 30 days of receipt of the pre-suit demand letter, a lawsuit cannot be brought against the insurer.

If an insurer has reasonable belief that a fraudulent insurance act has been committed and reports its suspicions to the Division of Insurance Fraud, the 30-day payment period is tolled as to any portions of the claim reported for investigation. The insurer, within 30 days of receipt of written notice of a covered loss and the amount of the loss, must notify the insurer in writing that the claim is being investigated for fraud. Within 30 days of receiving notice from the Division of Insurance Fraud that a claim has been investigated and no criminal action will be recommended, the insurer must pay the claim with interest. Persons or entities who, in good faith, report suspected fraud or release information in furtherance of a fraud investigation are immune from civil and criminal liability for the reporting or release of such information.

ECC benefits are not due or payable to or on behalf of an insured, claimant, provider, or attorney, if such person has:

- Submitted a false material statement, document, record, or bill.
- Submitted false material information.
- Otherwise committed or attempted to commit a fraudulent insurance act.

Persons who commit such acts are precluded from receiving any ECC benefits relating to the claim, including payment for bills or services, regardless of whether a portion of the claim is legitimate. Medical providers cannot be denied payment for services rendered solely due to the misconduct of another person.

Medical Reimbursement under the ECC Law

Medical providers and entities may charge the insurer and injured party only a reasonable amount for services and care rendered. Payments made by insurers pursuant to the schedule of maximum charges are considered reasonable. If a provider bills a lesser amount, and the insurer pays the amount billed, the payment is also considered reasonable. Insurers that provide reimbursement under the schedule of charges may use all Medicare coding policies and CMS payment methodologies, including applicable modifiers to determine the appropriate amount of reimbursement for medical services, supplies, or care.

The ECC Law permits reimbursement at 80% of the following schedule of maximum charges:

- For emergency transport and treatment by licensed providers, 200 percent of Medicare.
- For emergency services and care provided by a licensed hospital, 75 percent of the hospital's usual and customary charges.
- For emergency services and care provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.
- For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.
- For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.
- For all other medical services, supplies, and care, 200 percent of the allowable amount under the participating physicians schedule of Medicare Part B. For medical supplies, care, and services rendered by clinical laboratories, 200 percent of the allowable amount under Medicare Part B. For durable medical equipment, the amount contained in the Durable Medical Equipment Prosthetics/Orthotics & Supplies (DMEPOS) fee schedule of Medicare Part B. However, if such services, supplies, or care is not reimbursable under Medicare Part B, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13, F.S., and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

In calculating reimbursements under the schedule of maximum charges, the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation that was in effect as of March 1st of the year in which the services, supplies, or care was rendered, and applies until March 1st of the following year, regardless of any subsequent changes to such fee schedule or payment limitation. However, the reimbursement amount may not be less than the allowable amount under the participating physicians schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

Upon receipt of notice of an accident that is potentially covered by ECC insurance, an insurer must reserve, and hold for 30 days, \$5,000 of ECC benefits for payments to specified health care providers who provide emergency care coverage.

Insurers are authorized to request and conduct onsite physical reviews and examinations of the treatment locations and medical equipment of medical providers and entities that submit claims for payment of ECC benefits.

Examinations Under Oath and Compliance with Policy Terms

All insureds and assignees of ECC policy benefits, including medical providers, are required to comply with all policy terms, including submitting to examinations under oath (EUO). Compliance with policy terms by insureds and assignees is a condition precedent to such person's eligibility for policy benefits. Before requesting that an assignee participate in an EUO, the insurer must request the information sought in writing. EUOs may be recorded.

When an insurer requests that a medical provider submit to an EUO, the provider must produce individuals identified in the request or, if no person is identified, then the persons who have the most knowledge of the issues identified by the insurer. Medical providers and persons produced in response to the insurer's request are entitled to reasonable compensation for attending an EUO, which must be paid prior to the EUO. Such compensation is to be based on good faith estimates of the hourly rate for the health care provider and other persons to be examined and the time required to conduct the EUO. If additional time is needed for the examination, the insurer must pay additional compensation within 15 days to each person that completes the EUO. Insurers that, as a general business practice, request EUOs of assignees without a reasonable basis commit an unfair and deceptive trade practice.

Insurers must coordinate with claimants for ECC benefits to ensure an appropriate time and location for the EUO. A claimant's failure to agree to attend an EUO after an insurer presents two documented offers of a reasonable time and location, allows the insurer to suspend benefits, until the claimant agrees to submit, and actually submits to, the EUO.

Examinations (Mental or Physical) of the Insured

When an insured unreasonably refuses to submit to or fails to appear at an examination (mental or physical) requested by the insurer, the ECC insurer is not liable for subsequent ECC benefits. An insured's refusal or failure to appear for two examinations (mental or physical) is presumed to be an unreasonable refusal or failure to submit to examination. The presumption, however, is rebuttable, and may be overcome by the claimant upon showing that refusal or failure to attend was not unreasonable.

Limitations on Attorney Fee Awards

The use of contingency risk multipliers in calculating fee awards in no-fault ECC disputes is prohibited. Fee awards in no-fault litigation are limited to the lesser of the actual fee incurred based upon a rate for attorney services not to exceed \$200 per billable hour or:

- For any disputed amount of less than \$500, 15 times any disputed amount recovered by the attorney, limited to \$5,000.
- For any disputed amount of \$500 or more and less than \$5,000, 10 times any disputed amount recovered by the attorney, limited to a total of \$10,000.
- For any disputed amount of \$5,000 or more and up to \$10,000, 5 times any disputed amount recovered by the attorney, limited to a total of \$15,000.

Attorneys fee awards in a class action are limited to the lesser of \$50,000 or three times the total of any disputed amount recovered in the class action proceeding.

Fees incurred in litigating or quantifying the amount of fees due to the prevailing party under the ECC Law are not recoverable.

These limitations on attorney fee awards are effective upon the bill becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 316.066, F.S., effective May 1, 2012, relating to motor vehicle crash report forms.

Section 2. Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 3. Creates s. 627.748, F.S., providing for ss. 627.748-627.7491, F.S., to be referred to as the Florida Motor Vehicle No-Fault Emergency Care Coverage Law (ECC Law).

Section 4. Creates s. 627.7481, F.S., providing the purposes of the ECC Law.

Section 5. Creates s. 627.74811, F.S., providing the effect of the law on ECC policies.

Section 6. Creates s. 627.7482, F.S., providing definitions.

Section 7. Creates s. 627.7483, F.S., providing for required security for Florida motorists.

Section 8. Creates s. 627.7484, F.S., providing for proof of security.

Section 9. Creates s. 627.7485, F.S., providing required benefits under ECC policies.

Section 10. Creates s. 627.7486, F.S., providing tort exemption for injuries under the ECC law.

Section 11. Creates s. 627.7487, F.S., providing for optional deductibles under ECC policies.

Section 12. Creates s. 627.7488, F.S., providing for a notification of rights to insureds under the ECC Law.

Section 13. Creates s. 627.7489, F.S., requiring mandatory joinder of certain ECC claims.

Section 14. Creates s. 627.749, F.S., providing insurer's right to reimbursement for ECC benefits under specified circumstances.

Section 15. Creates s. 627.7491, F.S., providing for application of the ECC Law.

Sections 16 to 49. Amends ss. 316.646, 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 322.34, 324.021, 324.0221, 324.032, 324.171, 400.9935, 409.901, 409.910, 456.057, 456.072, 626.9541, 627.06501, 627.0652, 627.0653, 627.4132, 627.6482, 627.7263, 627.727, 627.7275, 627.728, 627.7295, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234, F.S., to conform and correct cross-references.

Section 50. Directs the Division of Statutory Revision to replace the phrase "the effective date of this act" wherever it occurs in this bill with the date the bill becomes law.

Section 51. Providing an effective date of October 1, 2012, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. Florida imposes a 1.75% premium tax on the gross insurance premiums collected by every insurance company. The tax is subject to numerous deductions. The tax is paid into the General Revenue Fund. In FY 2010-11, premium taxes of \$482.5 million were paid into the General Revenue Fund. This sum represents the premium tax from all forms of insurance, it is unknown how much premium tax results from PIP coverage. It is anticipated that this bill will lower insurance premiums and correspondingly decrease collections of the insurance premium tax. The potential fiscal loss to the state is unknown. It is also possible that consumers may purchase additional insurance offsetting some of this loss.

2. Expenditures:

The bill will create workload for the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS). OIR will need to conduct ratemaking for the new ECC policies. DFS will need to conduct rulemaking to implement the policies and create the related forms.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The Department of Highway Safety and Motor Vehicles reports it is unclear what impact the new traffic form requirements will have on local law enforcement agencies. The use of "long form" traffic accident reports by various local law enforcement agencies may require more time per accident investigation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that ECC policies provide a narrower range of coverage and curtail fraud in the no-fault system, the ECC Law will lower the premiums paid by Florida motorists for no-fault motor vehicle insurance. Correspondingly, this bill will result in some medical providers not being paid from a traditional source, which may result in shifting some medical costs to health insurance providers, shifting some medical costs to individuals, and lower utilization of providers where individuals are unable or unwilling to pay for such medical care.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

Florida's Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."³⁰ No Florida court has found a statutory limit on attorneys fees unconstitutional under this provision, but a limit has the *potential* of being found unconstitutional if such limit reaches the point that attorneys are unwilling to represent claimants because the limits are too low in relation to the time required to work on the case.

For instance, Florida has enacted attorneys fee limits applicable to worker's compensation cases.³¹ One district court upheld the limits based on a lack of evidence of their impact, but stated that it would hear the issue again if a party could present sufficient evidence "that the statute has unduly burdened a claimant's ability to retain counsel in order to secure benefits, or that the statute limits the types of benefits a claimant is authorized to pursue under [the statute]."³²

B. RULE-MAKING AUTHORITY:

The bill requires rulemaking by several agencies. DFS will likely need to adopt rules to implement the bill and adopt related forms.

The Department of Health, is required to develop by rule a list of diagnostic tests deemed not to be medically necessary for use in the treatment of persons sustaining bodily injury covered by emergency care coverage benefits under this section.

The Financial Services Commission is required to adopt by rule a standard disclosure and acknowledgment form. The commission is also required to adopt by rule a form for the notification of insureds of their right to receive emergency care coverage.

It appears adequate rulemaking is provided for the required rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Insurance & Banking Subcommittee considered and adopted a proposed committee substitute substantially changing the bill from one modifying PIP to one substituting ECC for PIP. This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

³⁰ Article I, s. 21, Florida Constitution.

³¹ Section 434.34, F.S.

³² *Lundy v. Four Seasons Ocean Grand Palm Beach*, 932 So.2d 506, 510 (Fla. 1st DCA 2006).

1 A bill to be entitled
2 An act relating to motor vehicle insurance; amending
3 s. 316.066, F.S.; revising provisions relating to the
4 contents of written reports of motor vehicle crashes;
5 amending s. 627.736, F.S.; providing limitations on
6 attorney fees for certain actions under the Florida
7 Motor Vehicle No-Fault Law; creating s. 627.748, F.S.;
8 designating specified provisions as the Florida Motor
9 Vehicle No-Fault Emergency Care Coverage Law; creating
10 s. 627.7481, F.S.; providing purposes; creating s.
11 627.74811, F.S.; providing legislative intent that
12 provisions, schedules, or procedures are to be given
13 full force and effect regardless of their express
14 inclusion in insurer forms; creating s. 627.7482,
15 F.S.; providing definitions; creating s. 627.7483,
16 F.S.; requiring every owner or registrant of a motor
17 vehicle required to be registered and licensed in this
18 state to maintain specified security; providing
19 exceptions; requiring every nonresident owner or
20 registrant of a motor vehicle that has been physically
21 present within this state for a specified period to
22 maintain security; specifying means by which such
23 security is provided; providing an exemption; creating
24 s. 627.7484, F.S.; providing requirements for filing
25 and maintaining proof of security; providing
26 penalties; creating s. 627.7485, F.S.; requiring that
27 insurance policies provide emergency care coverage to
28 specified persons; providing limits of coverage;

29 specifying limits for medical, disability, and death
 30 benefits; providing restrictions on insurers with
 31 respect to provision of required benefits; prohibiting
 32 requiring purchase of other motor vehicle coverage as
 33 a condition for providing such benefits; prohibiting
 34 insurers from requiring the purchase of property
 35 damage liability insurance exceeding a specified
 36 amount in conjunction with emergency care coverage
 37 insurance; providing that failure to comply with
 38 specified availability requirements constitutes an
 39 unfair method of competition or an unfair or deceptive
 40 act or practice; providing penalties; specifying
 41 benefits an insurer may exclude; providing procedure
 42 with respect to such exclusions; specifying when
 43 benefits are due from an insurer; prohibiting insurers
 44 from obtaining liens on recovery of special damages in
 45 tort claims for emergency care coverage benefits;
 46 providing that benefits under the Florida Motor
 47 Vehicle No-Fault Emergency Care Coverage Law are
 48 subject to the Medicaid program in specified
 49 circumstances; specifying when benefits are overdue;
 50 requiring insurers to hold a specified amount of
 51 benefits in reserve for a certain time for the payment
 52 of providers; providing for interest on overdue
 53 payments; providing for tolling the time period in
 54 which emergency care coverage benefits are required to
 55 be paid when the insurer has reasonable belief that
 56 fraud has been committed and performs certain actions;

57 providing immunity to persons or entities that report
 58 suspected fraud in good faith; specifying injuries for
 59 which an insurer must pay emergency care coverage
 60 benefits; disallowing benefits to an insured who has
 61 committed insurance fraud; providing that a person or
 62 entity lawfully rendering treatment to an injured
 63 person for a bodily injury covered by emergency care
 64 coverage may charge only a reasonable amount for
 65 services and care; providing that the insurer may pay
 66 such charges directly to the person or entity lawfully
 67 rendering such treatment; providing limits on such
 68 charges; providing for determination of reasonableness
 69 of charges; providing that payments made by an insurer
 70 pursuant to the schedule of maximum charges, or for
 71 lesser amounts billed by providers, are considered
 72 reasonable; establishing a schedule of maximum
 73 charges; specifying that reimbursement under a
 74 schedule of maximum charges that is based on Medicare
 75 is to be calculated under the applicable Medicare
 76 schedule in effect on a specified date each year;
 77 authorizing insurers to use all Medicare coding
 78 policies and CMS payment methodologies in determining
 79 reimbursement under a schedule of maximum charges that
 80 is Medicare-based; establishing limits on specified
 81 emergency services and care; providing conditions
 82 under which an insurer or insured is not required to
 83 pay a claim or charges; requiring the Department of
 84 Health to adopt, by rule, a list of diagnostic tests

85 | deemed not to be medically necessary and to
 86 | periodically revise the list; providing procedures and
 87 | requirements with respect to statements of and bills
 88 | for charges for emergency services and care; directing
 89 | the Financial Services Commission to adopt by rule a
 90 | disclosure and acknowledgment form to be countersigned
 91 | by claimants upon receipt of medical services;
 92 | providing procedures and requirements with respect to
 93 | investigation of claims of improper billing by a
 94 | physician or other medical provider; prohibiting
 95 | insurers from systematically downcoding with intent to
 96 | deny reimbursement; requiring insureds and persons to
 97 | whom the right to payment for emergency care coverage
 98 | benefits has been assigned to comply with all terms of
 99 | the emergency care coverage policy, including
 100 | submission to examinations under oath; providing that
 101 | compliance with policy terms is a condition precedent
 102 | to the receipt of emergency care coverage benefits;
 103 | providing for reasonable payment for attendance at
 104 | examinations under oath to health care providers and
 105 | other persons produced by the provider in response to
 106 | the insurer's request; permitting persons appearing
 107 | for an examination under oath to have an attorney
 108 | present at the person's expense; requiring insurers to
 109 | coordinate with claimants for emergency care coverage
 110 | benefits to ensure an appropriate time and location
 111 | for the examination; authorizing insurers to suspend
 112 | benefits to a claimant who fails to attend an

113 examination after the insurer has presented two
 114 documented offers of a reasonable time and location
 115 for the examination until the claimant submits to
 116 examination; providing for insurers to inspect the
 117 physical premises of providers seeking payment of
 118 emergency care coverage benefits; providing that when
 119 an insured fails to appear for two or more mental or
 120 physical examinations, the emergency care coverage
 121 carrier is not liable for subsequent emergency care
 122 coverage benefits; creating a rebuttable presumption
 123 that an insured's failure to appear for two
 124 examinations is an unreasonable refusal to appear;
 125 creating an attorney fee cap; prohibiting the use of
 126 contingency risk multipliers in calculating attorney
 127 fee awards; requiring that an insurer must be provided
 128 with written notice of an intent to initiate
 129 litigation as a condition precedent to filing any
 130 action for benefits; providing requirements with
 131 respect to a demand letter; providing procedures and
 132 requirements with respect to payment of an overdue
 133 claim; providing for the tolling of the time period
 134 for an action against an insurer; providing that
 135 failure to pay valid claims with specified frequency
 136 constitutes an unfair or deceptive trade practice;
 137 providing penalties; providing circumstances under
 138 which an insurer has a cause of action; providing for
 139 fraud advisory notice; requiring that all claims
 140 related to the same health care provider for the same

141 | injured person be brought in one action unless good
 142 | cause is shown; authorizing the electronic
 143 | transmission of notices and communications under
 144 | certain conditions; creating s. 627.7486, F.S.;
 145 | providing an exemption from tort liability for certain
 146 | damages in legal actions under the Florida Motor
 147 | Vehicle No-Fault Emergency Care Coverage Law in
 148 | certain circumstances; providing for recovery of tort
 149 | damages in certain circumstances; providing for
 150 | motions to dismiss action on specified grounds;
 151 | prohibiting the award of punitive damages; creating s.
 152 | 627.7487, F.S.; providing for optional deductibles and
 153 | limitations of coverage for emergency care coverage
 154 | policies; requiring a specified notice to
 155 | policyholders; creating s. 627.7488, F.S.; requiring
 156 | the commission to adopt by rule a form for the
 157 | notification of insureds of their right to receive
 158 | emergency care coverage benefits; specifying contents
 159 | of such notice; providing requirements for the mailing
 160 | or delivery of such notice; creating s. 627.7489,
 161 | F.S.; providing for mandatory joinder of specified
 162 | claims; creating s. 627.749, F.S.; providing for an
 163 | insurer's right of reimbursement for emergency medical
 164 | care benefits paid to a person injured by a commercial
 165 | motor vehicle under specified circumstances; creating
 166 | s. 627.7491, F.S.; providing for application of the
 167 | Florida Motor Vehicle No-Fault Emergency Care Coverage
 168 | Law; providing for requirements for forms and rates

169 for policies issued or renewed on or after a specified
 170 date; requiring a specified notice to existing
 171 policyholders; amending ss. 316.646, 318.18, 320.02,
 172 320.0609, 320.27, 320.771, 322.251, 322.34, 324.021,
 173 324.0221, 324.032, 324.171, 400.9935, 409.901,
 174 409.910, 456.057, 456.072, 626.9541, 627.06501,
 175 627.0652, 627.0653, 627.4132, 627.6482, 627.7263,
 176 627.727, 627.7275, 627.728, 627.7295, 627.8405,
 177 627.915, 628.909, 705.184, 713.78, and 817.234, F.S.;

178 conforming provisions; providing a directive to the
 179 Division of Statutory Revision; providing
 180 applicability; providing effective dates.

181
 182 Be It Enacted by the Legislature of the State of Florida:

183
 184 Section 1. Effective May 1, 2012, subsection (1) of
 185 section 316.066, Florida Statutes, is amended to read:

186 316.066 Written reports of crashes.—

187 (1) (a) A Florida Traffic Crash Report must, ~~Long Form is~~
 188 ~~required to~~ be completed and submitted to the entities specified
 189 in paragraph (e) department within 10 days after ~~completing~~ an
 190 investigation is completed by the every law enforcement officer
 191 who in the regular course of duty investigates a motor vehicle
 192 crash ~~that:~~

193 ~~1. Resulted in death or personal injury.~~

194 ~~2. Involved a violation of s. 316.061(1) or s. 316.193.~~

195 (b) ~~In every crash for which a Florida Traffic Crash~~
 196 ~~Report, Long Form is not required by this section, the law~~

197 ~~enforcement officer may complete a short form crash report or~~
 198 ~~provide a driver exchange of information form to be completed by~~
 199 ~~each party involved in the crash.~~ The ~~short form~~ report must
 200 include:

- 201 1. The date, time, and location of the crash.
- 202 2. A description of the vehicles involved.
- 203 3. The names and addresses of the parties involved,
 204 including all drivers and passengers, each clearly identified as
 205 being either a driver or a passenger and specifying the vehicle
 206 in which each person was a driver or passenger.
- 207 4. The names and addresses of witnesses.
- 208 5. The name, badge number, and law enforcement agency of
 209 the officer investigating the crash.
- 210 6. The names of the insurance companies for the respective
 211 parties involved in the crash.

212 (c) Each party to the crash must provide the law
 213 enforcement officer with proof of insurance, which must be
 214 documented in the crash report. If a law enforcement officer
 215 submits a report on the crash, proof of insurance must be
 216 provided to the officer by each party involved in the crash. Any
 217 party who fails to provide the required information commits a
 218 noncriminal traffic infraction, punishable as a nonmoving
 219 violation as provided in chapter 318, unless the officer
 220 determines that due to injuries or other special circumstances
 221 such insurance information cannot be provided immediately. If
 222 the person provides the law enforcement agency, within 24 hours
 223 after the crash, proof of insurance that was valid at the time
 224 of the crash, the law enforcement agency may void the citation.

225 (d) The driver of a vehicle that was in any manner
 226 involved in a crash resulting in damage to any vehicle or other
 227 property in an amount of \$500 or more which was not investigated
 228 by a law enforcement agency, shall, within 10 days after the
 229 crash, submit a written report of the crash to the department.
 230 The entity receiving the report may require witnesses of the
 231 crash to render reports and may require any driver of a vehicle
 232 involved in a crash of which a written report must be made to
 233 file supplemental written reports if the original report is
 234 deemed insufficient by the receiving entity.

235 (e) Reports for motor vehicle crashes that result in death
 236 or personal injury or involve a violation of s. 316.061(1) or s.
 237 316.193 shall be submitted to the department. All other Short-
 238 form crash reports prepared by law enforcement shall be
 239 maintained by the law enforcement officer's agency.

240 Section 2. Effective upon this act becoming a law,
 241 subsection (8) of section 627.736, Florida Statutes, is amended
 242 to read:

243 627.736 Required personal injury protection benefits;
 244 exclusions; priority; claims.—

245 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S
 246 FEES.—

247 (a) For legal actions commenced on or after the effective
 248 date of this act, with respect to any dispute under the
 249 provisions of ss. 627.730-627.7405 between the insured and the
 250 insurer, or between an assignee of an insured's rights and the
 251 insurer, ~~the provisions of s. 627.428 applies shall apply,~~
 252 except as provided in paragraphs (b) and (c) and subsections

253 (10) and (15) and except that any attorney fees recovered are
 254 limited to the lesser of the actual fee incurred based upon a
 255 rate for attorney services not to exceed \$200 per billable hour
 256 or:

257 1. For any disputed amount of less than \$500, 15 times any
 258 disputed amount recovered by the attorney under ss. 627.730-
 259 627.7405, limited to a total of \$5,000.

260 2. For any disputed amount of \$500 or more and less than
 261 \$5,000, 10 times any disputed amount recovered by the attorney
 262 under ss. 627.730-627.7405, limited to a total of \$10,000.

263 3. For any disputed amount of \$5,000 or more and up to
 264 \$10,000, 5 times any disputed amount recovered by the attorney
 265 under ss. 627.730-627.7405, limited to a total of \$15,000.

266
 267 Fees incurred in litigating or quantifying the amount of fees
 268 due to the prevailing party under ss. 627.730-627.7405 are not
 269 recoverable.

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

273 (c) Attorney fees in a class action under ss. 627.730-
 274 627.7405 are limited to the lesser of \$50,000 or 3 times the
 275 total of any disputed amount recovered in the class action
 276 proceeding.

277 Section 3. Section 627.748, Florida Statutes, is created
 278 to read:

279 627.748 Short title.—Sections 627.748–627.7491 may be
 280 cited as the "Florida Motor Vehicle No-Fault Emergency Care
 281 Coverage Law."

282 Section 4. Section 627.7481, Florida Statutes, is created
 283 to read:

284 627.7481 Purposes.—The purposes of ss. 627.748–627.7491
 285 are to provide, without regard to fault, for emergency services
 286 and care, services and care provided in a hospital, prescribed
 287 followup care, funeral, and disability insurance benefits; to
 288 require motor vehicle insurance that secures such benefits for
 289 motor vehicles required to be registered in this state; and,
 290 with respect to motor vehicle accidents, to provide a limitation
 291 on the right to claim damages for pain, suffering, mental
 292 anguish, and inconvenience.

293 Section 5. Section 627.74811, Florida Statutes, is created
 294 to read:

295 627.74811 Effect of law on emergency care coverage
 296 policies.—The provisions, schedules, and procedures authorized
 297 in ss. 627.748–627.7491 shall be implemented by insurers
 298 offering policies pursuant to the Florida Motor Vehicle No-Fault
 299 Emergency Care Coverage Law. The Legislature intends that these
 300 provisions, schedules, and procedures have full force and effect
 301 regardless of their express inclusion in an insurance policy
 302 form, and a specific provision, schedule, or procedure
 303 authorized in ss. 627.748–627.7491 will govern over general
 304 provisions in an insurance policy form. An insurer is not
 305 required to amend its policy form or to expressly notify
 306 providers, claimants, or insureds of the applicable fee

307 schedules in order to implement and apply such provisions,
 308 schedules, or procedures.

309 Section 6. Section 627.7482, Florida Statutes, is created
 310 to read:

311 627.7482 Definitions.—As used in ss. 627.748–627.7491, the
 312 term:

313 (1) "Broker" means any person not licensed under chapter
 314 395, chapter 400, chapter 429, chapter 458, chapter 459, chapter
 315 460, chapter 461, or chapter 641 who charges or receives
 316 compensation for any use of medical equipment and is not the
 317 100-percent owner or the 100-percent lessee of such equipment.

318 For purposes of this subsection, such owner or lessee may be an
 319 individual, a corporation, a partnership, or any other entity
 320 and any of its 100-percent-owned affiliates and subsidiaries.

321 For purposes of this subsection, the term "lessee" means a long-
 322 term lessee under a capital or operating lease but does not
 323 include a part-time lessee. For purposes of this subsection, the

324 term "broker" does not include a hospital or physician
 325 management company whose medical equipment is ancillary to the
 326 practices managed; a debt collection agency; an entity that has

327 contracted with the insurer to obtain a discounted rate; a
 328 management company that has contracted to provide general
 329 management services for a licensed physician or health care

330 facility and whose compensation is not materially affected by
 331 the usage or frequency of usage of medical equipment; or an
 332 entity that is 100-percent owned by one or more hospitals or

333 physicians. The term "broker" does not include a person or
 334 entity that certifies, upon request of an insurer, that:

335 (a) It is a clinic licensed under part X of chapter 400;
 336 (b) It is a 100-percent owner of medical equipment; and
 337 (c) The owner's only part-time lease of medical equipment
 338 for emergency care coverage patients is on a temporary basis
 339 not to exceed 30 days in a 12-month period and is necessitated
 340 by:

- 341 1. Repair or maintenance of existing 100-percent-owned
 342 medical equipment;
- 343 2. The pending arrival and installation of newly purchased
 344 or replacement 100-percent-owned medical equipment; or
- 345 3. A determination by the medical director or clinical
 346 director that open-style medical equipment is medically
 347 necessary for the performance of tests or procedures for
 348 patients due to a patient's physical size or claustrophobia. The
 349 leased medical equipment may not be used by patients who are not
 350 patients of the registered clinic for medical treatment of
 351 services.

352
 353 However, the 30-day period provided in this paragraph may be
 354 extended for an additional 60 days as applicable to magnetic
 355 resonance imaging equipment if the owner certifies that the
 356 extension otherwise complies with this paragraph.

357
 358 Any person or entity making a false certification under this
 359 subsection commits insurance fraud as defined in s. 817.234.

360 (2) "Certify" means to swear or attest to a fact being
 361 true or accurately represented in a writing.

362 (3) "Emergency medical condition" means:

363 (a) A medical condition manifesting itself by acute
 364 symptoms of sufficient severity, which may include severe pain,
 365 such that the absence of immediate medical attention could
 366 reasonably be expected to result in any of the following:

367 1. Serious jeopardy to patient health, including a
 368 pregnant woman or fetus.

369 2. Serious impairment to bodily functions.

370 3. Serious dysfunction of any bodily organ or part.

371 (b) With respect to a pregnant woman:

372 1. That there is inadequate time to effect safe transfer
 373 to another hospital prior to delivery;

374 2. That a transfer may pose a threat to the health and
 375 safety of the patient or fetus; or

376 3. That there is evidence of the onset and persistence of
 377 uterine contractions or rupture of the membranes.

378 (4) "Emergency services and care" means medical screening,
 379 examination and evaluation by a physician, or, to the extent
 380 permitted by applicable law, by other appropriate personnel
 381 under the supervision of a physician, to determine if an
 382 emergency medical condition exists and, if it does, the care,
 383 treatment, or surgery by a physician necessary to relieve or
 384 eliminate the emergency medical condition, within the service
 385 capability of the facility.

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

388 (6) "Knowingly" means having actual knowledge of
 389 information; acting in deliberate ignorance of the truth or
 390 falsity of the information; or acting in reckless disregard of

391 the information. Proof of specific intent to defraud is not
 392 required.

393 (7) "Lawful" or "lawfully" means in substantial compliance
 394 with all relevant applicable criminal, civil, and administrative
 395 requirements of state and federal law related to the provision
 396 of medical services or treatment.

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

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

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

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

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

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

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

419
 420 The term "motor vehicle" does not include a mobile home or any
 421 motor vehicle that is used in mass transit, other than public
 422 school transportation; is designed to transport more than five
 423 passengers exclusive of the operator of the motor vehicle; and
 424 is owned by a municipality, a transit authority, or a political
 425 subdivision of the state.

426 (10) "Named insured" means a person, usually the owner of
 427 a motor vehicle, identified in a policy by name as the insured
 428 under the policy.

429 (11) "Owner," with respect to a motor vehicle, means a
 430 person who holds the legal title to a motor vehicle or, if a
 431 motor vehicle is the subject of a security agreement or lease
 432 with an option to purchase with the debtor or lessee having the
 433 right to possession, the debtor or lessee of the motor vehicle.

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

440 (13) "Relative residing in the insured's household" means
 441 a relative of any degree by blood or by marriage who usually
 442 makes her or his home in the same family unit, regardless of
 443 whether she or he is temporarily living elsewhere.

444 (14) "Unbundling" means separating treatment or services
 445 that would be properly billed under one billing code into two or

446 more billing codes, resulting in a payment amount greater than
 447 would be paid using one billing code.

448 (15) "Upcoding" means using a billing code to describe
 449 treatment or services in a manner that would result in a payment
 450 amount greater than would be paid using a billing code that
 451 accurately describes such treatment or services. The term does
 452 not include an otherwise lawful bill by a magnetic resonance
 453 imaging facility, which globally combines both technical and
 454 professional components, if the amount of the global bill is not
 455 more than the components if billed separately; however, payment
 456 of such a bill constitutes payment in full for all components of
 457 such service.

458 Section 7. Section 627.7483, Florida Statutes, is created
 459 to read:

460 627.7483 Required security.—

461 (1) (a) Every owner or registrant of a motor vehicle, other
 462 than a motor vehicle used as a school bus as defined in s.
 463 1006.25 or a limousine, required to be registered and licensed
 464 in this state shall maintain security as described in subsection
 465 (3) continuously throughout the registration or licensing
 466 period.

467 (b) Paragraph (a) does not apply to an owner or registrant
 468 of a motor vehicle used as a taxicab, but such owner or
 469 registrant shall maintain security as required under s.
 470 324.032(1), and s. 627.7486 does not apply to any such motor
 471 vehicle.

472 (2) Every nonresident owner or registrant of a motor
 473 vehicle that, whether operated or not operated, has been

474 physically present within this state for more than 90 days
 475 during the preceding 365 days shall thereafter maintain security
 476 as described in subsection (3) continuously while such motor
 477 vehicle is physically present within this state.

478 (3) Security required by this section shall be provided:

479 (a) By an insurance policy delivered or issued for
 480 delivery in this state by an authorized or eligible motor
 481 vehicle liability insurer which provides the benefits and
 482 exemptions contained in ss. 627.748-627.7491. Any policy of
 483 insurance represented or sold as providing the security required
 484 under this section shall be deemed to provide insurance for the
 485 payment of the required benefits; or

486 (b) By any other method authorized by s. 324.031(2), (3),
 487 or (4) and approved by the Department of Highway Safety and
 488 Motor Vehicles as affording security equivalent to that afforded
 489 by a policy of insurance or by self-insuring as authorized by s.
 490 768.28(16). The person filing such security shall have all of
 491 the obligations and rights of an insurer under ss. 627.748-
 492 627.7491.

493 (4) An owner of a motor vehicle for which security is
 494 required by this section who fails to have such security in
 495 effect at the time of an accident is not immune from tort
 496 liability and is personally liable for the payment of benefits
 497 under s. 627.7485. With respect to such benefits, such an owner
 498 has all of the rights and obligations of an insurer under ss.
 499 627.748-627.7491.

500 (5) In addition to other persons who are not required to
 501 provide security as required under this section and s. 324.022,

502 the owner or registrant of a motor vehicle is exempt from such
 503 requirements if she or he is a member of the United States Armed
 504 Forces and is called to or on active duty outside the United
 505 States in an emergency situation. The exemption provided by this
 506 subsection applies only while the member of the armed forces is
 507 on such active duty outside the United States and while the
 508 motor vehicle covered by the security required by this section
 509 and s. 324.022 is not operated by any person. Upon receipt of a
 510 written request by the insured to whom the exemption provided in
 511 this subsection applies, the insurer shall cancel the coverages
 512 and return any unearned premium or suspend the security required
 513 by this section and s. 324.022. Notwithstanding s. 324.0221(2),
 514 the Department of Highway Safety and Motor Vehicles may not
 515 suspend the registration or operator's license of any owner or
 516 registrant of a motor vehicle during the time she or he
 517 qualifies for an exemption under this subsection. Any owner or
 518 registrant of a motor vehicle who qualifies for an exemption
 519 under this subsection shall immediately notify the department
 520 prior to and at the end of the expiration of the exemption.

521 Section 8. Section 627.7484, Florida Statutes, is created
 522 to read:

523 627.7484 Proof of security; security requirements;
 524 penalties.—

525 (1) The provisions of chapter 324 that pertain to the
 526 method of giving and maintaining proof of financial
 527 responsibility and that govern and define a motor vehicle
 528 liability policy apply to filing and maintaining proof of
 529 security required by ss. 627.748-627.7491.

530 (2) Any person who:
 531 (a) Gives information required in a report or otherwise as
 532 provided for in ss. 627.748-627.7491, knowing or having reason
 533 to believe that such information is false;
 534 (b) Forges or, without authority, signs any evidence of
 535 proof of security; or
 536 (c) Files, or offers for filing, any such evidence of
 537 proof, knowing or having reason to believe that it is forged or
 538 signed without authority
 539
 540 commits a misdemeanor of the first degree, punishable as
 541 provided in s. 775.082 or s. 775.083.

542 Section 9. Section 627.7485, Florida Statutes, is created
 543 to read:

544 627.7485 Required emergency care coverage benefits;
 545 exclusions; priority; claims.-

546 (1) REQUIRED BENEFITS.-Every insurance policy complying
 547 with the security requirements of s. 627.7483 must provide
 548 emergency care coverage to the named insured, relatives residing
 549 in the insured's household, persons operating the insured motor
 550 vehicle, passengers in such motor vehicle, and other persons
 551 struck by such motor vehicle and suffering bodily injury while
 552 not an occupant of a self-propelled vehicle, subject to
 553 subsection (2) and paragraph (4)(f), to a limit of \$10,000 for
 554 loss sustained by any such person as a result of bodily injury,
 555 sickness, disease, or death arising out of the ownership,
 556 maintenance, or use of a motor vehicle as follows:

557 (a) Medical benefits.-Eighty percent of all reasonable

558 expenses as follows:

559 1. Emergency transport and treatment rendered by an
 560 ambulance provider licensed under part III of chapter 401 within
 561 24 hours after the motor vehicle accident.

562 2. Emergency services and care rendered within 72 hours
 563 after the motor vehicle accident in a hospital licensed under
 564 chapter 395.

565 3. Services and care rendered when an insured is admitted
 566 to a hospital, as defined in s. 395.002(12), within 72 hours
 567 after the motor vehicle accident.

568 4. Services and care rendered to an insured who is
 569 determined more than 72 hours after the motor vehicle accident
 570 to have an emergency medical condition related to the initial
 571 diagnosis and arising from the motor vehicle accident.

572 5. If the insured receives services and care pursuant to
 573 subparagraph 2., subparagraph 3., or subparagraph 4., subsequent
 574 services and care directly related to the medical diagnosis
 575 arising from the motor vehicle accident, subject to the
 576 following:

577 a. The diagnosis shall be rendered in a hospital licensed
 578 under chapter 395 and rendered by a physician licensed under
 579 chapter 458 or an osteopathic physician licensed under chapter
 580 459; and

581 b. The care and services shall be rendered by a physician
 582 licensed under chapter 458, an osteopathic physician licensed
 583 under chapter 459, a dentist licensed under chapter 466, a
 584 physician assistant licensed under chapter 458 or chapter 459,
 585 or an advanced registered nurse practitioner licensed under

586 chapter 464.

587

588 For purposes of ss. 627.748-627.7491, a medical diagnosis that
 589 an emergency medical condition exists is presumed to be correct
 590 unless rebutted by clear and convincing evidence to the
 591 contrary.

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

601 (c) Death benefits.—Death benefits equal to the lesser of
 602 \$5,000 or the remainder of unused emergency care coverage
 603 insurance benefits per individual. The insurer may pay such
 604 benefits to the executor or administrator of the deceased, to
 605 any of the deceased's relatives by blood, legal adoption, or
 606 marriage, or to any person appearing to the insurer to be
 607 equitably entitled thereto.

608

609 Only insurers writing motor vehicle liability insurance in this
 610 state may provide the benefits required by this section, and no
 611 such insurer may require the purchase of any other motor vehicle
 612 coverage other than the purchase of property damage liability
 613 coverage as required by s. 627.7275 as a condition for providing

614 such required benefits. Insurers may not require that property
 615 damage liability insurance in an amount greater than \$10,000 be
 616 purchased in conjunction with emergency care coverage insurance.
 617 Such insurers shall make benefits and required property damage
 618 liability insurance coverage available through normal marketing
 619 channels. Any insurer writing motor vehicle liability insurance
 620 in this state who fails to comply with such availability
 621 requirement as a general business practice shall be deemed to
 622 have violated part IX of chapter 626, and such violation shall
 623 constitute an unfair method of competition or an unfair or
 624 deceptive act or practice involving the business of insurance.
 625 Any such insurer committing such violation shall be subject to
 626 the penalties afforded in such part, as well as those that may
 627 be afforded elsewhere in the insurance code.

628 (2) AUTHORIZED EXCLUSIONS.—Any insurer may exclude
 629 benefits:

630 (a) For injury sustained by the named insured and
 631 relatives residing in the insured's household while occupying
 632 another motor vehicle owned by the named insured and not insured
 633 under the policy or for injury sustained by any person operating
 634 the insured motor vehicle without the express or implied consent
 635 of the insured.

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

- 639 1. Causing injury to herself or himself intentionally; or
- 640 2. Being injured while committing a felony.

641

642 Whenever an insured is charged with conduct as set forth in
 643 subparagraph 2., the 30-day payment provision of paragraph
 644 (4)(b) shall be held in abeyance, and the insurer shall withhold
 645 payment of any emergency care coverage benefits pending the
 646 outcome of the case at the trial level. If the charge is nolle
 647 prossed or dismissed or the insured is acquitted, the 30-day
 648 payment provision shall run from the date the insurer is
 649 notified of such action.

650 (3) INSURED'S RIGHTS TO RECOVERY OF SPECIAL DAMAGES IN
 651 TORT CLAIMS.—No insurer shall have a lien on any recovery in
 652 tort by judgment, settlement, or otherwise for emergency care
 653 coverage benefits, whether suit has been filed or settlement has
 654 been reached without suit. An injured party who is entitled to
 655 bring suit under ss. 627.748-627.7491, or her or his legal
 656 representative, shall have no right to recover any damages for
 657 which emergency care coverage benefits are paid or payable. The
 658 plaintiff may prove all of her or his special damages
 659 notwithstanding this limitation, but if special damages are
 660 introduced in evidence, the trier of facts, whether judge or
 661 jury, may not award damages for emergency care coverage benefits
 662 paid or payable. In all cases in which a jury is required to fix
 663 damages, the court shall instruct the jury that the plaintiff
 664 may not recover such special damages for emergency care coverage
 665 benefits paid or payable.

666 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under
 667 ss. 627.748-627.7491 shall be primary, except that benefits
 668 received under any workers' compensation law shall be credited
 669 against the benefits provided by subsection (1) and shall be due

670 and payable as loss accrues, upon receipt of reasonable proof of
 671 such loss and the amount of expenses and loss incurred that are
 672 covered by the policy issued under ss. 627.748-627.7491. When
 673 the Agency for Health Care Administration provides, pays, or
 674 becomes liable for medical assistance under the Medicaid program
 675 related to injury, sickness, disease, or death arising out of
 676 the ownership, maintenance, or use of a motor vehicle, benefits
 677 under ss. 627.748-627.7491 shall be subject to the provisions of
 678 the Medicaid program.

679 (a) An insurer may require written notice to be given as
 680 soon as practicable after an accident involving a motor vehicle
 681 for which the policy affords the security required by ss.
 682 627.748-627.7491.

683 (b) Emergency care coverage benefits paid pursuant to this
 684 section shall be overdue if not paid within 30 days after the
 685 insurer is furnished written notice of the fact and amount of a
 686 covered loss. If such written notice is not furnished to the
 687 insurer as to the entire claim, any partial amount supported by
 688 the written notice is overdue if not paid within 30 days after
 689 the written notice is furnished to the insurer. Any part or all
 690 of the remainder of the claim that is subsequently supported by
 691 the written notice is overdue if not paid within 30 days after
 692 the written notice is furnished to the insurer. When an insurer
 693 pays only a portion of a claim or rejects a claim, the insurer
 694 shall provide at the time of the partial payment or rejection an
 695 itemized specification of each item that the insurer had
 696 reduced, omitted, or declined to pay and any information that
 697 the insurer desires the claimant to consider related to the

698 medical necessity of the denied treatment or to explain the
 699 reasonableness of the reduced charge; however, this does not
 700 limit the introduction of evidence at trial. The insurer shall
 701 include the name and address of the person to whom the claimant
 702 should respond and a claim number to be referenced in future
 703 correspondence. However, notwithstanding the fact that written
 704 notice has been furnished to the insurer, a payment may not be
 705 deemed overdue when the insurer has reasonable proof to
 706 establish that the insurer is not responsible for the payment.
 707 For the purpose of calculating the extent to which any benefits
 708 are overdue, payment shall be considered made on the date a
 709 draft or other valid instrument that is equivalent to payment
 710 was placed in the United States mail in a properly addressed,
 711 postpaid envelope or, if not so posted, on the date of delivery.
 712 This paragraph does not preclude or limit the ability of the
 713 insurer to assert that the claim was unrelated, was not
 714 medically necessary, or was unreasonable or that the amount of
 715 the charge was in excess of that permitted under, or in
 716 violation of, subsection (5). Such assertion by the insurer may
 717 be made at any time, including after payment of the claim or
 718 after the 30-day time period for payment set forth in this
 719 paragraph.

720 (c) Upon receiving notice of an accident that is
 721 potentially covered by emergency care coverage benefits, the
 722 insurer must reserve \$5,000 of emergency care coverage benefits
 723 for payment to physicians licensed under chapter 458 or chapter
 724 459, dentists licensed under chapter 466, physician assistants
 725 licensed under chapter 458 or chapter 459, or advanced

726 registered nurse practitioners licensed under chapter 464 who
 727 provide emergency care coverage pursuant to subparagraph
 728 (1)(a)2. The amount required to be held in reserve may be used
 729 only to pay claims from such medical providers until 30 days
 730 after the date the insurer receives notice of the accident.
 731 After the 30-day period, any amount of the reserve for which the
 732 insurer has not received notice of a claim from such medical
 733 provider for emergency care coverage benefits may then be used
 734 by the insurer to pay other claims. The time periods specified
 735 in paragraph (b) for required payment of emergency care coverage
 736 benefits shall be tolled for the period of time that an insurer
 737 is required by this paragraph to hold payment of a claim that is
 738 not from a medical provider eligible to receive payment of
 739 emergency care coverage benefits to the extent that the
 740 emergency care coverage benefits not held in reserve are
 741 insufficient to pay the claim. This paragraph does not require
 742 an insurer to establish a claim reserve for insurance accounting
 743 purposes.

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

751 (e)1. If an insurer has reasonable belief that a
 752 fraudulent insurance act, as defined in s. 626.989, has been
 753 committed and reports its suspicions to the Division of

754 Insurance Fraud, the 30-day period for payment is tolled as to
 755 any portions of the claim reported for investigation. The
 756 insurer must notify the claimant in writing that the claim is
 757 being investigated for fraud within 30 days after the insurer is
 758 furnished with written notice of the fact and amount of a
 759 covered loss. Within 30 days after receipt of notice from the
 760 Division of Insurance Fraud that a claim has been investigated
 761 and that no criminal action will be recommended, the insurer
 762 must pay the claim with simple interest as provided in paragraph
 763 (d).

764 2. Subject to s. 626.989(4), persons or entities that in
 765 good faith report suspected fraud to the Division of Insurance
 766 Fraud or share information in the furtherance of a fraud
 767 investigation are not subject to any civil or criminal liability
 768 relating to the reporting or release of such information.

769 (f) The insurer of the owner of a motor vehicle shall pay
 770 emergency care coverage benefits for an emergency medical
 771 condition as described in paragraph (1)(a) for accidental bodily
 772 injury requiring medical treatment:

773 1. Sustained in this state by the owner while occupying a
 774 motor vehicle, or while not an occupant of a self-propelled
 775 vehicle if the injury is caused by physical contact with a motor
 776 vehicle.

777 2. Sustained outside this state, but within the United
 778 States of America or its territories or possessions or Canada,
 779 by the owner while occupying the owner's motor vehicle.

780 3. Sustained by a relative of the owner residing in the
 781 insured's household, under the circumstances described in

782 subparagraph 1. or subparagraph 2., provided the relative at the
 783 time of the accident is domiciled in the owner's household and
 784 is not herself or himself the owner of a motor vehicle with
 785 respect to which security is required under ss. 627.748-
 786 627.7491.

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

792 a. The owner of a motor vehicle for which security is
 793 required under ss. 627.748-627.7491; or

794 b. Entitled to emergency care coverage benefits from the
 795 insurer of the owner or owners of such a motor vehicle.

796 (g) If two or more insurers are liable to pay emergency
 797 care coverage benefits for the same injury to any one person,
 798 the maximum amount payable shall be as specified in subsection
 799 (1), and any insurer paying the benefits shall be entitled to
 800 recover from each of the other insurers an equitable pro rata
 801 share of the benefits paid and expenses incurred in processing
 802 the claim.

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

807 (i) Benefits are not due or payable to or on behalf of an
 808 insured, claimant, medical provider, or attorney if the insured,
 809 claimant, medical provider, or attorney has:

- 810 1. Submitted a false material statement, document, record,
- 811 or bill;
- 812 2. Submitted false material information; or
- 813 3. Otherwise committed or attempted to commit a fraudulent
- 814 insurance act as defined in s. 626.989.

815

816 A claimant who violates this paragraph is not entitled to any
 817 emergency care coverage benefits or payment for any bills and
 818 services, regardless of whether a portion of the claim may be
 819 legitimate. However, a medical provider who does not violate
 820 this paragraph may not be denied benefits solely due to the
 821 violation by another claimant.

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

823 (a) Any physician, hospital, clinic, or other person or
 824 institution lawfully rendering treatment to an injured person
 825 for a bodily injury covered by emergency care coverage insurance
 826 may charge the insurer and injured party only a reasonable
 827 amount pursuant to this section for the services, treatment, and
 828 supplies rendered, and the insurer providing such coverage may
 829 pay for such charges directly to such person or institution
 830 lawfully rendering such treatment, if the insured receiving such
 831 treatment or her or his guardian has countersigned the properly
 832 completed invoice, bill, or claim form approved by the office
 833 upon which such charges are to be paid for as having actually
 834 been rendered, to the best of the knowledge of the insured or
 835 her or his guardian. However, such a charge may not exceed the
 836 amount the person or institution customarily charges for like
 837 services, treatment, or supplies. When determining whether a

838 charge for a particular service, treatment, or supply is
 839 reasonable, consideration may be given to evidence of usual and
 840 customary charges and payments accepted by the provider involved
 841 in the dispute, reimbursement levels in the community and
 842 various federal and state medical fee schedules applicable to
 843 motor vehicle and other insurance coverages, and other
 844 information relevant to the reasonableness of the reimbursement
 845 for the service, treatment, or supply.

846 1. When a health care provider or entity bills an insurer
 847 in an amount less than indicated in the following schedule of
 848 maximum charges and the insurer pays the amount billed, the
 849 payment shall be considered reasonable. However, a payment made
 850 by an insurer that limits reimbursement to 80 percent of the
 851 following schedule of maximum charges is considered reasonable:

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

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

857 c. For emergency services and care provided in a facility
 858 licensed under chapter 395 rendered by a physician or dentist,
 859 and related hospital inpatient services rendered by a physician
 860 or dentist, the usual and customary charges in the community.

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

865 e. For hospital outpatient services, other than emergency

866 services and care, 200 percent of the Medicare Part A Ambulatory
 867 Payment Classification for the specific hospital providing the
 868 outpatient services.

869 f. For all other medical services, treatment, supplies,
 870 and care, 200 percent of the allowable amount under the
 871 participating physicians schedule of Medicare Part B; for
 872 medical services, treatment, supplies, and care provided by
 873 clinical laboratories, 200 percent of the allowable amount under
 874 Medicare Part B; and for durable medical equipment, the amount
 875 contained in the Durable Medical Equipment
 876 Prosthetics/Orthotics & Supplies (DMEPOS) fee schedule of
 877 Medicare Part B. However, if such services, treatment, or
 878 supplies, and care are not reimbursable under Medicare Part B,
 879 the insurer may limit reimbursement to 80 percent of the maximum
 880 reimbursable allowance under workers' compensation, as
 881 determined under s. 440.13 and rules adopted thereunder that are
 882 in effect at the time such services, treatment, supplies, or
 883 care are provided. Services, treatment, or supplies that are not
 884 reimbursable under Medicare or workers' compensation are not
 885 required to be reimbursed by the insurer.

886 2. For purposes of subparagraph 1., the applicable fee
 887 schedule or payment limitation under Medicare is the fee
 888 schedule or payment limitation that was in effect as of March 1
 889 of the year in which the services, treatment, supplies, or care
 890 were provided and for the area in which such services were
 891 rendered and shall apply until March 1 of the following year,
 892 notwithstanding any subsequent changes made to such fee schedule
 893 or payment limitation, except that it may not be less than the

894 allowable amount under the participating physicians schedule of
 895 Medicare Part B for 2007 for medical services, treatment,
 896 supplies, and care subject to Medicare Part B.

897 3. Subparagraph 2. does not allow the insurer to apply any
 898 limitation on the number of treatments or other utilization
 899 limits that apply under Medicare or workers' compensation. An
 900 insurer that applies the allowable payment limitations of
 901 subparagraph 1. must reimburse a provider who lawfully provided
 902 care or treatment under the scope of her or his license
 903 regardless of whether such provider is entitled to reimbursement
 904 under Medicare due to restrictions or limitations on the types
 905 or discipline of health care providers who may be reimbursed for
 906 particular procedures or procedure codes. However, nothing in
 907 subparagraph 1. prohibits an insurer from using any and all
 908 Medicare coding policies and Centers for Medicare and Medicaid
 909 Services (CMS) payment methodologies, including applicable
 910 modifiers, to determine the appropriate amount of reimbursement
 911 for medical services, treatment, supplies, or care.

912 4. If an insurer limits payment as authorized by
 913 subparagraph 2., the person providing such services, treatment,
 914 supplies, or care may not bill or attempt to collect from the
 915 insured any amount in excess of such limits, except for amounts
 916 that are not covered by the insured's emergency care coverage
 917 insurance due to the coinsurance amount or maximum policy
 918 limits.

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

921 a. Made by a broker or by a person making a claim on

922 behalf of a broker;

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

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

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

929 e. For any treatment or service that is upcoded, or that
 930 is unbundled when such treatment or services should be bundled,
 931 in accordance with paragraph (d). To facilitate prompt payment
 932 of lawful services, an insurer may change billing codes that it
 933 determines to have been improperly or incorrectly upcoded or
 934 unbundled, and may make payment based on the changed billing
 935 codes, without affecting the right of the provider to dispute
 936 the change by the insurer; however, before doing so, the insurer
 937 must contact the health care provider and discuss the reasons
 938 for the insurer's change and the health care provider's reason
 939 for the coding or make a reasonable good faith effort to do so
 940 as documented in the insurer's file; or

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

947 2. The Department of Health, in consultation with the
 948 appropriate professional licensing boards, shall adopt, by rule,
 949 a list of diagnostic tests deemed not to be medically necessary

950 for use in the treatment of persons sustaining bodily injury
 951 covered by emergency care coverage benefits under this section.
 952 The list shall be revised from time to time as determined by the
 953 Department of Health in consultation with the respective
 954 professional licensing boards. Inclusion of a test on the list
 955 shall be based on lack of demonstrated medical value and a level
 956 of general acceptance by the relevant provider community and may
 957 not be dependent entirely upon subjective patient response.
 958 Notwithstanding its inclusion on a fee schedule in this
 959 subsection, an insurer or insured is not required to pay any
 960 charges or reimburse claims for any diagnostic test deemed not
 961 medically necessary by the Department of Health.

962 (c)1. With respect to any treatment or service, other than
 963 medical services billed by a hospital or other provider for
 964 emergency services and care or inpatient services rendered at a
 965 hospital-owned facility, the statement of charges must be
 966 furnished to the insurer by the provider and may not include,
 967 and the insurer is not required to pay, charges for treatment or
 968 services rendered more than 35 days before the postmark date or
 969 electronic transmission date of the statement, except for past
 970 due amounts previously billed on a timely basis under this
 971 paragraph, and except that, if the provider submits to the
 972 insurer a notice of initiation of treatment within 21 days after
 973 its first examination or treatment of the claimant, the
 974 statement may include charges for treatment or services rendered
 975 up to, but not more than, 75 days before the postmark date of
 976 the statement. The injured party is not liable for, and the
 977 provider may not bill the injured party for, charges that are

978 unpaid because of the provider's failure to comply with this
 979 paragraph. Any agreement requiring the injured person or insured
 980 to pay for such charges is unenforceable.

981 2. If, however, the insured fails to furnish the provider
 982 with the correct name and address of the insured's emergency
 983 care coverage insurer, the provider has 35 days from the date
 984 the provider obtains the correct information to furnish the
 985 insurer with a statement of the charges. The insurer is not
 986 required to pay for such charges unless the provider includes
 987 with the statement documentary evidence that was provided by the
 988 insured during the 35-day period demonstrating that the provider
 989 reasonably relied on erroneous information from the insured and
 990 either:

- 991 a. A denial letter from the incorrect insurer; or
- 992 b. Proof of mailing, which may include an affidavit under
 993 penalty of perjury, reflecting timely mailing to the incorrect
 994 address or insurer.

995 3. For emergency services and care rendered in a hospital
 996 emergency department or for transport and treatment rendered by
 997 an ambulance provider licensed pursuant to part III of chapter
 998 401, the provider is not required to furnish the statement of
 999 charges within the time periods established by this paragraph,
 1000 and the insurer may not be considered to have been furnished
 1001 with notice of the amount of the covered loss for purposes of
 1002 paragraph (4)(b) until it receives a statement complying with
 1003 paragraph (d), or a copy thereof, that specifically identifies
 1004 the place of service as a hospital emergency department or an
 1005 ambulance in accordance with billing standards recognized by the

1006 Health Care Finance Administration.

1007 4. Each notice of insured's rights under s. 627.7488 must
 1008 include the following statement in type no smaller than 12
 1009 points:

1010
 1011 BILLING REQUIREMENTS.—Florida Statutes provide that with
 1012 respect to any treatment or services, other than certain
 1013 hospital and emergency services, the statement of charges
 1014 furnished to the insurer by the provider may not include,
 1015 and the insurer and the injured party are not required to
 1016 pay, charges for treatment or services rendered more than
 1017 35 days before the postmark date of the statement, except
 1018 for past due amounts previously billed on a timely basis,
 1019 and except that, if the provider submits to the insurer a
 1020 notice of initiation of treatment within 21 days after its
 1021 first examination or treatment of the claimant, the
 1022 statement may include charges for treatment or services
 1023 rendered up to, but not more than, 75 days before the
 1024 postmark date of the statement.

1025
 1026 (d) All statements and bills for medical services rendered
 1027 by any physician, hospital, clinic, or other person or
 1028 institution shall be submitted to the insurer on a properly
 1029 completed Centers for Medicare and Medicaid Services (CMS) 1500
 1030 form, UB 92 form, or any other standard form approved by the
 1031 office or adopted by the commission for purposes of this
 1032 paragraph. All billings for such services rendered by providers
 1033 shall, to the extent applicable, follow the Physicians' Current

1034 Procedural Terminology (CPT) or Healthcare Correct Procedural
 1035 Coding System (HCPCS), or ICD-9 in effect for the year in which
 1036 services are rendered and comply with the Centers for Medicare
 1037 and Medicaid Services (CMS) 1500 form instructions and the
 1038 American Medical Association Current Procedural Terminology
 1039 (CPT) Editorial Panel and Healthcare Correct Procedural Coding
 1040 System (HCPCS). All providers other than hospitals shall include
 1041 on the applicable claim form the professional license number of
 1042 the provider in the line or space provided for "Signature of
 1043 Physician or Supplier, Including Degrees or Credentials." In
 1044 determining compliance with applicable CPT and HCPCS coding,
 1045 guidance shall be provided by the Physicians' Current Procedural
 1046 Terminology (CPT) or the Healthcare Correct Procedural Coding
 1047 System (HCPCS) in effect for the year in which services were
 1048 rendered, the Office of the Inspector General (OIG), Physicians
 1049 Compliance Guidelines, and other authoritative treatises
 1050 designated by rule by the Agency for Health Care Administration.
 1051 No statement of medical services may include charges for medical
 1052 services of a person or entity that performed such services
 1053 without possessing the valid licenses required to perform such
 1054 services. For purposes of paragraph (4) (b), an insurer may not
 1055 be considered to have been furnished with notice of the amount
 1056 of the covered loss or medical bills due unless the statements
 1057 or bills comply with this paragraph and are properly completed
 1058 in their entirety as to all material provisions, with all
 1059 relevant information being provided therein.
 1060 (e)1. At the time the initial treatment or service is
 1061 provided, each physician, other licensed professional, clinic,

1062 or other medical institution providing medical services upon
 1063 which a claim for emergency care coverage benefits is based
 1064 shall require an insured person or her or his guardian to
 1065 execute a disclosure and acknowledgment form that reflects at a
 1066 minimum that:

1067 a. The insured or her or his guardian must countersign the
 1068 form attesting to the fact that the services set forth in the
 1069 form were actually rendered.

1070 b. The insured or her or his guardian has both the right
 1071 and the affirmative duty to confirm that the services were
 1072 actually rendered.

1073 c. The insured or her or his guardian was not solicited by
 1074 any person to seek any services from the medical provider.

1075 d. The physician, other licensed professional, clinic, or
 1076 other medical institution rendering services for which payment
 1077 is being claimed explained the services to the insured or her or
 1078 his guardian.

1079 e. If the insured notifies the insurer in writing of a
 1080 billing error, the insured may be entitled to a certain
 1081 percentage of a reduction in the amounts paid by the insured's
 1082 motor vehicle insurer.

1083 2. The physician, other licensed professional, clinic, or
 1084 other medical institution rendering services for which payment
 1085 is being claimed has the affirmative duty to explain the
 1086 services rendered to the insured or her or his guardian so that
 1087 the insured or her or his guardian countersigns the form with
 1088 informed consent.

1089 3. Countersignature by the insured or her or his guardian

1090 is not required for the reading of diagnostic tests or other
 1091 services of such a nature that they are not required to be
 1092 performed in the presence of the insured.

1093 4. The licensed medical professional rendering treatment
 1094 for which payment is being claimed must sign, by her or his own
 1095 hand, the form complying with this paragraph.

1096 5. The original completed disclosure and acknowledgment
 1097 form shall be furnished to the insurer pursuant to paragraph
 1098 (4) (b) and may not be electronically furnished.

1099 6. This disclosure and acknowledgment form is not required
 1100 for services billed by a provider for emergency services and
 1101 care rendered in a hospital emergency department or for
 1102 transport and treatment rendered by an ambulance provider
 1103 licensed pursuant to part III of chapter 401.

1104 7. The Financial Services Commission shall adopt, by rule,
 1105 a standard disclosure and acknowledgment form that shall be used
 1106 to fulfill the requirements of this paragraph, effective 90 days
 1107 after such form is adopted and becomes final. The commission
 1108 shall adopt a proposed rule by January 1, 2013. Until the rule
 1109 is final, the provider may use a form of its own that otherwise
 1110 complies with the requirements of this paragraph.

1111 8. As used in this paragraph, the term "countersigned"
 1112 means bearing a second or verifying signature, as on a
 1113 previously signed document, and is not satisfied by the
 1114 statement "signature on file" or any similar statement.

1115 9. This paragraph applies only with respect to the initial
 1116 treatment or service of the insured by a provider. For
 1117 subsequent treatments or service, the provider must maintain a

1118 patient log signed by the patient, in chronological order by
 1119 date of service, that is consistent with the services being
 1120 rendered to the patient as claimed. The requirements of this
 1121 subparagraph for maintaining a patient log signed by the patient
 1122 may be met by a hospital that maintains medical records as
 1123 required by s. 395.3025 and applicable rules and makes such
 1124 records available to the insurer upon request.

1125 (f) Upon written notification by any person, an insurer
 1126 shall investigate any claim of improper billing by a physician
 1127 or other medical provider. The insurer shall determine whether
 1128 the insured was properly billed for only those services and
 1129 treatments that the insured actually received. If the insurer
 1130 determines that the insured has been improperly billed, the
 1131 insurer shall notify the insured, the person making the written
 1132 notification, and the provider of its findings and shall reduce
 1133 the amount of payment to the provider by the amount determined
 1134 to be improperly billed. If a reduction is made due to such
 1135 written notification by any person, the insurer shall pay to the
 1136 person 20 percent of the amount of the reduction, up to \$500. If
 1137 the provider is arrested due to the improper billing, the
 1138 insurer shall pay to the person 40 percent of the amount of the
 1139 reduction, up to \$500.

1140 (g) An insurer may not systematically downcode with the
 1141 intent to deny reimbursement otherwise due. Such action
 1142 constitutes a material misrepresentation under s.
 1143 626.9541(1)(i)2.

1144 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.-
 1145 (a) In all circumstances, an insured seeking benefits

1146 under ss. 627.748-627.7491, including omnibus insureds, must
 1147 comply with the terms of the policy, which include, but are not
 1148 limited to, submitting to an examination under oath. Compliance
 1149 with this paragraph is a condition precedent to the insured's
 1150 recovering of benefits. Every employer shall, if a request is
 1151 made by an insurer providing emergency care coverage under ss.
 1152 627.748-627.7491 against whom a claim has been made, furnish in
 1153 a form approved by the office a sworn statement of the earnings,
 1154 since the time of the bodily injury and for a reasonable period
 1155 before the injury, of the person upon whose injury the claim is
 1156 based.

1157 (b) If an insured seeking to recover benefits pursuant to
 1158 ss. 627.748-627.7491 assigns the contractual right to such
 1159 benefits or payment of such benefits to any person or entity,
 1160 the assignee must comply with the terms of the policy. In all
 1161 circumstances, the assignee is obligated to cooperate under the
 1162 policy, including, but not limited to, submitting to an
 1163 examination under oath. Examinations under oath may be recorded
 1164 by audio, video, court reporter, or any combination thereof.
 1165 Compliance with this paragraph by the assignee is a condition
 1166 precedent to the assignee's recovery of benefits.

1167 1. If an insurer requests an examination under oath of a
 1168 medical provider, the provider must produce those persons
 1169 identified in the request or, if no person is specifically
 1170 identified, the persons having the most knowledge of the issues
 1171 identified by the insurer in the request. All claimants must
 1172 produce and allow for the inspection of all documents requested
 1173 by the insurer that are relevant to the services rendered and

1174 reasonably obtainable by the claimant. No later than the time of
 1175 the examination under oath, the insurer must pay the medical
 1176 provider, and other persons produced in response to the
 1177 insurer's request, reasonable compensation for attending the
 1178 examination under oath. Such compensation shall be based upon
 1179 good faith estimates of the hourly rate for the health care
 1180 provider and other persons to be examined and the time required
 1181 to conduct the examination under oath. If additional time is
 1182 necessary for completion of the examination under oath, the
 1183 insurer must provide compensation for the time that exceeds the
 1184 good faith estimate within 15 days after the examination under
 1185 oath to each person that completes the examination. Each person
 1186 appearing for an examination under oath may have an attorney
 1187 present at her or his own expense.

1188 2. Before requesting that an assignee participate in an
 1189 examination under oath, the insurer must send a written request
 1190 to the assignee requesting all information that the insurer
 1191 believes is necessary to process the claim and relevant to the
 1192 services rendered.

1193 3. An insurer that, as a general practice, requests
 1194 examinations under oath of an assignee without a reasonable
 1195 basis is subject to s. 626.9541.

1196 4. An insurer must coordinate with the claimant for
 1197 emergency care coverage benefits to ensure an appropriate time
 1198 and location for the examination. A claimant's failure to agree
 1199 to attend an examination after an insurer presents two
 1200 documented offers of a reasonable time and location allows the
 1201 insurer to suspend benefits until such time that the claimant

1202 agrees to submit to, and does actually submit to, an
 1203 examination.

1204 (c) Every physician, hospital, clinic, or other medical
 1205 institution providing, before or after bodily injury upon which
 1206 a claim for emergency care coverage benefits is based, any
 1207 products, services, or accommodations in relation to that or any
 1208 other injury, or in relation to a condition claimed to be
 1209 connected with that or any other injury, shall, if requested to
 1210 do so by the insurer against whom the claim has been made,
 1211 permit the insurer or the insurer's representative to conduct an
 1212 onsite physical review and examination of the treatment
 1213 location, treatment apparatuses, diagnostic devices, and any
 1214 other medical equipment used for the services rendered within 10
 1215 days after the insurer's request and furnish forthwith a written
 1216 report of the history, condition, treatment, dates, and costs of
 1217 such treatment of the injured person and why the items
 1218 identified by the insurer were reasonable in amount and
 1219 medically necessary, together with a sworn statement that the
 1220 treatment or services rendered were reasonable and necessary
 1221 with respect to the bodily injury sustained and identifying
 1222 which portion of the expenses for such treatment or services was
 1223 incurred as a result of such bodily injury, and produce
 1224 forthwith, and permit the inspection and copying of, her or his
 1225 or its records regarding such history, condition, treatment,
 1226 dates, and costs of treatment; however, this does not limit the
 1227 introduction of evidence at trial. Such sworn statement shall
 1228 read as follows:
 1229

1230 "Under penalty of perjury, I declare that I have read the
 1231 foregoing, and the facts alleged are true to the best of my
 1232 knowledge and belief."

1233
 1234 No cause of action for violation of the physician-patient
 1235 privilege or invasion of the right of privacy may be permitted
 1236 against any physician, hospital, clinic, or other medical
 1237 institution complying with this paragraph. The person requesting
 1238 such records and such sworn statement shall pay all reasonable
 1239 costs connected therewith. If an insurer makes a written request
 1240 for documentation or information under this paragraph within 30
 1241 days after having received notice of the amount of a covered
 1242 loss under paragraph (4) (a), the amount or the partial amount
 1243 that is the subject of the insurer's inquiry shall become
 1244 overdue if the insurer does not pay in accordance with paragraph
 1245 (4) (b) or within 10 days after the insurer's receipt of the
 1246 requested documentation or information, whichever occurs later.
 1247 For purposes of this paragraph, the term "receipt" includes, but
 1248 is not limited to, inspection and copying pursuant to this
 1249 paragraph. Any insurer that requests documentation or
 1250 information pertaining to reasonableness of charges or medical
 1251 necessity under this paragraph without a reasonable basis for
 1252 such requests as a general business practice is engaging in an
 1253 unfair trade practice under the insurance code. Section
 1254 626.989(4) (d) applies to the sharing of information related to
 1255 reviews and examinations conducted pursuant to this section.

1256 (d) In the event of any dispute regarding an insurer's
 1257 right to discovery of facts under this section, the insurer may

1258 petition a court of competent jurisdiction to enter an order
 1259 permitting such discovery. The order may be made only on motion
 1260 for good cause shown and upon notice to all persons having an
 1261 interest, and it shall specify the time, place, manner,
 1262 conditions, and scope of the discovery. Such court may, in order
 1263 to protect against annoyance, embarrassment, or oppression, as
 1264 justice requires, enter an order refusing discovery or
 1265 specifying conditions of discovery and may order payments of
 1266 costs and expenses of the proceeding, including reasonable fees
 1267 for the appearance of attorneys at the proceedings, as justice
 1268 requires.

1269 (e) The injured person shall be furnished, upon request, a
 1270 copy of all information obtained by the insurer under this
 1271 section and shall pay a reasonable charge if required by the
 1272 insurer.

1273 (f) Notice to an insurer of the existence of a claim may
 1274 not be unreasonably withheld by an insured.

1275 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;
 1276 REPORTS.—

1277 (a) Whenever the mental or physical condition of an
 1278 injured person covered by emergency care coverage insurance is
 1279 material to any claim that has been or may be made for past or
 1280 future emergency care coverage insurance benefits, such person
 1281 shall, upon the request of an insurer, submit to mental or
 1282 physical examination by a physician or physicians. The costs of
 1283 any examinations requested by an insurer shall be borne entirely
 1284 by the insurer. Such examination shall be conducted within the
 1285 municipality where the insured is receiving treatment, or in a

1286 location reasonably accessible to the insured, which, for
 1287 purposes of this paragraph, means any location within the
 1288 municipality in which the insured resides or any location within
 1289 10 miles by road of the insured's residence provided such
 1290 location is within the county in which the insured resides. If
 1291 the examination is to be conducted in a location reasonably
 1292 accessible to the insured, and if there is no qualified
 1293 physician to conduct the examination in a location reasonably
 1294 accessible to the insured, such examination shall be conducted
 1295 in an area of the closest proximity to the insured's residence.
 1296 Emergency care coverage insurers are authorized to include
 1297 reasonable provisions in emergency care coverage insurance
 1298 policies for mental and physical examination of those claiming
 1299 emergency care coverage insurance benefits. An insurer may not
 1300 withdraw payment of a treating physician without the consent of
 1301 the injured person covered by the emergency care coverage
 1302 insurance unless the insurer first obtains a valid report by a
 1303 physician located in this state licensed under the same chapter
 1304 as the treating physician whose treatment authorization is
 1305 sought to be withdrawn stating that treatment was not
 1306 reasonable, related, or necessary. A valid report is one that is
 1307 prepared and signed by the physician examining the injured
 1308 person or reviewing the treatment records of the injured person,
 1309 is factually supported by the examination and treatment records,
 1310 if reviewed, and has not been modified by anyone other than the
 1311 physician. The physician preparing the report must be in active
 1312 practice unless the physician is physically disabled. Active
 1313 practice means that during the 3 years immediately preceding the

1314 date of the physical examination or review of the treatment
 1315 records, the physician must have devoted professional time to
 1316 the active clinical practice of evaluation, diagnosis, or
 1317 treatment of medical conditions or to the instruction of
 1318 students in an accredited health professional school or
 1319 accredited residency program or a clinical research program that
 1320 is affiliated with an accredited health professional school or
 1321 teaching hospital or accredited residency program. The physician
 1322 preparing a report at the request of an insurer and physicians
 1323 rendering expert opinions on behalf of persons claiming medical
 1324 benefits for emergency care coverage, or on behalf of an insured
 1325 through an attorney or another entity, shall maintain, for at
 1326 least 3 years, copies of all examination reports as medical
 1327 records and shall maintain, for at least 3 years, records of all
 1328 payments for the examinations and reports. Neither an insurer
 1329 nor any person acting at the direction of or on behalf of an
 1330 insurer may materially change an opinion in a report prepared
 1331 under this paragraph or direct the physician preparing the
 1332 report to change such opinion. The denial of a payment as the
 1333 result of such a changed opinion constitutes a material
 1334 misrepresentation under s. 626.9541(1)(i)2.; however, this
 1335 paragraph does not preclude the insurer from calling to the
 1336 attention of the physician errors of fact in the report based
 1337 upon information in the claim file.

1338 (b) If requested by the person examined, a party causing
 1339 an examination to be made shall deliver to her or him a copy of
 1340 every written report concerning the examination rendered by an
 1341 examining physician, at least one of which must set out the

1342 examining physician's findings and conclusions in detail. After
 1343 such request and delivery, the party causing the examination to
 1344 be made is entitled, upon request, to receive from the person
 1345 examined every written report available to her or him or her or
 1346 his representative concerning any examination, previously or
 1347 thereafter made, of the same mental or physical condition. By
 1348 requesting and obtaining a report of the examination so ordered,
 1349 or by taking the deposition of the examiner, the person examined
 1350 waives any privilege she or he may have, in relation to the
 1351 claim for benefits, regarding the testimony of every other
 1352 person who has examined, or may thereafter examine, her or him
 1353 with respect to the same mental or physical condition. If a
 1354 person unreasonably refuses to submit to or fails to appear at
 1355 an examination, the emergency care coverage insurer is no longer
 1356 liable for subsequent emergency care coverage benefits. Refusal
 1357 or failure to appear for two examinations raises a rebuttable
 1358 presumption that such refusal or failure was unreasonable.

1359 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—

1360 (a) With respect to any dispute under ss. 627.748-627.7491
 1361 between the insured and the insurer, or between an assignee of
 1362 an insured's rights and the insurer, s. 627.428 applies, except
 1363 as provided in paragraphs (b) and (c) and subsections (9) and
 1364 (13) and except that any attorney fees recovered are limited to
 1365 the lesser of the actual fee incurred based upon a rate for
 1366 attorney services not to exceed \$200 per billable hour or:

1367 1. For any disputed amount of less than \$500, 15 times any
 1368 disputed amount recovered by the attorney under ss. 627.748-
 1369 627.7491, not to exceed \$5,000.

1370 2. For any disputed amount of \$500 or more and less than
 1371 \$5,000, 10 times any disputed amount recovered by the attorney
 1372 under ss. 627.748-627.7491, not to exceed \$10,000.

1373 3. For any disputed amount of \$5,000 or more and up to
 1374 \$10,000, 5 times any disputed amount recovered by the attorney
 1375 under ss. 627.748-627.7491, not to exceed \$15,000.

1376
 1377 Fees incurred in litigating or quantifying the amount of fees
 1378 due to the prevailing party under ss. 627.748-627.7491 are not
 1379 recoverable.

1380 (b) Notwithstanding s. 627.428, the attorney fees
 1381 recovered under ss. 627.748-627.7491 shall be calculated without
 1382 regard to any contingency risk multiplier.

1383 (c) Attorney fees in a class action under ss. 627.748-
 1384 627.7491 are limited to the lesser of \$50,000 or 3 times the
 1385 total of any disputed amount recovered in the class action
 1386 proceeding.

1387 (9) DEMAND LETTER.-

1388 (a) As a condition precedent to filing any action for
 1389 benefits under this section, the insurer must be provided with
 1390 written notice of an intent to initiate litigation. Such notice
 1391 may not be sent until the claim is overdue, including any
 1392 additional time the insurer has to pay the claim pursuant to
 1393 paragraph (4) (b).

1394 (b) The notice required shall state that it is a "demand
 1395 letter under s. 627.7485(9), F.S.," and shall state with
 1396 specificity:

1397 1. The name of the insured upon whom such benefits are

1398 being sought, including a copy of the assignment giving rights
 1399 to the claimant if the claimant is not the insured.

1400 2. The claim number or policy number upon which such claim
 1401 was originally submitted to the insurer.

1402 3. To the extent applicable, the name of any medical
 1403 provider who rendered to an insured the treatment, services,
 1404 accommodations, or supplies that form the basis of such claim
 1405 and an itemized statement specifying each exact amount, the date
 1406 of treatment, service, or accommodation, and the type of benefit
 1407 claimed to be due. A completed form satisfying the requirements
 1408 of paragraph (5) (d) or the lost-wage statement previously
 1409 submitted may be used as the itemized statement. To the extent
 1410 that the demand involves an insurer's withdrawal of payment
 1411 under paragraph (7) (a) for future treatment not yet rendered,
 1412 the claimant shall attach a copy of the insurer's notice
 1413 withdrawing such payment and an itemized statement of the type,
 1414 frequency, and duration of future treatment claimed to be
 1415 reasonable and medically necessary.

1416 (c) Each notice required by this subsection must be
 1417 delivered to the insurer by United States certified or
 1418 registered mail, return receipt requested. If so requested by
 1419 the claimant in the notice, such postal costs shall be
 1420 reimbursed by the insurer when the insurer pays the claim. Such
 1421 notice must be sent to the person and address specified by the
 1422 insurer for the purposes of receiving notices under this
 1423 subsection. Each licensed insurer, whether domestic, foreign, or
 1424 alien, shall file with the office designation of the name and
 1425 address of the person to whom notices pursuant to this

1426 subsection shall be sent, which the office shall make available
 1427 on its website. The name and address on file with the office
 1428 pursuant to s. 624.422 shall be deemed the authorized
 1429 representative to accept notice pursuant to this subsection in
 1430 the event no other designation has been made.

1431 (d) If, within 30 days after receipt of notice by the
 1432 insurer, the overdue claim specified in the notice is paid by
 1433 the insurer together with applicable interest and a penalty of
 1434 10 percent of the overdue amount paid by the insurer, subject to
 1435 a maximum penalty of \$250, no action may be brought against the
 1436 insurer. If the demand involves an insurer's withdrawal of
 1437 payment under paragraph (7) (a) for future treatment not yet
 1438 rendered, no action may be brought against the insurer if,
 1439 within 30 days after its receipt of the notice, the insurer
 1440 mails to the person filing the notice a written statement of the
 1441 insurer's agreement to pay for such treatment in accordance with
 1442 the notice and to pay a penalty of 10 percent, subject to a
 1443 maximum penalty of \$250, when it pays for such future treatment
 1444 in accordance with the requirements of this section. To the
 1445 extent the insurer determines not to pay any amount demanded,
 1446 the penalty is not payable in any subsequent action. For
 1447 purposes of this paragraph, payment or the insurer's agreement
 1448 shall be considered made on the date a draft or other valid
 1449 instrument that is equivalent to payment, or the insurer's
 1450 written statement of agreement, is placed in the United States
 1451 mail in a properly addressed, postpaid envelope, or if not so
 1452 posted, on the date of delivery. The insurer is not obligated to
 1453 pay any attorney fees if the insurer pays the claim or mails its

1454 agreement to pay for future treatment within the time prescribed
 1455 by this paragraph.

1456 (e) The applicable statute of limitation for an action
 1457 under this section shall be tolled for a period of 30 business
 1458 days by the mailing of the notice required by this subsection.

1459 (f) Any insurer making a general business practice of not
 1460 paying valid claims until receipt of the notice required by this
 1461 subsection is engaging in an unfair trade practice under the
 1462 insurance code.

1463 (10) FAILURE TO PAY VALID CLAIMS; UNFAIR OR DECEPTIVE
 1464 PRACTICE.—

1465 (a) If an insurer fails to pay valid claims for emergency
 1466 care coverage with such frequency so as to indicate a general
 1467 business practice, the insurer is engaging in a prohibited
 1468 unfair or deceptive practice that is subject to the penalties
 1469 provided in s. 626.9521, and the office has the powers and
 1470 duties specified in ss. 626.9561-626.9601 with respect thereto.

1471 (b) Notwithstanding s. 501.212, the Department of Legal
 1472 Affairs may investigate and initiate actions for a violation of
 1473 this subsection, including, but not limited to, the powers and
 1474 duties specified in part II of chapter 501.

1475 (11) CIVIL ACTION FOR INSURANCE FRAUD.—An insurer shall
 1476 have a cause of action against any person convicted of, or who,
 1477 regardless of adjudication of guilt, pleads guilty or nolo
 1478 contendere to, insurance fraud under s. 817.234, patient
 1479 brokering under s. 817.505, or kickbacks under s. 456.054,
 1480 associated with a claim for emergency care coverage benefits in
 1481 accordance with this section. An insurer prevailing in an action

1482 brought under this subsection may recover compensatory,
 1483 consequential, and punitive damages subject to the requirements
 1484 and limitations of part II of chapter 768 and attorney fees and
 1485 costs incurred in litigating a cause of action against any
 1486 person convicted of, or who, regardless of adjudication of
 1487 guilt, pleads guilty or nolo contendere to, insurance fraud
 1488 under s. 817.234, patient brokering under s. 817.505, or
 1489 kickbacks under s. 456.054, associated with a claim for
 1490 emergency care coverage benefits in accordance with this
 1491 section.

1492 (12) FRAUD ADVISORY NOTICE.—Upon receiving notice of a
 1493 claim under this section, an insurer shall provide a notice to
 1494 the insured or to a person for whom a claim for reimbursement
 1495 for diagnosis or treatment of injuries has been filed advising
 1496 that:

1497 (a) Pursuant to s. 626.9892, the Department of Financial
 1498 Services may pay rewards of up to \$25,000 to persons providing
 1499 information leading to the arrest and conviction of persons
 1500 committing crimes investigated by the Division of Insurance
 1501 Fraud arising from violations of s. 440.105, s. 624.15, s.
 1502 626.9541, s. 626.989, or s. 817.234.

1503 (b) Solicitation of a person injured in a motor vehicle
 1504 crash for purposes of filing emergency care coverage or tort
 1505 claims could be a violation of s. 817.234, s. 817.505, or the
 1506 rules regulating The Florida Bar and, if such conduct has taken
 1507 place, it should be immediately reported to the Division of
 1508 Insurance Fraud.

1509 (13) ALL CLAIMS BROUGHT IN A SINGLE ACTION.—In any civil

1510 action to recover emergency care coverage benefits brought by a
 1511 claimant pursuant to this section against an insurer, all claims
 1512 related to the same health care provider for the same injured
 1513 person shall be brought in one action unless good cause is shown
 1514 why such claims should be brought separately. If the court
 1515 determines that a civil action is filed for a claim that should
 1516 have been brought in a prior civil action, the court may not
 1517 award attorney fees to the claimant.

1518 (14) SECURE ELECTRONIC DATA TRANSFER.—If all parties
 1519 mutually and expressly agree, a notice, documentation,
 1520 transmission, or communication of any kind required or
 1521 authorized under ss. 627.748-627.7491 may be transmitted
 1522 electronically if it is transmitted by secure electronic data
 1523 transfer that is consistent with state and federal privacy and
 1524 security laws.

1525 Section 10. Section 627.7486, Florida Statutes, is created
 1526 to read:

1527 627.7486 Tort exemption; limitation on right to damages;
 1528 punitive damages.—

1529 (1) Every owner, registrant, operator, or occupant of a
 1530 motor vehicle for which security has been provided as required
 1531 by ss. 627.748-627.7491, and every person or organization
 1532 legally responsible for her or his acts or omissions, is exempt
 1533 from tort liability for damages because of bodily injury,
 1534 sickness, or disease arising out of the ownership, operation,
 1535 maintenance, or use of such motor vehicle in this state to the
 1536 extent that the benefits described in s. 627.7485(1) are payable
 1537 for such injury, or would be payable but for any exclusion

1538 authorized by ss. 627.748-627.7491, under any insurance policy
 1539 or other method of security complying with s. 627.7483, or by an
 1540 owner personally liable under s. 627.7483 for the payment of
 1541 such benefits, unless a person is entitled to maintain an action
 1542 for pain, suffering, mental anguish, and inconvenience for such
 1543 injury under subsection (2).

1544 (2) In any action of tort brought against the owner,
 1545 registrant, operator, or occupant of a motor vehicle for which
 1546 security has been provided as required by ss. 627.748-627.7491,
 1547 or against any person or organization legally responsible for
 1548 her or his acts or omissions, a plaintiff may recover damages in
 1549 tort for pain, suffering, mental anguish, and inconvenience
 1550 because of bodily injury, sickness, or disease arising out of
 1551 the ownership, maintenance, operation, or use of such motor
 1552 vehicle only in the event that the injury or disease consists in
 1553 whole or in part of:

1554 (a) Significant and permanent loss of an important bodily
 1555 function;

1556 (b) Permanent injury within a reasonable degree of medical
 1557 probability, other than scarring or disfigurement;

1558 (c) Significant and permanent scarring or disfigurement;

1559 or

1560 (d) Death.

1561 (3) When a defendant in a proceeding brought pursuant to
 1562 ss. 627.748-627.7491 questions whether the plaintiff has met the
 1563 requirements of subsection (2), the defendant may file an
 1564 appropriate motion with the court, and the court shall, on a
 1565 one-time basis only, 30 days before the date set for the trial

1566 or the pretrial hearing, whichever is first, by examining the
 1567 pleadings and the evidence before it, ascertain whether the
 1568 plaintiff will be able to submit some evidence that the
 1569 plaintiff will meet the requirements of subsection (2). If the
 1570 court finds that the plaintiff will not be able to submit such
 1571 evidence, the court shall dismiss the plaintiff's claim without
 1572 prejudice.

1573 (4) In any action brought against a motor vehicle
 1574 liability insurer for damages in excess of its policy limits, no
 1575 claim for punitive damages shall be allowed.

1576 Section 11. Section 627.7487, Florida Statutes, is created
 1577 to read:

1578 627.7487 Emergency care coverage; optional limitations;
 1579 deductibles.-

1580 (1) The named insured may elect a deductible or modified
 1581 coverage or combination thereof to apply to the named insured
 1582 alone or to the named insured and dependent relatives residing
 1583 in the insured's household but may not elect a deductible or
 1584 modified coverage to apply to any other person covered under the
 1585 policy.

1586 (2) An insurer shall offer to each applicant and to each
 1587 policyholder, upon the renewal of an existing policy,
 1588 deductibles in amounts of \$250, \$500, and \$1,000. The deductible
 1589 amount must be applied to 100 percent of the expenses and losses
 1590 described in s. 627.7485. After the deductible is met, each
 1591 insured is eligible to receive up to \$10,000 in total benefits
 1592 described in s. 627.7485(1). However, this subsection may not be
 1593 applied to reduce the amount of any benefits received in

1594 accordance with s. 627.7485(1)(c).

1595 (3) An insurer shall offer coverage wherein, at the
 1596 election of the named insured, the benefits for loss of gross
 1597 income and loss of earning capacity described in s.
 1598 627.7485(1)(b) shall be excluded.

1599 (4) The named insured may not be prevented from electing a
 1600 deductible under subsection (2) and modified coverage under
 1601 subsection (3). Each election made by the named insured under
 1602 this section shall result in an appropriate reduction of premium
 1603 associated with that election.

1604 (5) All such offers shall be made in clear and unambiguous
 1605 language at the time the initial application is taken and before
 1606 each annual renewal and shall indicate that a premium reduction
 1607 will result from each election. At the option of the insurer,
 1608 such requirement may be met by using forms of notice approved by
 1609 the office or by providing the following notice in 10-point type
 1610 in the insurer's application for initial issuance of a policy of
 1611 motor vehicle insurance and the insurer's annual notice of
 1612 renewal premium:

1613
 1614 For emergency care coverage insurance, the named insured
 1615 may elect a deductible and to exclude coverage for loss of
 1616 gross income and loss of earning capacity ("lost wages").
 1617 These elections apply to the named insured alone, or to the
 1618 named insured and all dependent resident relatives. A
 1619 premium reduction will result from these elections. The
 1620 named insured is hereby advised not to elect the lost wage
 1621 exclusion if the named insured or dependent resident

1622 relatives are employed, since lost wages will not be
 1623 payable in the event of an accident.

1624

1625 Section 12. Section 627.7488, Florida Statutes, is created
 1626 to read:

1627 627.7488 Notice of insured's rights.-

1628 (1) The commission, by rule, shall adopt a form for the
 1629 notification of insureds of their right to receive emergency
 1630 care coverage under the Florida Motor Vehicle No-Fault Emergency
 1631 Care Coverage Law. Such notice shall include:

1632 (a) A description of the benefits provided by emergency
 1633 care coverage insurance, including, but not limited to, the
 1634 specific types of services for which medical benefits are paid,
 1635 disability benefits, death benefits, significant exclusions from
 1636 and limitations on emergency care coverage benefits, when
 1637 payments are due, how benefits are coordinated with other
 1638 insurance benefits that the insured may have, penalties and
 1639 interest that may be imposed on insurers for failure to make
 1640 timely payments of benefits, and rights of parties regarding
 1641 disputes as to benefits.

1642 (b) An advisory informing insureds that:

1643 1. Pursuant to s. 626.9892, the Department of Financial
 1644 Services may pay rewards of up to \$25,000 to persons providing
 1645 information leading to the arrest and conviction of persons
 1646 committing crimes investigated by the Division of Insurance
 1647 Fraud arising from violations of s. 440.105, s. 624.15, s.
 1648 626.9541, s. 626.989, or s. 817.234.

1649 2. Pursuant to s. 627.7485(5)(e)1.e., if the insured

1650 notifies the insurer in writing of a billing error, the insured
 1651 may be entitled to a certain percentage of a reduction in the
 1652 amounts paid by the insured's motor vehicle insurer.

1653 (c) A notice that solicitation of a person injured in a
 1654 motor vehicle crash for purposes of filing emergency care
 1655 coverage or tort claims could be a violation of s. 817.234, s.
 1656 817.505, or the rules regulating The Florida Bar and, if such
 1657 conduct has taken place, it should be immediately reported to
 1658 the Division of Insurance Fraud.

1659 (2) Each insurer issuing a policy in this state providing
 1660 emergency care coverage benefits must mail or deliver the notice
 1661 as specified in subsection (1) to an insured within 21 days
 1662 after receiving from the insured notice of a motor vehicle
 1663 accident or claim involving personal injury to an insured who is
 1664 covered under the policy. The office may allow an insurer
 1665 additional time, not to exceed 30 days, to provide the notice
 1666 specified in subsection (1) upon a showing by the insurer that
 1667 an emergency justifies an extension of time.

1668 (3) The notice required by this section does not alter or
 1669 modify the terms of the insurance contract or other requirements
 1670 of ss. 627.748-627.7491.

1671 Section 13. Section 627.7489, Florida Statutes, is created
 1672 to read:

1673 627.7489 Mandatory joinder of derivative claim.—In any
 1674 action brought pursuant to s. 627.7486 claiming personal
 1675 injuries, all claims arising out of the plaintiff's injuries,
 1676 including all derivative claims, shall be brought together,

1677 unless good cause is shown why such claims should be brought
 1678 separately.

1679 Section 14. Section 627.749, Florida Statutes, is created
 1680 to read:

1681 627.749 Insurers' right of reimbursement.—Notwithstanding
 1682 any other provisions of ss. 627.748-627.7491, any insurer
 1683 providing emergency care coverage benefits on a private
 1684 passenger motor vehicle shall have, to the extent of any
 1685 emergency care coverage benefits paid to any person as a benefit
 1686 arising out of such private passenger motor vehicle insurance, a
 1687 right of reimbursement against the owner or the insurer of the
 1688 owner of a commercial motor vehicle if the benefits paid result
 1689 from such person having been an occupant of the commercial motor
 1690 vehicle or having been struck by the commercial motor vehicle
 1691 while not an occupant of any self-propelled vehicle.

1692 Section 15. Section 627.7491, Florida Statutes, is created
 1693 to read:

1694 627.7491 Application of the Florida Motor Vehicle No-Fault
 1695 Emergency Care Coverage Law.—

1696 (1) Any person subject to the requirements of ss. 627.748-
 1697 627.7491 must maintain security for emergency care coverage on
 1698 and after the effective date of this act.

1699 (2) All forms and rates for policies issued or renewed on
 1700 or after October 1, 2012, must reflect ss. 627.748-627.7491 and
 1701 must be approved by the office prior to their use.

1702 (3) After the effective date of this act, insurers must
 1703 provide notice of the Florida Motor Vehicle No-Fault Emergency
 1704 Care Coverage Law to existing policyholders at least 30 days

1705 before the policy expiration date and to applicants for no-fault
 1706 coverage upon receipt of the application. The notice is not
 1707 subject to approval by the office and must clearly inform the
 1708 policyholder or applicant of the following:

1709 (a) That no-fault motor vehicle insurance requirements are
 1710 governed by the Florida Motor Vehicle No-Fault Emergency Care
 1711 Coverage Law and must provide an explanation of emergency care
 1712 coverage. Current policyholders, with respect to the initial
 1713 renewal after the effective date of this act, must also be
 1714 provided with an explanation of differences between their
 1715 current policies and the coverage provided under emergency care
 1716 coverage policies.

1717 (b) That failure to maintain required emergency care
 1718 coverage and \$10,000 in property damage liability coverage may
 1719 result in suspension of the policyholder's driver license and
 1720 vehicle registration by the State of Florida.

1721 (c) The name and telephone number of a person to contact
 1722 with any questions she or he may have.

1723 Section 16. Subsection (1) of section 316.646, Florida
 1724 Statutes, is amended to read:

1725 316.646 Security required; proof of security and display
 1726 thereof; dismissal of cases.—

1727 (1) Any person required by s. 324.022 to maintain property
 1728 damage liability security, required by s. 324.023 to maintain
 1729 liability security for bodily injury or death, or required by s.
 1730 627.733 or s. 627.7483 to maintain personal injury protection
 1731 security or emergency care coverage security, as applicable, on
 1732 a motor vehicle shall have in his or her immediate possession at

1733 all times while operating such motor vehicle proper proof of
 1734 maintenance of the required security. Such proof shall be a
 1735 uniform proof-of-insurance card in a form prescribed by the
 1736 department, a valid insurance policy, an insurance policy
 1737 binder, a certificate of insurance, or such other proof as may
 1738 be prescribed by the department.

1739 Section 17. Paragraph (b) of subsection (2) of section
 1740 318.18, Florida Statutes, is amended to read:

1741 318.18 Amount of penalties.—The penalties required for a
 1742 noncriminal disposition pursuant to s. 318.14 or a criminal
 1743 offense listed in s. 318.17 are as follows:

1744 (2) Thirty dollars for all nonmoving traffic violations
 1745 and:

1746 (b) For all violations of ss. 320.0605, 320.07(1),
 1747 322.065, and 322.15(1). Any person who is cited for a violation
 1748 of s. 320.07(1) shall be charged a delinquent fee pursuant to s.
 1749 320.07(4).

1750 1. If a person who is cited for a violation of s. 320.0605
 1751 or s. 320.07 can show proof of having a valid registration at
 1752 the time of arrest, the clerk of the court may dismiss the case
 1753 and may assess a dismissal fee of up to \$10. A person who finds
 1754 it impossible or impractical to obtain a valid registration
 1755 certificate must submit an affidavit detailing the reasons for
 1756 the impossibility or impracticality. The reasons may include,
 1757 but are not limited to, the fact that the vehicle was sold,
 1758 stolen, or destroyed; that the state in which the vehicle is
 1759 registered does not issue a certificate of registration; or that
 1760 the vehicle is owned by another person.

1761 2. If a person who is cited for a violation of s. 322.03,
 1762 s. 322.065, or s. 322.15 can show a driver ~~driver's~~ license
 1763 issued to him or her and valid at the time of arrest, the clerk
 1764 of the court may dismiss the case and may assess a dismissal fee
 1765 of up to \$10.

1766 3. If a person who is cited for a violation of s. 316.646
 1767 can show proof of security as required by s. 627.733 or s.
 1768 627.7483, as applicable, issued to the person and valid at the
 1769 time of arrest, the clerk of the court may dismiss the case and
 1770 may assess a dismissal fee of up to \$10. A person who finds it
 1771 impossible or impractical to obtain proof of security must
 1772 submit an affidavit detailing the reasons for the
 1773 impracticality. The reasons may include, but are not limited to,
 1774 the fact that the vehicle has since been sold, stolen, or
 1775 destroyed; that the owner or registrant of the vehicle is not
 1776 required by s. 627.733 or s. 627.7483 to maintain personal
 1777 injury protection insurance or emergency care coverage
 1778 insurance, as applicable; or that the vehicle is owned by
 1779 another person.

1780 Section 18. Paragraphs (a) and (d) of subsection (5) of
 1781 section 320.02, Florida Statutes, are amended to read:

1782 320.02 Registration required; application for
 1783 registration; forms.—

1784 (5) (a) Proof that personal injury protection benefits or
 1785 emergency care coverage benefits, as applicable, have been
 1786 purchased when required under s. 627.733 or s. 627.7483, as
 1787 applicable, that property damage liability coverage has been
 1788 purchased as required under s. 324.022, that bodily injury or

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1789 death coverage has been purchased if required under s. 324.023,
 1790 and that combined bodily liability insurance and property damage
 1791 liability insurance have been purchased when required under s.
 1792 627.7415 shall be provided in the manner prescribed by law by
 1793 the applicant at the time of application for registration of any
 1794 motor vehicle that is subject to such requirements. The issuing
 1795 agent shall refuse to issue registration if such proof of
 1796 purchase is not provided. Insurers shall furnish uniform proof-
 1797 of-purchase cards in a form prescribed by the department and
 1798 shall include the name of the insured's insurance company, the
 1799 coverage identification number, and the make, year, and vehicle
 1800 identification number of the vehicle insured. The card shall
 1801 contain a statement notifying the applicant of the penalty
 1802 specified in s. 316.646(4). The card or insurance policy,
 1803 insurance policy binder, or certificate of insurance or a
 1804 photocopy of any of these; an affidavit containing the name of
 1805 the insured's insurance company, the insured's policy number,
 1806 and the make and year of the vehicle insured; or such other
 1807 proof as may be prescribed by the department shall constitute
 1808 sufficient proof of purchase. If an affidavit is provided as
 1809 proof, it shall be in substantially the following form:

1810
 1811 Under penalty of perjury, I ...(Name of insured)... do hereby
 1812 certify that I have ...(Personal Injury Protection or Emergency
 1813 Care Coverage, as applicable, Property Damage Liability, and,
 1814 when required, Bodily Injury Liability)... Insurance currently
 1815 in effect with ...(Name of insurance company)... under
 1816 ...(policy number)... covering ...(make, year, and vehicle

1817 identification number of vehicle).... ...(Signature of
1818 Insured)...

1819

1820 Such affidavit shall include the following warning:

1821

1822 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE
1823 REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA
1824 LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS
1825 SUBJECT TO PROSECUTION.

1826

1827 When an application is made through a licensed motor vehicle
1828 dealer as required in s. 319.23, the original or a photostatic
1829 copy of such card, insurance policy, insurance policy binder, or
1830 certificate of insurance or the original affidavit from the
1831 insured shall be forwarded by the dealer to the tax collector of
1832 the county or the Department of Highway Safety and Motor
1833 Vehicles for processing. By executing the aforesaid affidavit,
1834 no licensed motor vehicle dealer will be liable in damages for
1835 any inadequacy, insufficiency, or falsification of any statement
1836 contained therein. A card shall also indicate the existence of
1837 any bodily injury liability insurance voluntarily purchased.

1838 (d) The verifying of proof of personal injury protection
1839 insurance or emergency care coverage insurance, as applicable,
1840 proof of property damage liability insurance, proof of combined
1841 bodily liability insurance and property damage liability
1842 insurance, or proof of financial responsibility insurance and
1843 the issuance or failure to issue the motor vehicle registration
1844 under ~~the provisions of~~ this chapter may not be construed in any

1845 court as a warranty of the reliability or accuracy of the
 1846 evidence of such proof. Neither the department nor any tax
 1847 collector is liable in damages for any inadequacy,
 1848 insufficiency, falsification, or unauthorized modification of
 1849 any item of the proof of personal injury protection insurance or
 1850 emergency care coverage insurance, as applicable, proof of
 1851 property damage liability insurance, proof of combined bodily
 1852 liability insurance and property damage liability insurance, or
 1853 proof of financial responsibility insurance prior to, during, or
 1854 subsequent to the verification of the proof. The issuance of a
 1855 motor vehicle registration does not constitute prima facie
 1856 evidence or a presumption of insurance coverage.

1857 Section 19. Paragraph (b) of subsection (1) of section
 1858 320.0609, Florida Statutes, is amended to read:

1859 320.0609 Transfer and exchange of registration license
 1860 plates; transfer fee.—

1861 (1)

1862 (b) The transfer of a license plate from a vehicle
 1863 disposed of to a newly acquired vehicle does not constitute a
 1864 new registration. The application for transfer shall be accepted
 1865 without requiring proof of personal injury protection insurance
 1866 or emergency care coverage insurance, as applicable, or
 1867 liability insurance.

1868 Section 20. Subsection (3) of section 320.27, Florida
 1869 Statutes, is amended to read:

1870 320.27 Motor vehicle dealers.—

1871 (3) APPLICATION AND FEE.—The application for the license
 1872 shall be in such form as may be prescribed by the department and

1873 shall be subject to such rules with respect thereto as may be so
 1874 prescribed by it. Such application shall be verified by oath or
 1875 affirmation and shall contain a full statement of the name and
 1876 birth date of the person or persons applying therefor; the name
 1877 of the firm or copartnership, with the names and places of
 1878 residence of all members thereof, if such applicant is a firm or
 1879 copartnership; the names and places of residence of the
 1880 principal officers, if the applicant is a body corporate or
 1881 other artificial body; the name of the state under whose laws
 1882 the corporation is organized; the present and former place or
 1883 places of residence of the applicant; and prior business in
 1884 which the applicant has been engaged and the location thereof.
 1885 Such application shall describe the exact location of the place
 1886 of business and shall state whether the place of business is
 1887 owned by the applicant and when acquired, or, if leased, a true
 1888 copy of the lease shall be attached to the application. The
 1889 applicant shall certify that the location provides an adequately
 1890 equipped office and is not a residence; that the location
 1891 affords sufficient unoccupied space upon and within which
 1892 adequately to store all motor vehicles offered and displayed for
 1893 sale; and that the location is a suitable place where the
 1894 applicant can in good faith carry on such business and keep and
 1895 maintain books, records, and files necessary to conduct such
 1896 business, which will be available at all reasonable hours to
 1897 inspection by the department or any of its inspectors or other
 1898 employees. The applicant shall certify that the business of a
 1899 motor vehicle dealer is the principal business which shall be
 1900 conducted at that location. Such application shall contain a

1901 statement that the applicant is either franchised by a
 1902 manufacturer of motor vehicles, in which case the name of each
 1903 motor vehicle that the applicant is franchised to sell shall be
 1904 included, or an independent (nonfranchised) motor vehicle
 1905 dealer. Such application shall contain such other relevant
 1906 information as may be required by the department, including
 1907 evidence that the applicant is insured under a garage liability
 1908 insurance policy or a general liability insurance policy coupled
 1909 with a business automobile policy, which shall include, at a
 1910 minimum, \$25,000 combined single-limit liability coverage
 1911 including bodily injury and property damage protection and
 1912 \$10,000 personal injury protection or emergency care coverage,
 1913 as applicable. Franchise dealers must submit a garage liability
 1914 insurance policy, and all other dealers must submit a garage
 1915 liability insurance policy or a general liability insurance
 1916 policy coupled with a business automobile policy. Such policy
 1917 shall be for the license period, and evidence of a new or
 1918 continued policy shall be delivered to the department at the
 1919 beginning of each license period. Upon making initial
 1920 application, the applicant shall pay to the department a fee of
 1921 \$300 in addition to any other fees now required by law; upon
 1922 making a subsequent renewal application, the applicant shall pay
 1923 to the department a fee of \$75 in addition to any other fees now
 1924 required by law. Upon making an application for a change of
 1925 location, the person shall pay a fee of \$50 in addition to any
 1926 other fees now required by law. The department shall, in the
 1927 case of every application for initial licensure, verify whether
 1928 certain facts set forth in the application are true. Each

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1929 applicant, general partner in the case of a partnership, or
 1930 corporate officer and director in the case of a corporate
 1931 applicant, must file a set of fingerprints with the department
 1932 for the purpose of determining any prior criminal record or any
 1933 outstanding warrants. The department shall submit the
 1934 fingerprints to the Department of Law Enforcement for state
 1935 processing and forwarding to the Federal Bureau of Investigation
 1936 for federal processing. The actual cost of state and federal
 1937 processing shall be borne by the applicant and is in addition to
 1938 the fee for licensure. The department may issue a license to an
 1939 applicant pending the results of the fingerprint investigation,
 1940 which license is fully revocable if the department subsequently
 1941 determines that any facts set forth in the application are not
 1942 true or correctly represented.

1943 Section 21. Paragraph (j) of subsection (3) of section
 1944 320.771, Florida Statutes, is amended to read:

1945 320.771 License required of recreational vehicle dealers.—

1946 (3) APPLICATION.—The application for such license shall be
 1947 in the form prescribed by the department and subject to such
 1948 rules as may be prescribed by it. The application shall be
 1949 verified by oath or affirmation and shall contain:

1950 (j) A statement that the applicant is insured under a
 1951 garage liability insurance policy, which shall include, at a
 1952 minimum, \$25,000 combined single-limit liability coverage,
 1953 including bodily injury and property damage protection, and
 1954 \$10,000 personal injury protection or emergency care coverage,
 1955 as applicable, if the applicant is to be licensed as a dealer
 1956 in, or intends to sell, recreational vehicles.

1957
 1958 The department shall, if it deems necessary, cause an
 1959 investigation to be made to ascertain if the facts set forth in
 1960 the application are true and shall not issue a license to the
 1961 applicant until it is satisfied that the facts set forth in the
 1962 application are true.

1963 Section 22. Subsection (1) of section 322.251, Florida
 1964 Statutes, is amended to read:

1965 322.251 Notice of cancellation, suspension, revocation, or
 1966 disqualification of license.—

1967 (1) All orders of cancellation, suspension, revocation, or
 1968 disqualification issued under ~~the provisions of~~ this chapter,
 1969 chapter 318, chapter 324, ~~or~~ ss. 627.732-627.734, or ss.
 1970 627.748-627.7491 shall be given either by personal delivery
 1971 thereof to the licensee whose license is being canceled,
 1972 suspended, revoked, or disqualified or by deposit in the United
 1973 States mail in an envelope, first class, postage prepaid,
 1974 addressed to the licensee at his or her last known mailing
 1975 address furnished to the department. Such mailing by the
 1976 department constitutes notification, and any failure by the
 1977 person to receive the mailed order will not affect or stay the
 1978 effective date or term of the cancellation, suspension,
 1979 revocation, or disqualification of the licensee's driving
 1980 privilege.

1981 Section 23. Paragraph (a) of subsection (8) of section
 1982 322.34, Florida Statutes, is amended to read:

1983 322.34 Driving while license suspended, revoked, canceled,
 1984 or disqualified.—

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1985 (8) (a) Upon the arrest of a person for the offense of
 1986 driving while the person's driver ~~driver's~~ license or driving
 1987 privilege is suspended or revoked, the arresting officer shall
 1988 determine:

1989 1. Whether the person's driver ~~driver's~~ license is
 1990 suspended or revoked.

1991 2. Whether the person's driver ~~driver's~~ license has
 1992 remained suspended or revoked since a conviction for the offense
 1993 of driving with a suspended or revoked license.

1994 3. Whether the suspension or revocation was made under s.
 1995 316.646, ~~or~~ s. 627.733, or s. 627.7483, relating to failure to
 1996 maintain required security, or under s. 322.264, relating to
 1997 habitual traffic offenders.

1998 4. Whether the driver is the registered owner or coowner
 1999 of the vehicle.

2000 Section 24. Subsection (1) and paragraph (c) of subsection
 2001 (9) of section 324.021, Florida Statutes, are amended to read:

2002 324.021 Definitions; minimum insurance required.—The
 2003 following words and phrases when used in this chapter shall, for
 2004 the purpose of this chapter, have the meanings respectively
 2005 ascribed to them in this section, except in those instances
 2006 where the context clearly indicates a different meaning:

2007 (1) MOTOR VEHICLE.—Every self-propelled vehicle which is
 2008 designed and required to be licensed for use upon a highway,
 2009 including trailers and semitrailers designed for use with such
 2010 vehicles, except traction engines, road rollers, farm tractors,
 2011 power shovels, and well drillers, and every vehicle which is
 2012 propelled by electric power obtained from overhead wires but not

2013 operated upon rails, but not including any bicycle or moped.
 2014 However, the term "motor vehicle" does ~~shall~~ not include any
 2015 motor vehicle as defined in s. 627.732(3) or s. 627.7482(9), as
 2016 applicable, when the owner of such vehicle has complied with the
 2017 requirements of ss. 627.730-627.7405 or ss. 627.748-627.7491, as
 2018 applicable, inclusive, unless ~~the provisions of~~ s. 324.051
 2019 applies apply; and, in such case, the applicable proof of
 2020 insurance provisions of s. 320.02 apply.

2021 (9) OWNER; OWNER/LESSOR.—

2022 (c) Application.—

2023 1. The limits on liability in subparagraphs (b)2. and 3.
 2024 do not apply to an owner of motor vehicles that are used for
 2025 commercial activity in the owner's ordinary course of business,
 2026 other than a rental company that rents or leases motor vehicles.
 2027 For purposes of this paragraph, the term "rental company"
 2028 includes only an entity that is engaged in the business of
 2029 renting or leasing motor vehicles to the general public and that
 2030 rents or leases a majority of its motor vehicles to persons with
 2031 no direct or indirect affiliation with the rental company. The
 2032 term also includes a motor vehicle dealer that provides
 2033 temporary replacement vehicles to its customers for up to 10
 2034 days. The term "rental company" also includes:

2035 a. A related rental or leasing company that is a
 2036 subsidiary of the same parent company as that of the renting or
 2037 leasing company that rented or leased the vehicle.

2038 b. The holder of a motor vehicle title or an equity
 2039 interest in a motor vehicle title if the title or equity
 2040 interest is held pursuant to or to facilitate an asset-backed

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2041 securitization of a fleet of motor vehicles used solely in the
 2042 business of renting or leasing motor vehicles to the general
 2043 public and under the dominion and control of a rental company,
 2044 as described in this subparagraph, in the operation of such
 2045 rental company's business.

2046 2. Furthermore, with respect to commercial motor vehicles
 2047 as defined in s. 627.732 or s. 627.7482, as applicable, the
 2048 limits on liability in subparagraphs (b)2. and 3. do not apply
 2049 if, at the time of the incident, the commercial motor vehicle is
 2050 being used in the transportation of materials found to be
 2051 hazardous for the purposes of the Hazardous Materials
 2052 Transportation Authorization Act of 1994, as amended, 49 U.S.C.
 2053 ss. 5101 et seq., and that is required pursuant to such act to
 2054 carry placards warning others of the hazardous cargo, unless at
 2055 the time of lease or rental either:

2056 a. The lessee indicates in writing that the vehicle will
 2057 not be used to transport materials found to be hazardous for the
 2058 purposes of the Hazardous Materials Transportation Authorization
 2059 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

2060 b. The lessee or other operator of the commercial motor
 2061 vehicle has in effect insurance with limits of at least
 2062 \$5,000,000 combined property damage and bodily injury liability.

2063 Section 25. Section 324.0221, Florida Statutes, is amended
 2064 to read:

2065 324.0221 Reports by insurers to the department; suspension
 2066 of driver ~~driver's~~ license and vehicle registrations;
 2067 reinstatement.—

2068 (1) (a) Each insurer that has issued a policy providing

2069 personal injury protection or emergency care coverage or
 2070 property damage liability coverage shall report the renewal,
 2071 cancellation, or nonrenewal thereof to the department within 45
 2072 days after the effective date of each renewal, cancellation, or
 2073 nonrenewal. Upon the issuance of a policy providing personal
 2074 injury protection or emergency care coverage or property damage
 2075 liability coverage to a named insured not previously insured by
 2076 the insurer during that calendar year, the insurer shall report
 2077 the issuance of the new policy to the department within 30 days.
 2078 The report shall be in the form and format and contain any
 2079 information required by the department and must be provided in a
 2080 format that is compatible with the data processing capabilities
 2081 of the department. The department may adopt rules regarding the
 2082 form and documentation required. Failure by an insurer to file
 2083 proper reports with the department as required by this
 2084 subsection or rules adopted with respect to the requirements of
 2085 this subsection constitutes a violation of the Florida Insurance
 2086 Code. These records shall be used by the department only for
 2087 enforcement and regulatory purposes, including the generation by
 2088 the department of data regarding compliance by owners of motor
 2089 vehicles with the requirements for financial responsibility
 2090 coverage.

2091 (b) With respect to an insurance policy providing personal
 2092 injury protection or emergency care coverage or property damage
 2093 liability coverage, each insurer shall notify the named insured,
 2094 or the first-named insured in the case of a commercial fleet
 2095 policy, in writing that any cancellation or nonrenewal of the
 2096 policy will be reported by the insurer to the department. The

2097 notice must also inform the named insured that failure to
 2098 maintain personal injury protection or emergency care coverage
 2099 and property damage liability coverage on a motor vehicle when
 2100 required by law may result in the loss of registration and
 2101 driving privileges in this state and inform the named insured of
 2102 the amount of the reinstatement fees required by this section.
 2103 This notice is for informational purposes only, and an insurer
 2104 is not civilly liable for failing to provide this notice.

2105 (2) The department shall suspend, after due notice and an
 2106 opportunity to be heard, the registration and driver ~~driver's~~
 2107 license of any owner or registrant of a motor vehicle with
 2108 respect to which security is required under s. ss. 324.022 and
 2109 either s. 627.733 or s. 627.7483, as applicable, upon:

2110 (a) The department's records showing that the owner or
 2111 registrant of such motor vehicle did not have in full force and
 2112 effect when required security that complies with the
 2113 requirements of s. ss. 324.022 and either s. 627.733 or s.
 2114 627.7483, as applicable; or

2115 (b) Notification by the insurer to the department, in a
 2116 form approved by the department, of cancellation or termination
 2117 of the required security.

2118 (3) An operator or owner whose driver ~~driver's~~ license or
 2119 registration has been suspended under this section or s. 316.646
 2120 may effect its reinstatement upon compliance with the
 2121 requirements of this section and upon payment to the department
 2122 of a nonrefundable reinstatement fee of \$150 for the first
 2123 reinstatement. The reinstatement fee is \$250 for the second
 2124 reinstatement and \$500 for each subsequent reinstatement during

2125 the 3 years following the first reinstatement. A person
 2126 reinstating her or his insurance under this subsection must also
 2127 secure noncancelable coverage as described in ss. 324.021(8),
 2128 324.023, and 627.7275(2) and present to the appropriate person
 2129 proof that the coverage is in force on a form adopted by the
 2130 department, and such proof shall be maintained for 2 years. If
 2131 the person does not have a second reinstatement within 3 years
 2132 after her or his initial reinstatement, the reinstatement fee is
 2133 \$150 for the first reinstatement after that 3-year period. If a
 2134 person's license and registration are suspended under this
 2135 section or s. 316.646, only one reinstatement fee must be paid
 2136 to reinstate the license and the registration. All fees shall be
 2137 collected by the department at the time of reinstatement. The
 2138 department shall issue proper receipts for such fees and shall
 2139 promptly deposit those fees in the Highway Safety Operating
 2140 Trust Fund. One-third of the fees collected under this
 2141 subsection shall be distributed from the Highway Safety
 2142 Operating Trust Fund to the local governmental entity or state
 2143 agency that employed the law enforcement officer seizing the
 2144 license plate pursuant to s. 324.201. The funds may be used by
 2145 the local governmental entity or state agency for any authorized
 2146 purpose.

2147 Section 26. Paragraph (a) of subsection (1) of section
 2148 324.032, Florida Statutes, is amended to read:

2149 324.032 Manner of proving financial responsibility; for-
 2150 hire passenger transportation vehicles.—Notwithstanding the
 2151 provisions of s. 324.031:

2152 (1) (a) A person who is either the owner or a lessee

2153 required to maintain insurance under s. 627.733(1)(b) or s.
 2154 627.7483(1)(b), as applicable, and who operates one or more
 2155 taxicabs, limousines, jitneys, or any other for-hire passenger
 2156 transportation vehicles may prove financial responsibility by
 2157 furnishing satisfactory evidence of holding a motor vehicle
 2158 liability policy, but with minimum limits of
 2159 \$125,000/250,000/50,000.

2160
 2161 Upon request by the department, the applicant must provide the
 2162 department at the applicant's principal place of business in
 2163 this state access to the applicant's underlying financial
 2164 information and financial statements that provide the basis of
 2165 the certified public accountant's certification. The applicant
 2166 shall reimburse the requesting department for all reasonable
 2167 costs incurred by it in reviewing the supporting information.
 2168 The maximum amount of self-insurance permissible under this
 2169 subsection is \$300,000 and must be stated on a per-occurrence
 2170 basis, and the applicant shall maintain adequate excess
 2171 insurance issued by an authorized or eligible insurer licensed
 2172 or approved by the Office of Insurance Regulation. All risks
 2173 self-insured shall remain with the owner or lessee providing it,
 2174 and the risks are not transferable to any other person, unless a
 2175 policy complying with subsection (1) is obtained.

2176 Section 27. Subsection (2) of section 324.171, Florida
 2177 Statutes, is amended to read:

2178 324.171 Self-insurer.—

2179 (2) The self-insurance certificate shall provide limits of
 2180 liability insurance in the amounts specified under s. 324.021(7)

2181 or s. 627.7415 and shall provide personal injury protection or
 2182 emergency care coverage under s. 627.733(3) (b) or s.
 2183 627.7483(3) (b), as applicable.

2184 Section 28. Paragraph (g) of subsection (1) of section
 2185 400.9935, Florida Statutes, is amended to read:

2186 400.9935 Clinic responsibilities.—

2187 (1) Each clinic shall appoint a medical director or clinic
 2188 director who shall agree in writing to accept legal
 2189 responsibility for the following activities on behalf of the
 2190 clinic. The medical director or the clinic director shall:

2191 (g) Conduct systematic reviews of clinic billings to
 2192 ensure that the billings are not fraudulent or unlawful. Upon
 2193 discovery of an unlawful charge, the medical director or clinic
 2194 director shall take immediate corrective action. If the clinic
 2195 performs only the technical component of magnetic resonance
 2196 imaging, static radiographs, computed tomography, or positron
 2197 emission tomography, and provides the professional
 2198 interpretation of such services, in a fixed facility that is
 2199 accredited by the Joint Commission on Accreditation of
 2200 Healthcare Organizations or the Accreditation Association for
 2201 Ambulatory Health Care, and the American College of Radiology;
 2202 and if, in the preceding quarter, the percentage of scans
 2203 performed by that clinic which was billed to all personal injury
 2204 protection insurance or emergency care coverage insurance
 2205 carriers was less than 15 percent, the chief financial officer
 2206 of the clinic may, in a written acknowledgment provided to the
 2207 agency, assume the responsibility for the conduct of the
 2208 systematic reviews of clinic billings to ensure that the

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2209 | billings are not fraudulent or unlawful.

2210 | Section 29. Subsection (28) of section 409.901, Florida

2211 | Statutes, is amended to read:

2212 | 409.901 Definitions; ss. 409.901-409.920.—As used in ss.

2213 | 409.901-409.920, except as otherwise specifically provided, the

2214 | term:

2215 | (28) "Third-party benefit" means any benefit that is or

2216 | may be available at any time through contract, court award,

2217 | judgment, settlement, agreement, or any arrangement between a

2218 | third party and any person or entity, including, without

2219 | limitation, a Medicaid recipient, a provider, another third

2220 | party, an insurer, or the agency, for any Medicaid-covered

2221 | injury, illness, goods, or services, including costs of medical

2222 | services related thereto, for personal injury or for death of

2223 | the recipient, but specifically excluding policies of life

2224 | insurance on the recipient, unless available under terms of the

2225 | policy to pay medical expenses prior to death. The term

2226 | includes, without limitation, collateral, as defined in this

2227 | section, health insurance, any benefit under a health

2228 | maintenance organization, a preferred provider arrangement, a

2229 | prepaid health clinic, liability insurance, uninsured motorist

2230 | insurance or personal injury protection or emergency care

2231 | coverage, medical benefits under workers' compensation, and any

2232 | obligation under law or equity to provide medical support.

2233 | Section 30. Paragraph (f) of subsection (11) of section

2234 | 409.910, Florida Statutes, is amended to read:

2235 | 409.910 Responsibility for payments on behalf of Medicaid-

2236 | eligible persons when other parties are liable.—

2237 (11) The agency may, as a matter of right, in order to
 2238 enforce its rights under this section, institute, intervene in,
 2239 or join any legal or administrative proceeding in its own name
 2240 in one or more of the following capacities: individually, as
 2241 subrogee of the recipient, as assignee of the recipient, or as
 2242 lienholder of the collateral.

2243 (f) Notwithstanding any provision in this section to the
 2244 contrary, in the event of an action in tort against a third
 2245 party in which the recipient or his or her legal representative
 2246 is a party which results in a judgment, award, or settlement
 2247 from a third party, the amount recovered shall be distributed as
 2248 follows:

2249 1. After attorney ~~attorney's~~ fees and taxable costs as
 2250 defined by the Florida Rules of Civil Procedure, one-half of the
 2251 remaining recovery shall be paid to the agency up to the total
 2252 amount of medical assistance provided by Medicaid.

2253 2. The remaining amount of the recovery shall be paid to
 2254 the recipient.

2255 3. For purposes of calculating the agency's recovery of
 2256 medical assistance benefits paid, the fee for services of an
 2257 attorney retained by the recipient or his or her legal
 2258 representative shall be calculated at 25 percent of the
 2259 judgment, award, or settlement.

2260 4. Notwithstanding any provision of this section to the
 2261 contrary, the agency shall be entitled to all medical coverage
 2262 benefits up to the total amount of medical assistance provided
 2263 by Medicaid. For purposes of this paragraph, "medical coverage"
 2264 means any benefits under health insurance, a health maintenance

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2265 organization, a preferred provider arrangement, or a prepaid
 2266 health clinic, and the portion of benefits designated for
 2267 medical payments under coverage for workers' compensation,
 2268 emergency care, personal injury protection, and casualty.

2269 Section 31. Paragraph (k) of subsection (2) of section
 2270 456.057, Florida Statutes, is amended to read:

2271 456.057 Ownership and control of patient records; report
 2272 or copies of records to be furnished.-

2273 (2) As used in this section, the terms "records owner,"
 2274 "health care practitioner," and "health care practitioner's
 2275 employer" do not include any of the following persons or
 2276 entities; furthermore, the following persons or entities are not
 2277 authorized to acquire or own medical records, but are authorized
 2278 under the confidentiality and disclosure requirements of this
 2279 section to maintain those documents required by the part or
 2280 chapter under which they are licensed or regulated:

2281 (k) Persons or entities practicing under s. 627.736(7) or
 2282 s. 627.7485(7), as applicable.

2283 Section 32. Paragraphs (ee) and (ff) of subsection (1) of
 2284 section 456.072, Florida Statutes, are amended to read:

2285 456.072 Grounds for discipline; penalties; enforcement.-

2286 (1) The following acts shall constitute grounds for which
 2287 the disciplinary actions specified in subsection (2) may be
 2288 taken:

2289 (ee) With respect to making a personal injury protection
 2290 or an emergency care coverage claim as required by s. 627.736 or
 2291 s. 627.7485, respectively, intentionally submitting a claim,
 2292 statement, or bill that has been "upcoded" as defined in s.

2293 | 627.732 or s. 627.7482, as applicable.

2294 | (ff) With respect to making a personal injury protection
 2295 | or an emergency care coverage claim as required by s. 627.736 or
 2296 | s. 627.7485, respectively, intentionally submitting a claim,
 2297 | statement, or bill for payment of services that were not
 2298 | rendered.

2299 | Section 33. Paragraph (o) of subsection (1) of section
 2300 | 626.9541, Florida Statutes, is amended to read:

2301 | 626.9541 Unfair methods of competition and unfair or
 2302 | deceptive acts or practices defined.—

2303 | (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
 2304 | ACTS.—The following are defined as unfair methods of competition
 2305 | and unfair or deceptive acts or practices:

2306 | (o) Illegal dealings in premiums; excess or reduced
 2307 | charges for insurance.—

2308 | 1. Knowingly collecting any sum as a premium or charge for
 2309 | insurance, which is not then provided, or is not in due course
 2310 | to be provided, subject to acceptance of the risk by the
 2311 | insurer, by an insurance policy issued by an insurer as
 2312 | permitted by this code.

2313 | 2. Knowingly collecting as a premium or charge for
 2314 | insurance any sum in excess of or less than the premium or
 2315 | charge applicable to such insurance, in accordance with the
 2316 | applicable classifications and rates as filed with and approved
 2317 | by the office, and as specified in the policy; or, in cases when
 2318 | classifications, premiums, or rates are not required by this
 2319 | code to be so filed and approved, premiums and charges collected
 2320 | from a Florida resident in excess of or less than those

2321 specified in the policy and as fixed by the insurer. This
 2322 provision may ~~shall~~ not be deemed to prohibit the charging and
 2323 collection, by surplus lines agents licensed under part VIII of
 2324 this chapter, of the amount of applicable state and federal
 2325 taxes, or fees as authorized by s. 626.916(4), in addition to
 2326 the premium required by the insurer or the charging and
 2327 collection, by licensed agents, of the exact amount of any
 2328 discount or other such fee charged by a credit card facility in
 2329 connection with the use of a credit card, as authorized by
 2330 subparagraph (q)3., in addition to the premium required by the
 2331 insurer. This subparagraph may ~~shall~~ not be construed to
 2332 prohibit collection of a premium for a universal life or a
 2333 variable or indeterminate value insurance policy made in
 2334 accordance with the terms of the contract.

2335 3.a. Imposing or requesting an additional premium for a
 2336 policy of motor vehicle liability, emergency care coverage,
 2337 personal injury protection, medical payment, or collision
 2338 insurance or any combination thereof or refusing to renew the
 2339 policy solely because the insured was involved in a motor
 2340 vehicle accident unless the insurer's file contains information
 2341 from which the insurer in good faith determines that the insured
 2342 was substantially at fault in the accident.

2343 b. An insurer which imposes and collects such a surcharge
 2344 or which refuses to renew such policy shall, in conjunction with
 2345 the notice of premium due or notice of nonrenewal, notify the
 2346 named insured that he or she is entitled to reimbursement of
 2347 such amount or renewal of the policy under the conditions listed
 2348 below and will subsequently reimburse him or her or renew the

2349 policy, if the named insured demonstrates that the operator
 2350 involved in the accident was:

2351 (I) Lawfully parked;

2352 (II) Reimbursed by, or on behalf of, a person responsible
 2353 for the accident or has a judgment against such person;

2354 (III) Struck in the rear by another vehicle headed in the
 2355 same direction and was not convicted of a moving traffic
 2356 violation in connection with the accident;

2357 (IV) Hit by a "hit-and-run" driver, if the accident was
 2358 reported to the proper authorities within 24 hours after
 2359 discovering the accident;

2360 (V) Not convicted of a moving traffic violation in
 2361 connection with the accident, but the operator of the other
 2362 automobile involved in such accident was convicted of a moving
 2363 traffic violation;

2364 (VI) Finally adjudicated not to be liable by a court of
 2365 competent jurisdiction;

2366 (VII) In receipt of a traffic citation which was dismissed
 2367 or nolle prossed; or

2368 (VIII) Not at fault as evidenced by a written statement
 2369 from the insured establishing facts demonstrating lack of fault
 2370 which are not rebutted by information in the insurer's file from
 2371 which the insurer in good faith determines that the insured was
 2372 substantially at fault.

2373 c. In addition to the other provisions of this
 2374 subparagraph, an insurer may not fail to renew a policy if the
 2375 insured has had only one accident in which he or she was at
 2376 fault within the current 3-year period. However, an insurer may

2377 nonrenew a policy for reasons other than accidents in accordance
 2378 with s. 627.728. This subparagraph does not prohibit nonrenewal
 2379 of a policy under which the insured has had three or more
 2380 accidents, regardless of fault, during the most recent 3-year
 2381 period.

2382 4. Imposing or requesting an additional premium for, or
 2383 refusing to renew, a policy for motor vehicle insurance solely
 2384 because the insured committed a noncriminal traffic infraction
 2385 as described in s. 318.14 unless the infraction is:

2386 a. A second infraction committed within an 18-month
 2387 period, or a third or subsequent infraction committed within a
 2388 36-month period.

2389 b. A violation of s. 316.183, when such violation is a
 2390 result of exceeding the lawful speed limit by more than 15 miles
 2391 per hour.

2392 5. Upon the request of the insured, the insurer and
 2393 licensed agent shall supply to the insured the complete proof of
 2394 fault or other criteria which justifies the additional charge or
 2395 cancellation.

2396 6. No insurer shall impose or request an additional
 2397 premium for motor vehicle insurance, cancel or refuse to issue a
 2398 policy, or refuse to renew a policy because the insured or the
 2399 applicant is a handicapped or physically disabled person, so
 2400 long as such handicap or physical disability does not
 2401 substantially impair such person's mechanically assisted driving
 2402 ability.

2403 7. No insurer may cancel or otherwise terminate any
 2404 insurance contract or coverage, or require execution of a

2405 consent to rate endorsement, during the stated policy term for
 2406 the purpose of offering to issue, or issuing, a similar or
 2407 identical contract or coverage to the same insured with the same
 2408 exposure at a higher premium rate or continuing an existing
 2409 contract or coverage with the same exposure at an increased
 2410 premium.

2411 8. No insurer may issue a nonrenewal notice on any
 2412 insurance contract or coverage, or require execution of a
 2413 consent to rate endorsement, for the purpose of offering to
 2414 issue, or issuing, a similar or identical contract or coverage
 2415 to the same insured at a higher premium rate or continuing an
 2416 existing contract or coverage at an increased premium without
 2417 meeting any applicable notice requirements.

2418 9. No insurer shall, with respect to premiums charged for
 2419 motor vehicle insurance, unfairly discriminate solely on the
 2420 basis of age, sex, marital status, or scholastic achievement.

2421 10. Imposing or requesting an additional premium for motor
 2422 vehicle comprehensive or uninsured motorist coverage solely
 2423 because the insured was involved in a motor vehicle accident or
 2424 was convicted of a moving traffic violation.

2425 11. No insurer shall cancel or issue a nonrenewal notice
 2426 on any insurance policy or contract without complying with any
 2427 applicable cancellation or nonrenewal provision required under
 2428 the Florida Insurance Code.

2429 12. No insurer shall impose or request an additional
 2430 premium, cancel a policy, or issue a nonrenewal notice on any
 2431 insurance policy or contract because of any traffic infraction
 2432 when adjudication has been withheld and no points have been

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2433 assessed pursuant to s. 318.14(9) and (10). However, this
 2434 subparagraph does not apply to traffic infractions involving
 2435 accidents in which the insurer has incurred a loss due to the
 2436 fault of the insured.

2437 Section 34. Subsection (1) of section 627.06501, Florida
 2438 Statutes, is amended to read:

2439 627.06501 Insurance discounts for certain persons
 2440 completing driver improvement course.—

2441 (1) Any rate, rating schedule, or rating manual for the
 2442 liability, emergency care, personal injury protection, and
 2443 collision coverages of a motor vehicle insurance policy filed
 2444 with the office may provide for an appropriate reduction in
 2445 premium charges as to such coverages when the principal operator
 2446 on the covered vehicle has successfully completed a driver
 2447 improvement course approved and certified by the Department of
 2448 Highway Safety and Motor Vehicles which is effective in reducing
 2449 crash or violation rates, or both, as determined pursuant to s.
 2450 318.1451(5). Any discount, not to exceed 10 percent, used by an
 2451 insurer is presumed to be appropriate unless credible data
 2452 demonstrates otherwise.

2453 Section 35. Subsection (1) of section 627.0652, Florida
 2454 Statutes, is amended to read:

2455 627.0652 Insurance discounts for certain persons
 2456 completing safety course.—

2457 (1) Any rates, rating schedules, or rating manuals for the
 2458 liability, emergency care, personal injury protection, and
 2459 collision coverages of a motor vehicle insurance policy filed
 2460 with the office shall provide for an appropriate reduction in

2461 premium charges as to such coverages when the principal operator
 2462 on the covered vehicle is an insured 55 years of age or older
 2463 who has successfully completed a motor vehicle accident
 2464 prevention course approved by the Department of Highway Safety
 2465 and Motor Vehicles. Any discount used by an insurer is presumed
 2466 to be appropriate unless credible data demonstrates otherwise.

2467 Section 36. Subsections (1) and (3) of section 627.0653,
 2468 Florida Statutes, are amended to read:

2469 627.0653 Insurance discounts for specified motor vehicle
 2470 equipment.—

2471 (1) Any rates, rating schedules, or rating manuals for the
 2472 liability, emergency care, personal injury protection, and
 2473 collision coverages of a motor vehicle insurance policy filed
 2474 with the office shall provide a premium discount if the insured
 2475 vehicle is equipped with factory-installed, four-wheel antilock
 2476 brakes.

2477 (3) Any rates, rating schedules, or rating manuals for
 2478 emergency care coverage, personal injury protection coverage,
 2479 and medical payments coverage, if offered, of a motor vehicle
 2480 insurance policy filed with the office shall provide a premium
 2481 discount if the insured vehicle is equipped with one or more air
 2482 bags which are factory installed.

2483 Section 37. Section 627.4132, Florida Statutes, is amended
 2484 to read:

2485 627.4132 Stacking of coverages prohibited.—If an insured
 2486 or named insured is protected by any type of motor vehicle
 2487 insurance policy for liability, emergency care, personal injury
 2488 protection, or other coverage, the policy shall provide that the

2489 insured or named insured is protected only to the extent of the
 2490 coverage she or he has on the vehicle involved in the accident.
 2491 However, if none of the insured's or named insured's vehicles is
 2492 involved in the accident, coverage is available only to the
 2493 extent of coverage on any one of the vehicles with applicable
 2494 coverage. Coverage on any other vehicles may ~~shall~~ not be added
 2495 to or stacked upon that coverage. This section does not apply:

2496 (1) To uninsured motorist coverage which is separately
 2497 governed by s. 627.727.

2498 (2) To reduce the coverage available by reason of
 2499 insurance policies insuring different named insureds.

2500 Section 38. Subsection (6) of section 627.6482, Florida
 2501 Statutes, is amended to read:

2502 627.6482 Definitions.—As used in ss. 627.648–627.6498, the
 2503 term:

2504 (6) "Health insurance" means any hospital and medical
 2505 expense incurred policy, minimum premium plan, stop-loss
 2506 coverage, health maintenance organization contract, prepaid
 2507 health clinic contract, multiple-employer welfare arrangement
 2508 contract, or fraternal benefit society health benefits contract,
 2509 whether sold as an individual or group policy or contract. The
 2510 term does not include any policy covering medical payment
 2511 coverage or emergency care or personal injury protection
 2512 coverage in a motor vehicle policy, coverage issued as a
 2513 supplement to liability insurance, or workers' compensation.

2514 Section 39. Section 627.7263, Florida Statutes, is amended
 2515 to read:

2516 627.7263 Rental and leasing driver ~~driver's~~ insurance to

2517 be primary; exception.—

2518 (1) The valid and collectible liability insurance,
 2519 emergency care coverage insurance, or personal injury protection
 2520 insurance providing coverage for the lessor of a motor vehicle
 2521 for rent or lease is primary unless otherwise stated in at least
 2522 10-point type on the face of the rental or lease agreement. Such
 2523 insurance is primary for the limits of liability and personal
 2524 injury protection or emergency care coverage as required by s.
 2525 ~~ss.~~ 324.021(7) and either s. 627.736 or s. 627.7485, as
 2526 applicable.

2527 (2) If the lessee's coverage is to be primary, the rental
 2528 or lease agreement must contain the following language, in at
 2529 least 10-point type:

2530
 2531 "The valid and collectible liability insurance and personal
 2532 injury protection insurance or emergency care coverage
 2533 insurance, as applicable, of any authorized rental or
 2534 leasing driver is primary for the limits of liability and
 2535 personal injury protection or emergency care coverage, as
 2536 applicable, required by s. ~~ss.~~ 324.021(7) and either s.
 2537 627.736 or s. 627.7485, Florida Statutes, as applicable."

2538
 2539 Section 40. Subsections (8), (9), and (10) of section
 2540 627.727, Florida Statutes, are renumbered as subsections (7),
 2541 (8), and (9), respectively, and present subsections (1) and (7)
 2542 of that section are amended to read:

2543 627.727 Motor vehicle insurance; uninsured and
 2544 underinsured vehicle coverage; insolvent insurer protection.—

2545 (1) No motor vehicle liability insurance policy which
 2546 provides bodily injury liability coverage shall be delivered or
 2547 issued for delivery in this state with respect to any
 2548 specifically insured or identified motor vehicle registered or
 2549 principally garaged in this state unless uninsured motor vehicle
 2550 coverage is provided therein or supplemental thereto for the
 2551 protection of persons insured thereunder who are legally
 2552 entitled to recover damages from owners or operators of
 2553 uninsured motor vehicles because of bodily injury, sickness, or
 2554 disease, including death, resulting therefrom. However, the
 2555 coverage required under this section is not applicable when, or
 2556 to the extent that, an insured named in the policy makes a
 2557 written rejection of the coverage on behalf of all insureds
 2558 under the policy. When a motor vehicle is leased for a period of
 2559 1 year or longer and the lessor of such vehicle, by the terms of
 2560 the lease contract, provides liability coverage on the leased
 2561 vehicle, the lessee of such vehicle shall have the sole
 2562 privilege to reject uninsured motorist coverage or to select
 2563 lower limits than the bodily injury liability limits, regardless
 2564 of whether the lessor is qualified as a self-insurer pursuant to
 2565 s. 324.171. Unless an insured, or lessee having the privilege of
 2566 rejecting uninsured motorist coverage, requests such coverage or
 2567 requests higher uninsured motorist limits in writing, the
 2568 coverage or such higher uninsured motorist limits need not be
 2569 provided in or supplemental to any other policy which renews,
 2570 extends, changes, supersedes, or replaces an existing policy
 2571 with the same bodily injury liability limits when an insured or
 2572 lessee had rejected the coverage. When an insured or lessee has

2573 initially selected limits of uninsured motorist coverage lower
 2574 than her or his bodily injury liability limits, higher limits of
 2575 uninsured motorist coverage need not be provided in or
 2576 supplemental to any other policy which renews, extends, changes,
 2577 supersedes, or replaces an existing policy with the same bodily
 2578 injury liability limits unless an insured requests higher
 2579 uninsured motorist coverage in writing. The rejection or
 2580 selection of lower limits shall be made on a form approved by
 2581 the office. The form shall fully advise the applicant of the
 2582 nature of the coverage and shall state that the coverage is
 2583 equal to bodily injury liability limits unless lower limits are
 2584 requested or the coverage is rejected. The heading of the form
 2585 shall be in 12-point bold type and shall state: "You are
 2586 electing not to purchase certain valuable coverage which
 2587 protects you and your family or you are purchasing uninsured
 2588 motorist limits less than your bodily injury liability limits
 2589 when you sign this form. Please read carefully." If this form is
 2590 signed by a named insured, it will be conclusively presumed that
 2591 there was an informed, knowing rejection of coverage or election
 2592 of lower limits on behalf of all insureds. The insurer shall
 2593 notify the named insured at least annually of her or his options
 2594 as to the coverage required by this section. Such notice shall
 2595 be part of, and attached to, the notice of premium, shall
 2596 provide for a means to allow the insured to request such
 2597 coverage, and shall be given in a manner approved by the office.
 2598 Receipt of this notice does not constitute an affirmative waiver
 2599 of the insured's right to uninsured motorist coverage where the
 2600 insured has not signed a selection or rejection form. The

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2601 coverage described under this section shall be over and above,
 2602 but may ~~shall~~ not duplicate, the benefits available to an
 2603 insured under any workers' compensation law, emergency care
 2604 coverage or personal injury protection benefits, disability
 2605 benefits law, or similar law; under any automobile medical
 2606 expense coverage; under any motor vehicle liability insurance
 2607 coverage; or from the owner or operator of the uninsured motor
 2608 vehicle or any other person or organization jointly or severally
 2609 liable together with such owner or operator for the accident;
 2610 and such coverage shall cover the difference, if any, between
 2611 the sum of such benefits and the damages sustained, up to the
 2612 maximum amount of such coverage provided under this section. The
 2613 amount of coverage available under this section may ~~shall~~ not be
 2614 reduced by a setoff against any coverage, including liability
 2615 insurance. Such coverage may ~~shall~~ not inure directly or
 2616 indirectly to the benefit of any workers' compensation or
 2617 disability benefits carrier or any person or organization
 2618 qualifying as a self-insurer under any workers' compensation or
 2619 disability benefits law or similar law.

2620 ~~(7) The legal liability of an uninsured motorist coverage~~
 2621 ~~insurer does not include damages in tort for pain, suffering,~~
 2622 ~~mental anguish, and inconvenience unless the injury or disease~~
 2623 ~~is described in one or more of paragraphs (a) (d) of s.~~
 2624 ~~627.737(2).~~

2625 Section 41. Subsection (1) of section 627.7275, Florida
 2626 Statutes, is amended to read:

2627 627.7275 Motor vehicle liability.—

2628 (1) A motor vehicle insurance policy providing personal

2629 injury protection as set forth in s. 627.736 or emergency care
 2630 coverage as set forth in s. 627.7485 may not be delivered or
 2631 issued for delivery in this state with respect to any
 2632 specifically insured or identified motor vehicle registered or
 2633 principally garaged in this state unless the policy also
 2634 provides coverage for property damage liability as required by
 2635 s. 324.022.

2636 Section 42. Paragraph (a) of subsection (1) of section
 2637 627.728, Florida Statutes, is amended to read:

2638 627.728 Cancellations; nonrenewals.—

2639 (1) As used in this section, the term:

2640 (a) "Policy" means the bodily injury and property damage
 2641 liability, emergency care, personal injury protection, medical
 2642 payments, comprehensive, collision, and uninsured motorist
 2643 coverage portions of a policy of motor vehicle insurance
 2644 delivered or issued for delivery in this state:

2645 1. Insuring a natural person as named insured or one or
 2646 more related individuals resident of the same household; and

2647 2. Insuring only a motor vehicle of the private passenger
 2648 type or station wagon type which is not used as a public or
 2649 livery conveyance for passengers or rented to others; or
 2650 insuring any other four-wheel motor vehicle having a load
 2651 capacity of 1,500 pounds or less which is not used in the
 2652 occupation, profession, or business of the insured other than
 2653 farming; other than any policy issued under an automobile
 2654 insurance assigned risk plan; insuring more than four
 2655 automobiles; or covering garage, automobile sales agency, repair
 2656 shop, service station, or public parking place operation

2657 hazards.

2658

2659 The term "policy" does not include a binder as defined in s.
 2660 627.420 unless the duration of the binder period exceeds 60
 2661 days.

2662 Section 43. Subsection (1), paragraph (a) of subsection
 2663 (5), and subsections (6) and (7) of section 627.7295, Florida
 2664 Statutes, are amended to read:

2665 627.7295 Motor vehicle insurance contracts.—

2666 (1) As used in this section, the term:

2667 (a) "Policy" means a motor vehicle insurance policy that
 2668 provides personal injury protection or emergency care coverage,
 2669 property damage liability coverage, or both.

2670 (b) "Binder" means a binder that provides motor vehicle
 2671 personal injury protection or emergency care coverage and
 2672 property damage liability coverage.

2673 (5) (a) A licensed general lines agent may charge a per-
 2674 policy fee not to exceed \$10 to cover the administrative costs
 2675 of the agent associated with selling the motor vehicle insurance
 2676 policy if the policy covers only personal injury protection or
 2677 emergency care coverage as provided by s. 627.736 or s.
 2678 627.7485, as applicable, and property damage liability coverage
 2679 as provided by s. 627.7275 and if no other insurance is sold or
 2680 issued in conjunction with or collateral to the policy. The fee
 2681 is not considered part of the premium.

2682 (6) If a motor vehicle owner's driver license, license
 2683 plate, and registration have previously been suspended pursuant
 2684 to s. 316.646, ~~or~~ s. 627.733, or s. 627.7483, an insurer may

2685 cancel a new policy only as provided in s. 627.7275.
 2686 (7) A policy of private passenger motor vehicle insurance
 2687 or a binder for such a policy may be initially issued in this
 2688 state only if, before the effective date of such binder or
 2689 policy, the insurer or agent has collected from the insured an
 2690 amount equal to 2 months' premium. An insurer, agent, or premium
 2691 finance company may not, directly or indirectly, take any action
 2692 resulting in the insured having paid from the insured's own
 2693 funds an amount less than the 2 months' premium required by this
 2694 subsection. This subsection applies without regard to whether
 2695 the premium is financed by a premium finance company or is paid
 2696 pursuant to a periodic payment plan of an insurer or an
 2697 insurance agent. This subsection does not apply if an insured or
 2698 member of the insured's family is renewing or replacing a policy
 2699 or a binder for such policy written by the same insurer or a
 2700 member of the same insurer group. This subsection does not apply
 2701 to an insurer that issues private passenger motor vehicle
 2702 coverage primarily to active duty or former military personnel
 2703 or their dependents. This subsection does not apply if all
 2704 policy payments are paid pursuant to a payroll deduction plan or
 2705 an automatic electronic funds transfer payment plan from the
 2706 policyholder. This subsection and subsection (4) do not apply if
 2707 all policy payments to an insurer are paid pursuant to an
 2708 automatic electronic funds transfer payment plan from an agent,
 2709 a managing general agent, or a premium finance company and if
 2710 the policy includes, at a minimum, personal injury protection or
 2711 emergency care coverage pursuant to ss. 627.730-627.7405 or ss.
 2712 627.748-627.7491, as applicable; motor vehicle property damage

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2713 liability pursuant to s. 627.7275; and bodily injury liability
 2714 in at least the amount of \$10,000 because of bodily injury to,
 2715 or death of, one person in any one accident and in the amount of
 2716 \$20,000 because of bodily injury to, or death of, two or more
 2717 persons in any one accident. This subsection and subsection (4)
 2718 do not apply if an insured has had a policy in effect for at
 2719 least 6 months, the insured's agent is terminated by the insurer
 2720 that issued the policy, and the insured obtains coverage on the
 2721 policy's renewal date with a new company through the terminated
 2722 agent.

2723 Section 44. Section 627.8405, Florida Statutes, is amended
 2724 to read:

2725 627.8405 Prohibited acts; financing companies.—No premium
 2726 finance company shall, in a premium finance agreement or other
 2727 agreement, finance the cost of or otherwise provide for the
 2728 collection or remittance of dues, assessments, fees, or other
 2729 periodic payments of money for the cost of:

2730 (1) A membership in an automobile club. The term
 2731 "automobile club" means a legal entity which, in consideration
 2732 of dues, assessments, or periodic payments of money, promises
 2733 its members or subscribers to assist them in matters relating to
 2734 the ownership, operation, use, or maintenance of a motor
 2735 vehicle; however, this definition of "automobile club" does not
 2736 include persons, associations, or corporations which are
 2737 organized and operated solely for the purpose of conducting,
 2738 sponsoring, or sanctioning motor vehicle races, exhibitions, or
 2739 contests upon racetracks, or upon racecourses established and
 2740 marked as such for the duration of such particular events. The

2741 words "motor vehicle" used herein have the same meaning as
 2742 defined in chapter 320.

2743 (2) An accidental death and dismemberment policy sold in
 2744 combination with a personal injury protection and property
 2745 damage only policy or an emergency care and property damage only
 2746 policy, as applicable.

2747 (3) Any product not regulated under ~~the provisions of this~~
 2748 insurance code.

2749

2750 This section also applies to premium financing by any insurance
 2751 agent or insurance company under part XVI. The commission shall
 2752 adopt rules to assure disclosure, at the time of sale, of
 2753 coverages financed with personal injury protection or emergency
 2754 care coverage and shall prescribe the form of such disclosure.

2755 Section 45. Subsection (1) of section 627.915, Florida
 2756 Statutes, is amended to read:

2757 627.915 Insurer experience reporting.—

2758 (1) Each insurer transacting private passenger automobile
 2759 insurance in this state shall report certain information
 2760 annually to the office. The information will be due on or before
 2761 July 1 of each year. The information shall be divided into the
 2762 following categories: bodily injury liability; property damage
 2763 liability; uninsured motorist; emergency care coverage or
 2764 personal injury protection benefits; medical payments;
 2765 comprehensive and collision. The information given shall be on
 2766 direct insurance writings in the state alone and shall represent
 2767 total limits data. The information set forth in paragraphs (a)-
 2768 (f) is applicable to voluntary private passenger and Joint

2769 Underwriting Association private passenger writings and shall be
 2770 reported for each of the latest 3 calendar-accident years, with
 2771 an evaluation date of March 31 of the current year. The
 2772 information set forth in paragraphs (g)-(j) is applicable to
 2773 voluntary private passenger writings and shall be reported on a
 2774 calendar-accident year basis ultimately seven times at seven
 2775 different stages of development.

2776 (a) Premiums earned for the latest 3 calendar-accident
 2777 years.

2778 (b) Loss development factors and the historic development
 2779 of those factors.

2780 (c) Policyholder dividends incurred.

2781 (d) Expenses for other acquisition and general expense.

2782 (e) Expenses for agents' commissions and taxes, licenses,
 2783 and fees.

2784 (f) Profit and contingency factors as utilized in the
 2785 insurer's automobile rate filings for the applicable years.

2786 (g) Losses paid.

2787 (h) Losses unpaid.

2788 (i) Loss adjustment expenses paid.

2789 (j) Loss adjustment expenses unpaid.

2790 Section 46. Paragraph (d) of subsection (2) and paragraph
 2791 (d) of subsection (3) of section 628.909, Florida Statutes, are
 2792 amended to read:

2793 628.909 Applicability of other laws.—

2794 (2) The following provisions of the Florida Insurance Code
 2795 shall apply to captive insurers who are not industrial insured
 2796 captive insurers to the extent that such provisions are not

2797 inconsistent with this part:

2798 (d) Sections 627.730-627.7405 or ss. 627.748-627.7491, as
 2799 applicable, when no-fault coverage is provided.

2800 (3) The following provisions of the Florida Insurance Code
 2801 shall apply to industrial insured captive insurers to the extent
 2802 that such provisions are not inconsistent with this part:

2803 (d) Sections 627.730-627.7405 or ss. 627.748-627.7491, as
 2804 applicable, when no-fault coverage is provided.

2805 Section 47. Subsections (2) and (6) and paragraphs (a),
 2806 (c), and (d) of subsection (7) of section 705.184, Florida
 2807 Statutes, are amended to read:

2808 705.184 Derelict or abandoned motor vehicles on the
 2809 premises of public-use airports.-

2810 (2) The airport director or the director's designee shall
 2811 contact the Department of Highway Safety and Motor Vehicles to
 2812 notify that department that the airport has possession of the
 2813 abandoned or derelict motor vehicle and to determine the name
 2814 and address of the owner of the motor vehicle, the insurance
 2815 company insuring the motor vehicle, notwithstanding ~~the~~
 2816 ~~provisions of s. 627.736 or s. 627.7485, as applicable~~, and any
 2817 person who has filed a lien on the motor vehicle. Within 7
 2818 business days after receipt of the information, the director or
 2819 the director's designee shall send notice by certified mail,
 2820 return receipt requested, to the owner of the motor vehicle, the
 2821 insurance company insuring the motor vehicle, notwithstanding
 2822 ~~the provisions of s. 627.736 or s. 627.7485, as applicable~~, and
 2823 all persons of record claiming a lien against the motor vehicle.
 2824 The notice shall state the fact of possession of the motor

2825 vehicle, that charges for reasonable towing, storage, and
 2826 parking fees, if any, have accrued and the amount thereof, that
 2827 a lien as provided in subsection (6) will be claimed, that the
 2828 lien is subject to enforcement pursuant to law, that the owner
 2829 or lienholder, if any, has the right to a hearing as set forth
 2830 in subsection (4), and that any motor vehicle which, at the end
 2831 of 30 calendar days after receipt of the notice, has not been
 2832 removed from the airport upon payment in full of all accrued
 2833 charges for reasonable towing, storage, and parking fees, if
 2834 any, may be disposed of as provided in s. 705.182(2)(a), (b),
 2835 (d), or (e), including, but not limited to, the motor vehicle
 2836 being sold free of all prior liens after 35 calendar days after
 2837 the time the motor vehicle is stored if any prior liens on the
 2838 motor vehicle are more than 5 years of age or after 50 calendar
 2839 days after the time the motor vehicle is stored if any prior
 2840 liens on the motor vehicle are 5 years of age or less.

2841 (6) The airport pursuant to this section or, if used, a
 2842 licensed independent wrecker company pursuant to s. 713.78 shall
 2843 have a lien on an abandoned or derelict motor vehicle for all
 2844 reasonable towing, storage, and accrued parking fees, if any,
 2845 except that no storage fee shall be charged if the motor vehicle
 2846 is stored less than 6 hours. As a prerequisite to perfecting a
 2847 lien under this section, the airport director or the director's
 2848 designee must serve a notice in accordance with subsection (2)
 2849 on the owner of the motor vehicle, the insurance company
 2850 insuring the motor vehicle, notwithstanding ~~the provisions of s.~~
 2851 627.736 or s. 627.7485, as applicable, and all persons of record
 2852 claiming a lien against the motor vehicle. If attempts to notify

2853 the owner, the insurance company insuring the motor vehicle,
2854 notwithstanding ~~the provisions of s. 627.736 or s. 627.7485, as~~
2855 applicable, or lienholders are not successful, the requirement
2856 of notice by mail shall be considered met. Serving of the notice
2857 does not dispense with recording the claim of lien.

2858 (7) (a) For the purpose of perfecting its lien under this
2859 section, the airport shall record a claim of lien which shall
2860 state:

2861 1. The name and address of the airport.

2862 2. The name of the owner of the motor vehicle, the
2863 insurance company insuring the motor vehicle, notwithstanding
2864 ~~the provisions of s. 627.736 or s. 627.7485, as applicable~~, and
2865 all persons of record claiming a lien against the motor vehicle.

2866 3. The costs incurred from reasonable towing, storage, and
2867 parking fees, if any.

2868 4. A description of the motor vehicle sufficient for
2869 identification.

2870 (c) The claim of lien shall be sufficient if it is in
2871 substantially the following form:

2872 CLAIM OF LIEN

2873 State of

2874 County of

2875 Before me, the undersigned notary public, personally appeared
2876, who was duly sworn and says that he/she is the
2877 of, whose address is.....; and that the
2878 following described motor vehicle:

2879 ...(Description of motor vehicle)...

2880 owned by, whose address is, has accrued

2881 \$..... in fees for a reasonable tow, for storage, and for
 2882 parking, if applicable; that the lienor served its notice to the
 2883 owner, the insurance company insuring the motor vehicle
 2884 notwithstanding ~~the provisions of s. 627.736 or s. 627.7485,~~
 2885 Florida Statutes, as applicable, and all persons of record
 2886 claiming a lien against the motor vehicle on, ...(year)....,
 2887 by.....

2888 ...(Signature)...

2889 Sworn to (or affirmed) and subscribed before me this day of
 2890, ...(year)...., by ...(name of person making statement)....

2891 ...(Signature of Notary Public).....(Print, Type, or Stamp
 2892 Commissioned name of Notary Public)...

2893 Personally Known....OR Produced....as identification.

2894

2895 However, the negligent inclusion or omission of any information
 2896 in this claim of lien which does not prejudice the owner does
 2897 not constitute a default that operates to defeat an otherwise
 2898 valid lien.

2899 (d) The claim of lien shall be served on the owner of the
 2900 motor vehicle, the insurance company insuring the motor vehicle,
 2901 notwithstanding ~~the provisions of s. 627.736 or s. 627.7485,~~ as
 2902 applicable, when no-fault coverage is provided, and all persons
 2903 of record claiming a lien against the motor vehicle. If attempts
 2904 to notify the owner, the insurance company insuring the motor
 2905 vehicle notwithstanding ~~the provisions of s. 627.736 or s.~~
 2906 627.7485, as applicable, when no-fault coverage is provided, or
 2907 lienholders are not successful, the requirement of notice by
 2908 mail shall be considered met. The claim of lien shall be so

2909 served before recordation.

2910 Section 48. Paragraphs (a), (b), and (c) of subsection (4)
 2911 of section 713.78, Florida Statutes, are amended to read:

2912 713.78 Liens for recovering, towing, or storing vehicles
 2913 and vessels.—

2914 (4)(a) Any person regularly engaged in the business of
 2915 recovering, towing, or storing vehicles or vessels who comes
 2916 into possession of a vehicle or vessel pursuant to subsection
 2917 (2), and who claims a lien for recovery, towing, or storage
 2918 services, shall give notice to the registered owner, the
 2919 insurance company insuring the vehicle notwithstanding ~~the~~
 2920 ~~provisions of s. 627.736 or s. 627.7485, as applicable,~~ and to
 2921 all persons claiming a lien thereon, as disclosed by the records
 2922 in the Department of Highway Safety and Motor Vehicles or of a
 2923 corresponding agency in any other state.

2924 (b) Whenever any law enforcement agency authorizes the
 2925 removal of a vehicle or vessel or whenever any towing service,
 2926 garage, repair shop, or automotive service, storage, or parking
 2927 place notifies the law enforcement agency of possession of a
 2928 vehicle or vessel pursuant to s. 715.07(2)(a)2., the law
 2929 enforcement agency of the jurisdiction where the vehicle or
 2930 vessel is stored shall contact the Department of Highway Safety
 2931 and Motor Vehicles, or the appropriate agency of the state of
 2932 registration, if known, within 24 hours through the medium of
 2933 electronic communications, giving the full description of the
 2934 vehicle or vessel. Upon receipt of the full description of the
 2935 vehicle or vessel, the department shall search its files to
 2936 determine the owner's name, the insurance company insuring the

2937 vehicle or vessel, and whether any person has filed a lien upon
 2938 the vehicle or vessel as provided in s. 319.27(2) and (3) and
 2939 notify the applicable law enforcement agency within 72 hours.
 2940 The person in charge of the towing service, garage, repair shop,
 2941 or automotive service, storage, or parking place shall obtain
 2942 such information from the applicable law enforcement agency
 2943 within 5 days after the date of storage and shall give notice
 2944 pursuant to paragraph (a). The department may release the
 2945 insurance company information to the requestor notwithstanding
 2946 ~~the provisions of~~ s. 627.736 or s. 627.7485, as applicable.

2947 (c) Notice by certified mail, return receipt requested,
 2948 shall be sent within 7 business days after the date of storage
 2949 of the vehicle or vessel to the registered owner, the insurance
 2950 company insuring the vehicle notwithstanding ~~the provisions of~~
 2951 s. 627.736 or s. 627.7485, as applicable, and all persons of
 2952 record claiming a lien against the vehicle or vessel. It shall
 2953 state the fact of possession of the vehicle or vessel, that a
 2954 lien as provided in subsection (2) is claimed, that charges have
 2955 accrued and the amount thereof, that the lien is subject to
 2956 enforcement pursuant to law, and that the owner or lienholder,
 2957 if any, has the right to a hearing as set forth in subsection
 2958 (5), and that any vehicle or vessel which remains unclaimed, or
 2959 for which the charges for recovery, towing, or storage services
 2960 remain unpaid, may be sold free of all prior liens after 35 days
 2961 if the vehicle or vessel is more than 3 years of age or after 50
 2962 days if the vehicle or vessel is 3 years of age or less.

2963 Section 49. Paragraph (c) of subsection (7), paragraphs
 2964 (a), (b), and (c) of subsection (8), and subsection (9) of
 2965 section 817.234, Florida Statutes, are amended to read:

2966 817.234 False and fraudulent insurance claims.—

2967 (7)

2968 (c) An insurer, or any person acting at the direction of
 2969 or on behalf of an insurer, may not change an opinion in a
 2970 mental or physical report prepared under s. 627.736(7) or s.
 2971 627.7485(7), as applicable, s. ~~627.736(8)~~ or direct the
 2972 physician preparing the report to change such opinion; however,
 2973 this provision does not preclude the insurer from calling to the
 2974 attention of the physician errors of fact in the report based
 2975 upon information in the claim file. Any person who violates this
 2976 paragraph commits a felony of the third degree, punishable as
 2977 provided in s. 775.082, s. 775.083, or s. 775.084.

2978 (8)(a) It is unlawful for any person intending to defraud
 2979 any other person to solicit or cause to be solicited any
 2980 business from a person involved in a motor vehicle accident for
 2981 the purpose of making, adjusting, or settling motor vehicle tort
 2982 claims or claims for personal injury protection or emergency
 2983 care coverage benefits required by s. 627.736 or s. 627.7485, as
 2984 applicable. Any person who violates ~~the provisions of this~~
 2985 paragraph commits a felony of the second degree, punishable as
 2986 provided in s. 775.082, s. 775.083, or s. 775.084. A person who
 2987 is convicted of a violation of this subsection shall be
 2988 sentenced to a minimum term of imprisonment of 2 years.

2989 (b) A person may not solicit or cause to be solicited any
 2990 business from a person involved in a motor vehicle accident by

2991 any means of communication other than advertising directed to
 2992 the public for the purpose of making motor vehicle tort claims
 2993 or claims for personal injury protection or emergency care
 2994 coverage benefits required by s. 627.736 or s. 627.7485, as
 2995 applicable, within 60 days after the occurrence of the motor
 2996 vehicle accident. Any person who violates this paragraph commits
 2997 a felony of the third degree, punishable as provided in s.
 2998 775.082, s. 775.083, or s. 775.084.

2999 (c) A lawyer, health care practitioner as defined in s.
 3000 456.001, or owner or medical director of a clinic required to be
 3001 licensed pursuant to s. 400.9905 may not, at any time after 60
 3002 days have elapsed from the occurrence of a motor vehicle
 3003 accident, solicit or cause to be solicited any business from a
 3004 person involved in a motor vehicle accident by means of in
 3005 person or telephone contact at the person's residence, for the
 3006 purpose of making motor vehicle tort claims or claims for
 3007 personal injury protection or emergency care coverage benefits
 3008 required by s. 627.736 or s. 627.7485, as applicable. Any person
 3009 who violates this paragraph commits a felony of the third
 3010 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 3011 775.084.

3012 (9) A person may not organize, plan, or knowingly
 3013 participate in an intentional motor vehicle crash or a scheme to
 3014 create documentation of a motor vehicle crash that did not occur
 3015 for the purpose of making motor vehicle tort claims or claims
 3016 for personal injury protection or emergency care coverage
 3017 benefits as required by s. 627.736 or s. 627.7485, as
 3018 applicable. Any person who violates this subsection commits a

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3019 felony of the second degree, punishable as provided in s.
 3020 775.082, s. 775.083, or s. 775.084. A person who is convicted of
 3021 a violation of this subsection shall be sentenced to a minimum
 3022 term of imprisonment of 2 years.

3023 Section 50. The Division of Statutory Revision is directed
 3024 to replace the phrase "the effective date of this act" wherever
 3025 it occurs in this act with the date this act becomes a law.

3026 Section 51. Except as otherwise expressly provided in this
 3027 act and except for this section, which shall take effect upon
 3028 this act becoming a law, this act shall take effect October 1,
 3029 2012, and shall apply to policies issued or renewed on or after
 3030 that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 213 Judicial Proceedings
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1890

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary <i>JMC</i>	Bond <i>NB</i>

SUMMARY ANALYSIS

As to foreclosure of real property, the bill:

- Reduces the statute of limitations for deficiency judgments on a foreclosure action from five years to two years.
- Amends the expedited foreclosure process to allow all lienholders to use the procedures, instead of just the mortgagee; reduces the number of hearings from 2 to 1; and prohibits service by publication when using the expedited process unless the property is abandoned.
- Requires the plaintiff in a foreclosure action to provide information to the court upon filing of the case regarding lost, destroyed or stolen promissory notes.
- Allows any party to request a case management conference to expedite the lawsuit.

The bill applies to existing mortgages and to pending cases.

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

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The foreclosure crisis has greatly impacted the economy of the state of Florida. It has also negatively affected the judicial branch, in terms of both funding and caseload.

Foreclosing on a mortgage in Florida is an unusually long process. Florida trails only New York and New Jersey in terms of the length of time between the first foreclosure filing and bank repossession, at 676 days. The national average is less than half that, at 318 days.¹

Courts are struggling with a backlog of foreclosure cases, which courts were not prepared for. In 2005, before the housing market crash, there were only 57,106 foreclosure filings statewide. By 2009, the number of filings exploded to 399,118. Courts did not have the resources to quickly and efficiently deal with this litigation explosion. Due to constitutional and statutory requirements to provide speedy trials to criminal defendants, civil filings take the brunt of any caseload backlog.² There has been a significant recent decline in filings due to problems with title and the robo-signing situation³, with only 123,793 filings through November, 2011, but filings are expected to increase as those issues are worked out by mortgage servicers.⁴

Furthermore, the caseload backlog is not spread evenly across the state. Certain circuits, particularly those located in South Florida, have a much greater percentage of loans in foreclosure than other circuits. At the county level, Miami-Dade has 18.88% of loans in foreclosure compared to only 4.15% in Jefferson County. Put another way, the number of housing units in foreclosure varies from a low of 1 in 5282 to a high of 1 in 148.⁵

Foreclosure Procedure

The foreclosure procedure is governed by statutory process and the rules of civil procedure. It is initiated by the lender or servicer, known as a mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an 'acceleration clause,' which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction. The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint⁶, which must allege that the plaintiff is the present owner and holder of the note and mortgage⁷, contain a copy of the note and mortgage⁸, and allege a statement of default,⁹ along

¹ RealtyTrac, Quarter 2 2011 data, on file with committee.

² Florida Office of the State Courts Administrator, *Summary Reporting System (SRS)*, August 19, 2011.

³ Susan Miller, *RealtyTrac: Robo-signing Scandal Cuts into 2010 Foreclosures*, South Florida Business Journal, January 13, 2011. <http://www.bizjournals.com/southflorida/news/2011/01/13/realtytrac-robo-signing-scandal-cuts.html> (last viewed January 23, 2012).

⁴ Michael Braga, *Going Up: Filings to Foreclose*, Sarasota Herald-Tribune, January 12, 2012.

<http://www.heraldtribune.com/article/20120112/ARCHIVES/201121043/-1/todayspaper?p=all&tc=pgall> (last viewed January 23, 2012).

⁵ The Florida Legislature, Office of Economic and Demographic Research, *Florida: An Overview of Foreclosures*, September 20, 2011.

⁶ See Rule 1.944, Fla. R. Civ. P.

⁷ *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).

⁸ Rule 1.130(a), Fla. R. Civ. P.

⁹ *Siahpoosh v. Nor Props.*, 666 So.2d 988, 989 (Fla. 4th DCA 1996).

with a filing fee¹⁰ and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.¹¹

- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.¹²
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.¹³
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment.¹⁴
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and if he or she finds in the favor of the plaintiff, renders a final judgment.¹⁵
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.¹⁶
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.¹⁷
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, where the second publication must be at least five days prior to the sale.¹⁸
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.¹⁹
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.²⁰
- After 10 days, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure²¹, and the court may, in its discretion, enter a deficiency decree in the amount of the fair market value of the security received and the amount of the debt.²²

Alternative Foreclosure Procedure

Section 702.10, F.S., creates an alternative procedure that is designed to speed up the foreclosure process in uncontested or meritless cases. The following is a brief outline of this alternative foreclosure process:

- After a complaint has been filed, the plaintiff may request an order to show cause for the entry of final judgment and the court must immediately review the complaint.²³
- If the court finds that the complaint is verified, and alleges a proper cause of action, the court must issue an order directing the defending the show cause why a final judgment should not be entered.²⁴
- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication, and no later than 60 days after the date of service.²⁵

¹⁰ The filing fee for foreclosure actions depends on the value of the claim. When the claim is for \$50,000 or less, the fee is \$395; when the claim is over \$50,000 but less than \$250,000, the fee is \$900; and when the claim is \$250,000 or more, the fee is \$1900, according to s. 28.241(1)(d), F.S.

¹¹ Section 48.23, F.S.

¹² Rule 1.070(j), Fla. R. Civ. P. *See also* chs. 48 and 49, F.S.

¹³ Rule 1.040(a)(1), Fla. R. Civ. P.

¹⁴ Rule 1.1510(a), Fla. R. Civ. P.

¹⁵ Section 45.031, F.S.

¹⁶ Section 702.01, F.S.

¹⁷ Section 45.031(1)(a), F.S.

¹⁸ Section 45.031, F.S.

¹⁹ Section 45.031(8), F.S.

²⁰ Section 45.031(8), F.S.

²¹ Section 45.031, F.S.

²² Section 702.06, F.S.

²³ Section 702.10(1), F.S.

²⁴ *Id.* While this appears to create a right to the order to show cause, many courts interpret this subsection to require an initial hearing.

²⁵ Section 702.10(1)(a), F.S.

- The defendant can file defenses by a motion or by sworn of verified answer or appear at the hearing, which prevents entry of a final judgment.²⁶
- The court need not hold a hearing for determination of reasonable attorney fees if the requested fees do not exceed 3% of the principal owed on the note at the time of filing.²⁷
- The court may enter a final judgment if the defendant has waived the right to be heard or has not shown cause not to enter a final judgment.²⁸

Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.²⁹

- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication.³⁰
- The defendant can file defenses by a motion or by sworn of verified answer or appear at the hearing, which prevents entry of a final judgment.³¹
- The court may enter an order requiring payment or an order to vacate if the defendant has waived the right to be heard.³²
- If the court finds that the defendant has not waived the right to be heard, after reviewing affidavits and evidence, the court can determine if the plaintiff is likely to prevail in the foreclosure action, and enter an order requiring the defendant to make the payments or provide another remedy.³³
- The court order must be stayed pending final adjudication of the claims if the defendant posts bond with the court in the amount equal to the unpaid balance of the mortgage.³⁴

Effects of the Bill

Statute of Limitations on Deficiency Judgment

Under current law, a lender has 5 years from the foreclosure sale to file a deficiency action.³⁵ This bill amends s. 95.11, F.S., to provide a two-year statute of limitations for an action to enforce a claim of a deficiency related to a note secured by a mortgage against real property. The limitations period begins on the 11th day after a foreclosure sale or the day after the mortgagee accepts a deed in lieu of foreclosure.

Alternative Foreclosure Procedure

The bill amends s. 701.20, F.S., the alternative foreclosure procedure, with the following changes:

- Any lienholder, not just the mortgagee, may initiate the procedure.
- The court may issue the order to show cause, requiring defendants to show cause for not issuing a final judgment, by reviewing the court file in chambers and without a hearing.
- Provides that service of process by publication is not allowed except as provided in s. 702.11, F.S., the new provision on abandoned property.
- Creates a preponderance of the evidence standard for entry of a final judgment of foreclosure.
- Allows the court to enter a default against a defendant.

²⁶ Section 702.10(1)(b), F.S.

²⁷ Section 702.10(1)(c), F.S.

²⁸ Section 702.10(1)(d), F.S.

²⁹ Section 702.10(2), F.S.

³⁰ Section 702.10(2)(a), F.S.

³¹ Section 702.10(2)(b), F.S.

³² Section 702.10(2)(c), F.S.

³³ Section 702.10(2)(d), F.S.

³⁴ *Id.*

³⁵ Section 95.11(2), F.S.

- Provides that the alternative foreclosure procedure may run simultaneously with other court procedures.
- Allows the court judicial discretion to determine if defenses provide cause to preclude the entry of final judgment.
- Provides that the issuance of a final judgment of foreclosure precludes the need for further hearing by the court.
- Allows the court to extend the time allotted for hearing as required for parties who appear at the initial hearing.
- For non-owner-occupied properties only, provides that the plaintiff may request that the court enter an order directing the defendant to show cause why an order to make payments during the pendency of the proceedings should not be entered.
- Provides a rebuttable presumption that a homestead property is owner-occupied.

The bill also requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity with s. 702.10, F.S.

Expedited Foreclosure of Abandoned Residential Property

The bill creates s. 702.11, F.S., providing for expedited foreclosure of abandoned residential real property. Residential real property is deemed to be abandoned if a process server has made three attempts to locate the occupant and two certain conditions exist. The three attempts must be at least 72 hours apart, and during three different times of the day (before noon, between noon and 6 P.M., and between 6 P.M. and 10 P.M. Each attempt must include physical knocking on the door or ringing of the doorbell, along with other efforts that are normally sufficient to obtain a response from an occupant. Two of the following conditions must exist for the property to be deemed abandoned:

- Windows or entrances to the premises are boarded up or multiple window panes are broken and unrepaired;
- Doors are smashed through, broken off, unhinged, or continuously unlocked.
- Trash or debris has accumulated on the premises.
- The premises are deteriorating and are below or in imminent danger of falling below minimum community standards for public safety and sanitation.
- Interviews with at least two neighbors indicate that the residence has been abandoned.

The process server may provide evidence of the condition of the property to the court.

Any party to the foreclosure of apparently-abandoned property must file a petition seeking to determine the status of the property in order to invoke an expedited foreclosure proceeding. Upon request of the petitioner, the court must issue subpoenas to the utility companies serving the property compelling disclosure of the status of utility status, including whether utilities are turned off and whether outstanding payments have been made. If the court determines the property is abandoned, the plaintiff may use the expedited foreclosure procedures of s. 702.10, F.S., with notice by publication.

Lost, Destroyed or Stolen Notes

The bill creates s. 702.12, F.S., providing legislative intent that the provisions relating to a lost, destroyed or stolen promissory note are intended to expedite the foreclosure process by insuring initial disclosure, rather than modifying existing law relating to standing. Every complaint in a foreclosure proceeding must contain affirmative allegations expressly made by the plaintiff that the plaintiff is the holder of the original note or must allege with specificity the factual basis by which the plaintiff is a person entitled to enforce the note. The plaintiff must file either the original promissory note or certification that the plaintiff is in physical possession of the original note, unless it is lost, destroyed or stolen. In such a case, the complaint must contain an affidavit that details a clear chain of all assignments, sets forth facts showing the plaintiff is entitled to enforce the note, and includes exhibits providing evidence of the acquisition, ownership and possession of the note.

Failure by the plaintiff to comply with this section may result in a court sanction, but does not provide a grounds to set aside a foreclosure sale.

Mandatory Case Management

The bill creates s. 702.13, F.S., providing for case management conferences in foreclosure actions. If all defendants in a mortgage foreclosure case have been served and no defendants have timely filed an answer or other response, the court may enter defaults against nonresponding parties. The court may then direct the plaintiff to file all evidence and proofs necessary for entry of summary judgment of foreclosure or to show cause why such a filing should not be made. The filing of these materials is treated by the court as a motion for summary judgment, and the court may set either a hearing for summary judgment or set the case for trial, in its discretion. After all parties have been served and not less than 48 days after the filing of foreclosure, any party may request a case management conference, where the court must set definite timetables for moving the case forward. The court may grant extensions or stays on showing that the parties are engaged in mediation or good faith loan modification discussions or other settlement, provided the property owner or lender pays applicable condominium, cooperative, or homeowners' association assessments.

The bill provides an effective date of July 1, 2012, and applies to causes of action pending on the effective date of the act. The provisions relating to abandoned residential property and lost, destroyed or stolen notes apply to cases filed on or after July 1, 2012. The provision relating to case management applies to cases pending on the effective date of the act.

B. SECTION DIRECTORY:

Section 1 amends s. 95.11, F.S., relating to statutes of limitations.

Section 2 provides dates of application for section 1 of the bill.

Section 3 amends s. 702.10, F.S., relating to expedited foreclosure procedures.

Section 4 creates s. 702.11, F.S., relating to expedited foreclosure of abandoned residential real property.

Section 5 creates s. 702.12, F.S., relating to lost, destroyed or stolen promissory notes.

Section 6 creates s. 702.13, F.S., relating to defaults and case management conferences in foreclosure actions.

Section 7 provides dates of application for section 3, 4, 5, and 6 of the bill.

Section 8 provides legislative findings that the provisions of the bill are remedial in nature.

Section 9 provides an effective date of July 1, 2012.

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 direct economic 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 appear to create a need for rulemaking. The bill requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity to s. 702.10, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to mortgage foreclosures; amending s.
3 95.11, F.S.; reducing the limitations period for
4 commencing an action to enforce a claim of a
5 deficiency judgment subsequent to a foreclosure
6 action; providing for application to existing causes
7 of action; amending s. 702.10, F.S.; expanding the
8 class of persons authorized to move for expedited
9 foreclosure; creating a definition; providing
10 requirements and procedures with respect to an order
11 directed to defendants to show cause why a final
12 judgment of foreclosure should not be entered;
13 providing that certain failures by a defendant to make
14 certain filings or to make certain appearances may
15 have specified legal consequences; requiring the court
16 to enter a final judgment of foreclosure and order a
17 foreclosure sale under certain circumstances; amending
18 a restriction on a mortgagee to request a court to
19 order a mortgagor defendant to make payments or to
20 vacate the premises during an action to foreclose on
21 residential real estate to provide that the
22 restriction applies to all but owner-occupied
23 residential property; providing a presumption
24 regarding owner-occupied property; requesting the
25 Supreme Court to promulgate rules and forms for use in
26 expedited foreclosure proceedings; creating s. 702.11,
27 F.S.; establishing expedited foreclosure proceedings
28 for abandoned residential real property and procedures

29 and requirements with respect thereto; creating s.
 30 702.12, F.S.; requiring certain documents to be filed
 31 contemporaneously with the filing of an initial
 32 complaint for foreclosure; providing legislative
 33 intent; providing that failure to file such documents
 34 does not affect title to property subsequent to a
 35 foreclosure sale; creating s. 702.13, F.S.; providing
 36 for case management conferences in foreclosure
 37 proceedings; providing that a court may not order a
 38 continuance in a mortgage foreclosure proceeding
 39 unless the owner pays assessments due to a
 40 condominium, cooperative or homeowners association;
 41 providing application of this act to existing cases
 42 and causes of action; providing application to
 43 existing notes and mortgages; providing an effective
 44 date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Paragraph (b) of subsection (2) of section
 49 95.11, Florida Statutes, is amended, and a new paragraph (h) is
 50 added to that subsection, to read:

51 95.11 Limitations other than for the recovery of real
 52 property.—Actions other than for recovery of real property shall
 53 be commenced as follows:

54 (2) WITHIN FIVE YEARS.—

55 (b) A legal or equitable action on a contract, obligation,
 56 or liability founded on a written instrument, except for an

57 | action to enforce a claim against a payment bond, which shall be
 58 | governed by the applicable provisions of ss. 255.05(10) and
 59 | 713.23(1)(e), and except for an action for a deficiency
 60 | judgment, which shall be governed by paragraph (4)(h).

61 | (4) WITHIN TWO YEARS.—

62 | (h) An action to enforce a claim of a deficiency related
 63 | to a note secured by a mortgage against real property. The
 64 | limitations period shall commence on the eleventh day after the
 65 | foreclosure sale or the day after the mortgagee accepts a deed
 66 | in lieu of foreclosure.

67 | Section 2. The amendment to s. 95.11, Florida Statutes,
 68 | made by this act shall apply to any action commenced on or after
 69 | July 1, 2012, regardless of when the cause of action accrued,
 70 | except that any action that would not have been barred under s.
 71 | 95.11(2)(b), Florida Statutes, prior to the amendments made by
 72 | this act may be commenced no later than 5 years after the action
 73 | accrued and in no event later than July 1, 2014, and if it is
 74 | not commenced by that date is barred by the amendments made by
 75 | this act.

76 | Section 3. Section 702.10, Florida Statutes, is amended to
 77 | read:

78 | 702.10 Order to show cause; entry of final judgment of
 79 | foreclosure; payment during foreclosure.—

80 | ~~(1) After a complaint in a foreclosure proceeding has been~~
 81 | ~~filed,~~ Any lienholder the mortgagee may request an order to show
 82 | cause for the entry of final judgment in a foreclosure action.
 83 | For purposes of this section, the term "lienholder" includes the
 84 | plaintiff and any defendant to the action who holds a lien

85 encumbering the property or any defendant who, by virtue of its
 86 status as a condominium association, cooperative association, or
 87 homeowners association, may file a lien against the real
 88 property subject to foreclosure. Upon filing, and the court
 89 shall immediately review the request and the court file in
 90 chambers and without a hearing ~~complaint~~. If, upon examination
 91 of the court file ~~complaint~~, the court finds that the complaint
 92 is verified, complies with s. 702.12, and alleges a cause of
 93 action to foreclose on real property, the court shall promptly
 94 issue an order directed to the other parties named in the action
 95 ~~defendant~~ to show cause why a final judgment of foreclosure
 96 should not be entered.

97 (a) The order shall:

98 1. Set the date and time for a hearing on the order to
 99 show cause. ~~However,~~ The date for the hearing may not be ~~set~~
 100 sooner than 20 days after the service of the order. ~~When service~~
 101 ~~is obtained by publication, the date for the hearing may not be~~
 102 ~~set sooner than 30 days after the first publication.~~ The hearing
 103 must be held within 90 ~~60~~ days after the date of service.
 104 Failure to hold the hearing within such time does not affect the
 105 validity of the order to show cause or the jurisdiction of the
 106 court to issue subsequent orders.

107 2. Direct the time within which service of the order to
 108 show cause and the complaint must be made upon the defendant.

109 3. State that the filing of defenses by a motion,
 110 responsive pleading, affidavits or other papers ~~or by a verified~~
 111 ~~or sworn answer at or before the hearing to show cause~~ may
 112 constitute ~~constitutes~~ cause for the court not to enter the

113 ~~attached~~ final judgment.

114 4. State that any ~~the~~ defendant has the right to file
 115 affidavits or other papers ~~at~~ before the time of the hearing to
 116 show cause and may appear personally or by way of an attorney at
 117 the hearing.

118 5. State that, if any ~~the~~ defendant files defenses by a
 119 motion, a verified or sworn answer, affidavits, or other papers
 120 or appears personally or by way of an attorney at the time of
 121 the hearing, the hearing time shall ~~may~~ be used to hear and
 122 consider the defendant's motion, answer, affidavits, other
 123 papers, and other evidence and argument as may be presented by
 124 any defendant or any defendant's counsel, and the court shall
 125 then make a determination as to whether a preponderance of the
 126 evidence and the arguments presented support entry of a final
 127 judgment of foreclosure, and if so, the court shall enter a
 128 final judgment of foreclosure ordering the clerk of the court to
 129 conduct a foreclosure sale.

130 6. State that, if a ~~the~~ defendant fails to appear at the
 131 hearing to show cause or fails to file defenses by a motion or
 132 by a verified or sworn answer or files an answer not contesting
 133 the foreclosure, such ~~the~~ defendant may be considered to have
 134 waived the right to a hearing, and in such case, the court may
 135 enter a default against such defendant and, if appropriate, a
 136 final judgment of foreclosure ordering the clerk of the court to
 137 conduct a foreclosure sale.

138 7. State that if the mortgage provides for reasonable
 139 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~
 140 fees do not exceed 3 percent of the principal amount owed at the

141 | time of filing the complaint, it is unnecessary for the court to
 142 | hold a hearing or adjudge the requested attorney ~~attorney's~~ fees
 143 | to be reasonable.

144 | 8. Attach the form of the proposed final judgment of
 145 | foreclosure the movant requests the court to will enter, ~~if the~~
 146 | ~~defendant waives the right to be heard~~ at the hearing on the
 147 | order to show cause. The form may contain blanks for the court
 148 | to enter the amounts due.

149 | 9. Require the party seeking final judgment ~~mortgagee~~ to
 150 | serve a copy of the order to show cause on the other parties ~~the~~
 151 | ~~mortgager~~ in the following manner:

152 | a. If a party ~~the mortgager~~ has been served with the
 153 | complaint and original process, or the other party is the
 154 | plaintiff in the action, service of the order to show cause on
 155 | that party ~~order~~ may be made in the manner provided in the
 156 | Florida Rules of Civil Procedure.

157 | b. If a defendant ~~the mortgager~~ has not been served with
 158 | the complaint and original process, the order to show cause,
 159 | together with the summons and a copy of the complaint, shall be
 160 | served on the party ~~mortgager~~ in the same manner as provided by
 161 | law for original process.

162 | c. Service of process by publication may not be used
 163 | except as provided in s. 702.11.

164 |
 165 | Any final judgment of foreclosure entered under this subsection
 166 | is for in rem relief only. Nothing in this subsection shall
 167 | preclude the entry of a deficiency judgment where otherwise
 168 | allowed by law. It is the intent of the legislature that this

169 alternative procedure may run simultaneously with other court
 170 procedures.

171 (b) The right to be heard at the hearing to show cause is
 172 waived if a ~~the~~ defendant, after being served as provided by law
 173 with an order to show cause, engages in conduct that clearly
 174 shows that such ~~the~~ defendant has relinquished the right to be
 175 heard on that order. Such ~~The~~ defendant's failure to file
 176 defenses by a motion, or by a sworn or verified answer,
 177 affidavits, or other papers or to appear personally or by way of
 178 an attorney at the hearing duly scheduled on the order to show
 179 cause presumptively constitutes conduct that clearly shows that
 180 such ~~the~~ defendant has relinquished the right to be heard. If a
 181 defendant files defenses by a motion, ~~or by~~ a verified or sworn
 182 answer, affidavits, or other papers at or before the hearing,
 183 such action may constitute ~~constitutes~~ cause and may preclude
 184 ~~precludes~~ the entry of a final judgment at the hearing to show
 185 cause.

186 (c) In a mortgage foreclosure proceeding, when a final
 187 ~~default~~ judgment of foreclosure has been entered against the
 188 mortgagor and the note or mortgage provides for the award of
 189 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the
 190 court to hold a hearing or adjudge the requested attorney
 191 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3
 192 percent of the principal amount owed on the note or mortgage at
 193 the time of filing, even if the note or mortgage does not
 194 specify the percentage of the original amount that would be paid
 195 as liquidated damages.

196 (d) If the court finds that all defendants have ~~the~~

197 ~~defendant has~~ waived the right to be heard as provided in
 198 paragraph (b), the court shall promptly enter a final judgment
 199 of foreclosure without the need for further hearing provided the
 200 plaintiff has shown entitlement to a final judgment. If the
 201 court finds that any ~~the~~ defendant has not waived the right to
 202 be heard on the order to show cause, the court shall then
 203 determine whether there is cause not to enter a final judgment
 204 of foreclosure. If the court determines that a preponderance of
 205 the evidence and the arguments presented support entry of a
 206 final judgment of foreclosure, the court shall enter a final
 207 judgment of foreclosure ordering the clerk of the court to
 208 conduct a foreclosure sale ~~finds that the defendant has not~~
 209 ~~shown cause, the court shall promptly enter a judgment of~~
 210 ~~foreclosure.~~ If the time allotted for the hearing is
 211 insufficient, the court may announce at the hearing a date and
 212 time for the continued hearing. Only the parties who appear,
 213 individually or through counsel, at the initial hearing need be
 214 notified of the date and time of the continued hearing.

215 (2) This subsection shall not apply to foreclosure of an
 216 owner-occupied residence. As part of any other ~~In an~~ action for
 217 foreclosure, and in addition to any other relief that the court
 218 may award ~~other than residential real estate, the plaintiff the~~
 219 ~~mortgagee~~ may request that the court enter an order directing
 220 the mortgagor defendant to show cause why an order to make
 221 payments during the pendency of the foreclosure proceedings or
 222 an order to vacate the premises should not be entered.

223 (a) The order shall:

224 1. Set the date and time for hearing on the order to show

225 cause. However, the date for the hearing may ~~shall~~ not be set
 226 sooner than 20 days after the service of the order. If ~~Where~~
 227 service is obtained by publication, the date for the hearing may
 228 ~~shall~~ not be set sooner than 30 days after the first
 229 publication.

230 2. Direct the time within which service of the order to
 231 show cause and the complaint shall be made upon each ~~the~~
 232 defendant.

233 3. State that a ~~the~~ defendant has the right to file
 234 affidavits or other papers at the time of the hearing and may
 235 appear personally or by way of an attorney at the hearing.

236 4. State that, if a ~~the~~ defendant fails to appear at the
 237 hearing to show cause and fails to file defenses by a motion or
 238 by a verified or sworn answer, ~~the~~ defendant is ~~may be~~ deemed to
 239 have waived the right to a hearing and in such case the court
 240 may enter an order to make payment or vacate the premises.

241 5. Require the movant ~~mortgagee~~ to serve a copy of the
 242 order to show cause on the mortgagor in the following manner:

243 a. If a defendant ~~the mortgagor~~ has been served with the
 244 complaint and original process, service of the order may be made
 245 in the manner provided in the Florida Rules of Civil Procedure.

246 b. If a defendant ~~the mortgagor~~ has not been served with
 247 the complaint and original process, the order to show cause,
 248 together with the summons and a copy of the complaint, shall be
 249 served on the mortgagor in the same manner as provided by law
 250 for original process.

251 (b) The right of a defendant to be heard at the hearing to
 252 show cause is waived if the defendant, after being served as

253 provided by law with an order to show cause, engages in conduct
 254 that clearly shows that the defendant has relinquished the right
 255 to be heard on that order. A ~~The~~ defendant's failure to file
 256 defenses by a motion or by a sworn or verified answer or to
 257 appear at the hearing duly scheduled on the order to show cause
 258 presumptively constitutes conduct that clearly shows that the
 259 defendant has relinquished the right to be heard.

260 (c) If the court finds that a ~~the~~ defendant has waived the
 261 right to be heard as provided in paragraph (b), the court may
 262 promptly enter an order requiring payment in the amount provided
 263 in paragraph (f) or an order to vacate.

264 (d) If the court finds that the mortgagor has not waived
 265 the right to be heard on the order to show cause, the court
 266 shall, at the hearing on the order to show cause, consider the
 267 affidavits and other showings made by the parties appearing and
 268 make a determination of the probable validity of the underlying
 269 claim alleged against the mortgagor and the mortgagor's
 270 defenses. If the court determines that the plaintiff mortgagee
 271 is likely to prevail in the foreclosure action, the court shall
 272 enter an order requiring the mortgagor to make the payment
 273 described in paragraph (e) to the mortgagee and provide for a
 274 remedy as described in paragraph (f). However, the order shall
 275 be stayed pending final adjudication of the claims of the
 276 parties if the mortgagor files with the court a written
 277 undertaking executed by a surety approved by the court in an
 278 amount equal to the unpaid balance of the lien being foreclosed
 279 ~~the mortgage on the property~~, including all principal, interest,
 280 unpaid taxes, and insurance premiums paid by a ~~the~~ mortgagee.

281 (e) If ~~In the event~~ the court enters an order requiring
 282 the mortgagor to make payments to the mortgagee, payments shall
 283 be payable at such intervals and in such amounts provided for in
 284 the mortgage instrument before acceleration or maturity. The
 285 obligation to make payments pursuant to any order entered under
 286 this subsection shall commence from the date of the motion filed
 287 under this section hereunder. The order shall be served upon the
 288 mortgagor no later than 20 days before the date specified for
 289 the first payment. The order may permit, but may ~~shall~~ not
 290 require, the plaintiff mortgagee to take all appropriate steps
 291 to secure the premises during the pendency of the foreclosure
 292 action.

293 (f) If ~~In the event~~ the court enters an order requiring
 294 payments, the order shall also provide that the plaintiff is
 295 ~~mortgagee shall be~~ entitled to possession of the premises upon
 296 the failure of the mortgagor to make the payment required in the
 297 order unless at the hearing on the order to show cause the court
 298 finds good cause to order some other method of enforcement of
 299 its order.

300 (g) All amounts paid pursuant to this section shall be
 301 credited against the mortgage obligation in accordance with the
 302 terms of the loan documents; ~~provided, however, that any~~
 303 payments made under this section do ~~shall~~ not constitute a cure
 304 of any default or a waiver or any other defense to the mortgage
 305 foreclosure action.

306 (h) Upon the filing of an affidavit with the clerk that
 307 the premises have not been vacated pursuant to the court order,
 308 the clerk shall issue to the sheriff a writ for possession which

309 shall be governed by the provisions of s. 83.62.

310 (i) For purposes of this section, there is a rebuttable
311 presumption that a residential property for which a homestead
312 exemption for taxation was granted according to the certified
313 rolls of the latest assessment by the county property appraiser,
314 before the filing of the foreclosure action, is an owner-
315 occupied residential property.

316 (3) The Supreme Court is requested to amend the Rules of
317 Civil Procedure to provide for expedited foreclosure proceedings
318 in conformity with this section. The Supreme Court is requested
319 to develop and publish forms for use under this section.

320 Section 4. Section 702.11, Florida Statutes, is created to
321 read:

322 702.11 Expedited foreclosure of abandoned residential real
323 property.-

324 (1) As used in this section, the term "abandoned
325 residential real property" means residential real property that
326 is deemed abandoned upon a showing that:

327 (a) A duly licensed process server has made at least three
328 attempts to locate an occupant of the residential real property.
329 The attempts must have been made at least 72 hours apart, and at
330 least one of such attempts must have been made before 12:00
331 p.m., between 12:00 p.m. and 6:00 p.m., and between 6:00 p.m.
332 and 10:00 p.m. Each attempt must include physically knocking or
333 ringing at the door of the residential real property and such
334 other efforts as are normally sufficient to obtain a response
335 from an occupant. The process server must have no business
336 affiliation with the owner or servicer of any mortgage on the

337 residential real property or with the attorney or law firm
 338 representing such owner or servicer.

339 (b) Two or more of the following conditions appear:

340 1. Windows or entrances to the premises are boarded up or
 341 closed off or multiple window panes are broken and unrepaired.

342 2. Doors to the premises are smashed through, broken off,
 343 unhinged, or continuously unlocked.

344 3. Rubbish, trash, or debris has accumulated on the
 345 mortgaged premises.

346 4. The premises are deteriorating and are below or in
 347 imminent danger of falling below minimum community standards for
 348 public safety and sanitation.

349 5. Interviews with at least two neighbors in at least two
 350 different households indicate that the residence has been
 351 abandoned. The neighbors must be adjoining, across the street in
 352 view of the home, or across the hall in a condominium or
 353 cooperative.

354
 355 The process server making attempts to locate an occupant of the
 356 residential real property may provide, by affidavit and
 357 photographic or other documentation, evidence of the condition
 358 of the residential real property.

359 (2) (a) Any party to a foreclosure action regarding real
 360 property appearing to be abandoned must file a petition before
 361 the court seeking to determine the status of the residential
 362 real property and to invoke an expedited foreclosure proceeding
 363 relating to the property. Upon the filing of an affidavit of
 364 diligent search and inquiry and the affidavit or documentary

365 evidence set forth in subsection (1), the clerk shall, upon
 366 request of the petitioner, issue subpoenas to electrical and
 367 water utilities serving the residential real property commanding
 368 disclosure of the status of utility service to the subject
 369 property, including whether utilities are currently turned off
 370 and whether all outstanding utility payments have been made and,
 371 if so, by whom.

372 (b) If, after review of the response of the utility
 373 companies to the subpoenas and all other matters of record, the
 374 court determines the property to have been abandoned, the party
 375 entitled to enforce the note and mortgage encumbering the
 376 residential real property shall be entitled to foreclose the
 377 mortgage using the expedited mortgage foreclosure procedures set
 378 forth in s. 702.10 upon service by publication. However, service
 379 must be made on associations holding liens for dues and
 380 assessments and all other junior lienholders as required by law.

381 Section 5. Section 702.12, Florida Statutes, is created to
 382 read:

383 702.12 Elements of foreclosure complaint; lost, destroyed,
 384 or stolen note affidavit.—The complaint in a foreclosure action
 385 alleging breach of a promissory note secured by a mortgage must
 386 contain affirmative allegations expressly made by the plaintiff
 387 at the time the proceeding is commenced that the plaintiff is
 388 the holder of the original note secured by the mortgage or must
 389 allege with specificity the factual basis by which the plaintiff
 390 is a person entitled to enforce the note under s. 673.3011 or
 391 under other applicable law. When a party has been delegated the
 392 authority to institute a mortgage foreclosure action on behalf

393 of the holder of the note, the complaint shall describe the
 394 authority of the plaintiff and identify, with specificity, the
 395 document that grants the plaintiff the authority to act on
 396 behalf of the holder of the note.

397 (1) Unless the complaint includes a count to enforce a
 398 lost, destroyed, or stolen instrument, the plaintiff shall cause
 399 to be filed with the court, contemporaneously with and as a
 400 condition precedent to the filing of the complaint for
 401 foreclosure, either:

402 (a) The original promissory note; or
 403 (b) Certification, under penalty of perjury, that the
 404 plaintiff is in physical possession of the original promissory
 405 note. Such certification must set forth the physical location of
 406 the note, the name and title of the individual giving the
 407 certification, and the name of the person who personally
 408 verified such physical possession and the time and date on which
 409 possession was verified. Correct copies of the note and all
 410 allonges thereto shall be attached to the certification. The
 411 original note shall then be filed with the court prior to the
 412 entry of any judgment of foreclosure or judgment on such note.
 413 However, if the real property is in two or more jurisdictions
 414 and the original note has been filed with the clerk in another
 415 jurisdiction, the court may accept any competent proof of such
 416 note filed in the other jurisdiction.

417 (2) When the complaint includes a count to enforce a lost,
 418 destroyed, or stolen instrument, an affidavit executed under
 419 penalty of perjury shall be attached to the complaint. The
 420 affidavit shall:

421 (a) Detail a clear chain of all assignments for the
 422 promissory note that is the subject of the action.

423 (b) Set forth facts showing that the plaintiff is entitled
 424 to enforce a lost, destroyed, or stolen instrument pursuant to
 425 s. 673.3091.

426 (c) Include as exhibits to the affidavit such copies of
 427 the note and allonges thereto, assignments of mortgage, audit
 428 reports showing physical receipt of the original note, or other
 429 evidence of the acquisition, ownership, and possession of the
 430 note as may be available to the plaintiff.

431 (3) If the foreclosure case is dismissed without prejudice
 432 and without completion of a foreclosure sale, upon request of
 433 the plaintiff the clerk must return the original promissory note
 434 to the plaintiff without need for further order of the court.

435 (4) The legislature intends that the requirements of this
 436 section are to expedite the foreclosure process by ensuring
 437 initial disclosure of a plaintiff's status and the facts
 438 supporting that status and thereby ensuring the availability of
 439 documents necessary to the prosecution of the case. This section
 440 shall not be interpreted to modify existing law regarding
 441 standing or real parties in interest. The court may sanction the
 442 plaintiff for failure to comply with this section, but any
 443 noncompliance with this section shall not affect the validity of
 444 a foreclosure sale or title to real property subsequent to a
 445 foreclosure sale.

446 Section 6. Section 702.13, Florida Statutes, is created to
 447 read:

448 702.13 Defaults and case management conferences in
 449 foreclosure actions.—

450 (1) In any mortgage foreclosure case in which all
 451 defendants have been served; and the defendants have failed to
 452 timely file an answer or other response denying, contesting, or
 453 asserting defenses to the plaintiff's entitlement to the
 454 foreclosure, the court, on its own motion or motion of any
 455 party, may enter defaults against nonresponding parties in
 456 accordance with the Florida Rules of Civil Procedure.
 457 Thereafter, the court shall direct the plaintiff in the
 458 foreclosure action to file all affidavits, certifications, and
 459 proofs necessary or appropriate for the entry of a summary
 460 judgment of foreclosure within a time certain or show cause why
 461 such a filing should not be made. The filing of these materials
 462 shall be construed as a motion for summary judgment, and the
 463 court may enter final summary judgment or set the case for trial
 464 in accord with its sound judicial discretion. This subsection
 465 does not restrict the authority of the court to set aside a
 466 default or a judgment granted thereon pursuant to the Florida
 467 Rules of Civil Procedure.

468 (2) After all parties have been served and not earlier
 469 than 48 days after the filing of the foreclosure case, any party
 470 may request a case management conference at which the court
 471 shall set definite timetables for moving the case forward. If
 472 any other hearings are set in the case, the case management
 473 conference shall be conducted at the same time as the scheduled
 474 case. At the conference, the court may grant extensions or
 475 stays in the proceedings on a showing that the plaintiff and

476 property owner defendant are engaged in mediation or good faith
 477 negotiations with regard to a loan modification or other
 478 settlement only if the property owner pays, or the lender agrees
 479 to pay, applicable condominium, cooperative, or homeowners'
 480 association assessments coming due after the entry of the
 481 extension or stay and keeping such assessments paid current
 482 through the conclusion of the foreclosure action.

483 Section 7. The amendments to ss. 702.10, Florida Statutes,
 484 and the creation of s. 702.13, Florida Statutes, are remedial in
 485 nature and shall apply to causes of action pending on the
 486 effective date of this act. Sections 702.11 and 702.12, Florida
 487 Statutes, created by this act, apply to cases filed on or after
 488 July 1, 2012.

489 Section 8. The legislature finds that the provisions of
 490 this act are remedial in nature. Accordingly, it is the intent
 491 of the legislature that the provisions of this act shall apply
 492 to all mortgages encumbering real property and all promissory
 493 notes secured by a mortgage, whether executed before or after
 494 the effective date of this act.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 897 Construction Liens and Bonds

SPONSOR(S): Moraitis

TIED BILLS: None IDEN./SIM. BILLS: SB 1202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad <i>DL</i>	Bond <i>YTB</i>
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In Florida, "surety insurance" is defined to include both payment and performance bonds. A payment bond guarantees that the contractor will pay certain subcontractors, laborers, and material suppliers. A performance bond protects the owner from financial loss should the contractor fail to perform the contract in accordance to its terms and conditions. Current law requires any person who enters into a formal contract over \$100,000 with the state, a county, a city, a political subdivision, or other public authority for the construction, completion, or repair of a public building, to deliver a payment and performance bond issued by a state-authorized surety insurer to the public owner.

The bill:

- Requires the surety's bond number to be listed on the front page of the bond;
- Specifies that the duration of a bond cannot be limited;
- Replaces mailing by clerk of court with service by the contractor who records a notice of contest of claim against the payment bond; and
- Gives claimants additional time to serve required notices or file suit when the bond is not recorded or otherwise provided.

A construction lien is an equitable device designed to protect individuals who enhance an owner's property and who are not in direct privity with the owner, such as laborers and suppliers, who remain unpaid after the owner has paid the general contractor. Under current law, contractors cannot place a lien on public or state owned lands and buildings to secure payment for construction on public buildings and land. If a private owner and a contractor wish to exempt out of the construction lien provision, the owner can require the contractor to furnish payment bond instead.

The bill:

- Requires that all lienors including those hired directly by the owner must be served with a notice of termination of a notice of commencement;
- Provides additional information (i.e. description of the project) which must be included in a demand for a copy of contract or statements of account;
- Updates various service provisions;
- Makes changes to mirror proposed changes related to bonds; and
- Makes various grammatical and stylistic changes.

The effective date of the bill is October 1, 2012.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In Florida, "surety insurance" is defined to include both payment and performance bonds.¹ A payment bond guarantees that the contractor will pay certain subcontractors, laborers, and material suppliers.² A performance bond protects the owner from financial loss should the contractor fail to perform the contract in accordance to its terms and conditions.³

These types of bonds involve a surety company that is paid a premium by a principal (i.e., general contractor) and agrees to stand in the place of the principal in the event of default to either the performance or payment of the contract.⁴ Unlike customary two-party insurance agreements, which involve the insurer and the insured, a surety agreement is a tripartite agreement that consists of:

- The obligee, the person purchasing the performance in a performance bond.
- The principal (i.e., the contractor).
- The surety, who provides the bond to protect against the principal's default.

Payment Bonds for Public Projects

Section 255.05 F.S., requires any person who enters into a formal contract over \$100,000 with the state, a county, a city, a political subdivision, or other public authority for the construction, completion, or repair of a public building, to deliver a payment and performance bond with a state authorized surety insurer to the public owner.⁵ Pursuant to s. 225.05(1)(a), F.S., the following information must be provided on the first page of a payment or performance bond:

- The name, principal business address, and the phone number of the contractor, surety, and owner of the property being improved and, if different from the owner, the contracting public entity.
- The contract number assigned by the contracting public entity.
- A description of the project being improved that is sufficient to identify it (i.e., a legal description or the property's street address) and a general description of the improvement.⁶

Section 225.05(2)(a)2., F.S., requires a claimant who is not in privity with the contractor and who has not received payment for his or her labor, services, or materials to provide written notice to both the contractor and the surety stating that he or she intends to make a claim against the bond for payment. The statute provides a "Notice of Contest of Claim Against Payment Bond" form.

No performance or payment bond is required for state contracts that are \$100,000 or less. In addition, if a state project is between \$100,000 and \$200,000, a state agency can exempt the contractor from the bond requirement pursuant to delegated authority from the Secretary of the Department of Management Services.⁷

¹ Section 624.606(1)(a), F.S.

² See Black's Law Dictionary (9th ed. 2009), bond.

³ See Black's Law Dictionary (9th ed. 2009), performance bond.

⁴ Toomey, Daniel and Tamara McNulty, *Surety Bonds: A Basic User's Guide for Payment Bond Claimants and Obligees*, 22 Construction Lawyer 5 (Winter 2002) (American Bar Association 2002).

⁵ See s. 255.05, F.S.

⁶ Section 255.05(1)(a), F.S.

⁷ *Id.*

The bill:

- Requires the surety's bond number to be listed on the front page of the bond;
- Specifies that the duration of a bond cannot be limited;⁸
- Replaces mailing by clerk of court with service by the contractor who records a notice of contest of claim against the payment bond; and
- Gives claimants additional time to serve required notices or file suit when the bond is not recorded or otherwise provided. Specifically, it provides that if the payment bond is not recorded before commencement of construction or a claimant is not otherwise notified in writing of the existence of the bond, the time periods for the claimant to serve any required notices or file suit on the bond shall run from the date the claimant is notified in writing of the bond's existence.⁹

Florida Construction Lien Law

Chapter 713, F.S., governs construction liens. A construction lien¹⁰ is an equitable device designed to protect individuals who enhance an owner's property and who are not in direct privity with the owner, such as laborers and suppliers, who remain unpaid after the owner has paid the general contractor.¹¹ Under current law, contractors cannot place a lien on public or state owned lands and buildings to secure payment for construction on public buildings and land. If an owner and a contractor wish to exempt out of the construction lien provision, s. 713.02(6), F.S., provides that an owner may require a contractor to furnish a payment bond under s. 255.05, F.S., instead.

The construction lien law protects subcontractors, sub-subcontractors, laborers, and suppliers of materials by allowing them to place a lien to ensure payment on the property receiving their services. Another purpose of lien law is to protect owners by requiring subcontractors to provide a notice of possible liens, thereby preventing double payments to contractors and subcontractors, material suppliers, or laborers for the same services or materials.¹²

The construction lien law requires various notices, demands, and requests to be provided in writing to the homeowner, contractor, subcontractor, lender, and building officials. It requires that the notices, demands, and requests be in a statutory form. The following notices are required by the act: Notice of Commencement,¹³ Notice to Owner, Claim of Lien,¹⁴ Notice of Termination,¹⁵ Waiver and Release of

⁸ This provision prevents a situation where a bond terminates prior to completion, the project goes upside-down, and claims against the bond cannot be paid due to expiration of the bond.

⁹ This provision is similar to language in s. 713.23(c), F.S., governing liens:

If a notice of commencement is not recorded, or a reference to the bond is not given in the notice of commencement, and in either case if the lienor not in privity with the contractor is not otherwise notified in writing of the existence of the bond, the lienor not in privity with the contractor shall have 45 days from the date the lienor is notified of the existence of the bond within which to serve the notice.

¹⁰ The term "lien" is not defined in ch. 713, F.S., but can be found elsewhere in statute to mean "a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien." See ss. 726.102(8) and 727.103(9), F.S.

¹¹ *Stunkel v. Gazebo Landscaping Design, Inc.*, 660 So.2d 623 (Fla. 1995). See also *Hiers v. Thomas*, 458 So.2d 322 (Fla. 2nd DCA 1984).

¹² See *Trytek v. Gale Indus., Inc.*, 3 So.3d 1194 (Fla. 2009) ("The dual purpose of the lien law in protecting both the laborer and owner seems to evidence a legislative intent to emphasize fairness and equity in actions brought pursuant to the lien law.")

¹³ Section 713.13, F.S. "Though the Notice of Commencement was originally required to trigger a commencement date from which to measure time limitations under the Mechanic's Lien Law, the information contained in the Notice of Commencement provides all the details necessary to complete a Notice to Owner." *MHB Const. Servs., L.L.C. v. RM-NA HB Waterway Shoppes, L.L.C.*, 74 So.3d 587, 589 (Fla. 4th DCA 2011).

¹⁴ Section 713.08, F.S.

¹⁵ Section 713.132, F.S.

Lien,¹⁶ Notice of Contest of Lien,¹⁷ Contractor's Final Payment Affidavit,¹⁸ and Demands of Written Statement of Account.¹⁹

Notice of Termination

Under current law, an owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination (NOT). The statute lists information that must be included in the NOT. For instance, the notice must contain a statement that:

A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination on the contractor and *on each lienor who has given notice.*²⁰

The bill provides that all lienors, including those hired directly by the owner or in privity with the owner, must be served with a NOT of a notice of commencement.

Demand for Copy of Contract and Statements of Account

A copy of the lienor's or owner's contract and a statement of the amount due must be provided upon written demand of an owner or lienor contracting or employed by the other party, at the expense of the demanding party.²¹ A request for a sworn statement of account must be in accordance to the statutory format prescribed in s. 713.16(3), F.S. Failure to provide such information within 30 days or furnishing a false or fraudulent statement may result in a loss of that person's right to recover under the lien or attorneys fees.²² An owner may serve in writing a demand of any lienor for a written statement under oath of his or her account showing the nature of the labor and services performed and to be performed, materials furnished, the amount paid on account to date, and the amount due as of the date of the statement by the lienor. Any such demand to a lienor must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to owner served by such lienor.

The bill provides that any written demand to a lienor must include a description of the project, including the names of the owner, the contractor, and the lienor's customer — as set forth in the lienor's notice to owner — sufficient for the lienor to properly identify the account in question. It makes changes to the form provided in statute and to other provisions in statute accordingly.

In addition, the bill eliminates the requirement that a lienor record a claim of lien prior to making a demand. This would allow a lienor to make a demand on the owner for a written sworn statement of account prior to or at the time of recording a claim of lien.

Service

Section 713.18(1), F.S., provides that a service of notice, claim of lien, affidavit, assignment, and other instruments must be served by personal service, registered or certified mail, overnight or second-day mail, or, if the other types of service cannot be accomplished, posting on the premises.²³ Service of an instrument is effective on the date of mailing if the instrument is sent to the last known address in the notice of commencement, building application or the last known address of the person to be served; and returned as not delivered or undeliverable through no fault of the person serving the item.²⁴ Under

¹⁶ Section 713.20, F.S.

¹⁷ Section 713.22(2), F.S.

¹⁸ Section 713.06, F.S.

¹⁹ Section 713.16, F.S.

²⁰ Section 713.132(1)(f), F.S., (emphasis added).

²¹ Section 713.16(1), F.S.

²² Section 713.16(4), F.S.

²³ See ss. 713.18(1)(a)-(c), F.S.

²⁴ See s. 713.18(3), F.S.

current law, the lienor must use the exact address in the notice of commencement to serve an owner even if the address is clearly incomplete (i.e. does not include a zip code or city).

The bill updates certain service provisions to include methods of delivery by any common carrier and to allow for use of USPS's Global Express Guaranteed service for overseas delivery.

The bill also provides that if the address shown on the notice of commencement or the building permit application is incomplete for purposes of mailing or delivery, the person serving the item may complete the address using information from the property appraiser or another public record or directory without affecting the validity of service under this section. The bill also makes minor grammatical and stylistic changes.

Duration of Lien

Under current law, a lien pursuant to s. 713.22, F.S., must not continue for longer than one year after the claim of lien has been recorded or one year after the recording of an amended claim of lien that shows a later date of final furnishing of labor, services, or materials, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The continuation of the lien affected by the commencement of an action is not enforceable against creditors or subsequent purchasers for a valuable consideration and without notice, unless a notice of lis pendens is recorded. An owner may shorten the time within which to commence an action to enforce any claim of lien or claim against a bond by recording a notice, as set out in statute, in the clerk's office. The clerk must mail a copy of the notice of contest to the lien claimant and service is deemed complete upon mailing.²⁵

The bill makes changes to mirror proposed changes to s. 255.05, F.S., discussed above. The bill:

- Provides that the owner or the owner's attorney, not the clerk of court, must serve a copy of the notice of contest to the lien claimant; and
- Deletes language providing that service is deemed complete upon mailing.

The bill also makes grammatical and stylistic changes.

Payment of Bond

Section 713.23, F.S., includes requirements for a payment bond to exempt an owner from the construction lien provision. The statute requires that the contractor provide the owner with a bond for at least the amount of the original contract price before beginning the construction of the improvement under the direct contract, and a copy of the bond attached to the recorded notice of commencement. The owner, contractor, or surety must furnish a copy of the bond to any lienor demanding it. A lienor seeking protection from the contractor's bond for his or her work and who is not in privity with the contractor (except a laborer) must serve the contractor with a written notice stating the lienor's intent. Such written notice must be served 45 days before beginning to furnish labor, materials or supplies.

Section 713.08, F.S., provides information which must be included in a claim of lien (i.e. the name of the lienor and the address where notices of process may be served on the lienor) and a corresponding form which a lienor must record to perfect his or her lien. However, the negligent inclusion or omission of any information in the claim of lien which does not prejudice the owner does not constitute a default that would defeat an otherwise valid lien.²⁶

Section 713.24, F.S., provides that a person with an interest in real property upon which a lien is imposed or the contract under which the lien is claimed may transfer a construction lien from such real property to other security by depositing a sum of money in the clerk's office; or filing a bond executed as surety by a surety insurer in the clerk's office.

²⁵ Section 713.22(2), F.S.

²⁶ Section 713.08(3), F.S.

The bill:

- Revises the statutory notice to the contractor form to follow the language and format of a claim of lien;
- Provides that the notice to contractor form may be combined with a notice to owner²⁷;
- Mirrors changes proposed to ss. 255.05 and 713.22, F.S., (i.e. the contractor or the contractor's attorney, not the clerk of court, must serve a copy of the notice of contest to the lienor);
- Provides that the bond must be attached to a notice of bond when it is recorded and served;
- Provides that the duration of a bond cannot be limited and that any such provision of a payment bond is unenforceable;
- Provides that the provisions of s. 713.24(3), F.S., relating to transfer of a lien to a security, apply to bonds pursuant to s. 713.08, F.S., except where those provisions conflict with the latter section; and
- Makes grammatical and stylistic changes.

B. SECTION DIRECTORY:

Section 1 amends s. 255.05, F.S., relating to bond of contractor constructing public buildings.

Section 2 amends s. 713.132, F.S., relating to notice of termination.

Section 3 amends s. 713.16, F.S., relating to demands for a copy of a contract and statements of account.

Section 4 amends s. 713.18, F.S., relating to manner of serving notices and other instruments.

Section 5 amends s. 713.22, F.S., relating to duration of lien.

Section 6 amends s. 713.23, F.S., relating to payment bond.

Section 7 provides an effective date of October 1, 2012.

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 direct economic impact on the private sector.

²⁷ Section 713.06, F.S., (relating to liens of persons not in privity with the owner).

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 bill provides for an effective date of October 1, 2012. It is unclear from the effective date provision whether the bill applies to current or future contracts.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to construction liens and bonds;
 3 amending s. 255.05, F.S.; requiring that the bond
 4 number be stated on the first page of the bond;
 5 providing that a provision in a payment bond furnished
 6 for a public works contract that limits the effective
 7 duration of the bond is unenforceable; requiring a
 8 contractor, or the contractor's attorney, to serve
 9 rather than mail a notice of contest of claim against
 10 the payment bond; providing additional time for
 11 service when the bond is not recorded; specifying the
 12 duration of the bond; amending s. 713.132, F.S.;
 13 requiring notice of termination to be served on
 14 lienors in privity with the owner; amending s. 713.16,
 15 F.S.; revising requirements for demands for a copy of
 16 a construction contract and a statement of account;
 17 authorizing a lienor to make certain written demands
 18 to an owner for certain written statements; providing
 19 requirements for such written demands; amending s.
 20 713.18, F.S.; providing additional methods by which
 21 certain items may be served; revising provisions
 22 relating to when service of specified items is
 23 effective; specifying requirements for certain written
 24 instruments under certain circumstances; amending s.
 25 713.22, F.S.; requiring that a contractor serve rather
 26 than mail a notice of contest of lien; amending s.
 27 713.23, F.S.; revising the contents of a notice to
 28 contractor; requiring that a contractor serve rather

29 than mail a notice of contest of claim against the
 30 payment bond and a notice of bond; clarifying the
 31 attachment of the bond to the notice; specifying the
 32 duration of the bond; clarifying applicability of
 33 certain provisions; providing an effective date.

34

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

36

37 Section 1. Paragraph (a) of subsection (1) and paragraph
 38 (a) of subsection (2) of section 255.05, Florida Statutes, are
 39 amended to read:

40 255.05 Bond of contractor constructing public buildings;
 41 form; action by materialmen.—

42 (1)(a) Any person entering into a formal contract with the
 43 state or any county, city, or political subdivision thereof, or
 44 other public authority or private entity, for the construction
 45 of a public building, for the prosecution and completion of a
 46 public work, or for repairs upon a public building or public
 47 work shall be required, before commencing the work or before
 48 recommencing the work after a default or abandonment, to
 49 execute, deliver to the public owner, and record in the public
 50 records of the county where the improvement is located, a
 51 payment and performance bond with a surety insurer authorized to
 52 do business in this state as surety. A public entity may not
 53 require a contractor to secure a surety bond under this section
 54 from a specific agent or bonding company. The bond must state on
 55 its front page: the name, principal business address, and phone
 56 number of the contractor, the surety, the owner of the property

57 | being improved, and, if different from the owner, the
 58 | contracting public entity; the contract number assigned by the
 59 | contracting public entity; the bond number assigned by the
 60 | surety; and a description of the project sufficient to identify
 61 | it, such as a legal description or the street address of the
 62 | property being improved, and a general description of the
 63 | improvement. Such bond shall be conditioned upon the
 64 | contractor's performance of the construction work in the time
 65 | and manner prescribed in the contract and promptly making
 66 | payments to all persons defined in s. 713.01 who furnish labor,
 67 | services, or materials for the prosecution of the work provided
 68 | for in the contract. Any claimant may apply to the governmental
 69 | entity having charge of the work for copies of the contract and
 70 | bond and shall thereupon be furnished with a certified copy of
 71 | the contract and bond. The claimant shall have a right of action
 72 | against the contractor and surety for the amount due him or her,
 73 | including unpaid finance charges due under the claimant's
 74 | contract. Such action shall not involve the public authority in
 75 | any expense. When such work is done for the state and the
 76 | contract is for \$100,000 or less, no payment and performance
 77 | bond shall be required. At the discretion of the official or
 78 | board awarding such contract when such work is done for any
 79 | county, city, political subdivision, or public authority, any
 80 | person entering into such a contract which is for \$200,000 or
 81 | less may be exempted from executing the payment and performance
 82 | bond. When such work is done for the state, the Secretary of
 83 | Management Services may delegate to state agencies the authority
 84 | to exempt any person entering into such a contract amounting to

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85 more than \$100,000 but less than \$200,000 from executing the
 86 payment and performance bond. In the event such exemption is
 87 granted, the officer or officials shall not be personally liable
 88 to persons suffering loss because of granting such exemption.
 89 The Department of Management Services shall maintain information
 90 on the number of requests by state agencies for delegation of
 91 authority to waive the bond requirements by agency and project
 92 number and whether any request for delegation was denied and the
 93 justification for the denial. Any provision in a payment bond
 94 furnished for public work contracts as provided by this
 95 subsection which restricts the classes of persons as defined in
 96 s. 713.01 protected by the bond or the venue of any proceeding
 97 relating to such bond, or which limits the effective duration of
 98 the bond, is unenforceable.

99 (2)(a)1. If a claimant is no longer furnishing labor,
 100 services, or materials on a project, a contractor or the
 101 contractor's agent or attorney may elect to shorten the
 102 ~~prescribed time in this paragraph~~ within which an action to
 103 enforce any claim against a payment bond must ~~provided pursuant~~
 104 ~~to this section~~ may be commenced by recording in the clerk's
 105 office a notice in substantially the following form:

107 NOTICE OF CONTEST OF CLAIM
 108 AGAINST PAYMENT BOND

109
 110 To: ... (Name and address of claimant) ...
 111

112 You are notified that the undersigned contests your notice

113 of nonpayment, dated,, and served on the
114 undersigned on,, and that the time within
115 which you may file suit to enforce your claim is limited to 60
116 days after the date of service of this notice.

117

118 DATED on,

119

120 Signed: ...(Contractor or Attorney)...

121

122 The claim of any claimant upon whom such notice is served and
123 who fails to institute a suit to enforce his or her claim
124 against the payment bond within 60 days after service of such
125 notice shall be extinguished automatically. The contractor or
126 the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the
127 notice of contest to the claimant at the address shown in the
128 notice of nonpayment or most recent amendment thereto and shall
129 certify to such service on the face of such notice and record
130 the notice. ~~Service is complete upon mailing.~~

131 2. A claimant, except a laborer, who is not in privity
132 with the contractor must ~~shall~~, before commencing or not later
133 than 45 days after commencing to furnish labor, services, or
134 materials for the prosecution of the work, furnish the
135 contractor with a written notice that he or she intends to look
136 to the bond for protection. If the payment bond is not recorded
137 before commencement of construction or a claimant is not
138 otherwise notified in writing of the existence of the bond, the
139 time periods for the claimant to serve any required notices or
140 file suit on the bond shall run from the date the claimant is

141 | notified in writing of the existence of the bond. A claimant who
 142 | is not in privity with the contractor and who has not received
 143 | payment for his or her labor, services, or materials shall
 144 | deliver to the contractor and to the surety written notice of
 145 | the performance of the labor or delivery of the materials or
 146 | supplies and of the nonpayment. The notice of nonpayment must
 147 | ~~may~~ be served ~~at any time~~ during the progress of the work or
 148 | thereafter but may not be served earlier than ~~before~~ 45 days
 149 | after the first furnishing of labor, services, or materials or
 150 | ~~and not~~ later than 90 days after the final furnishing of the
 151 | labor, services, or materials by the claimant or, with respect
 152 | to rental equipment, ~~not~~ later than 90 days after the date that
 153 | the rental equipment was last on the job site available for use.
 154 | Any notice of nonpayment served by a claimant who is not in
 155 | privity with the contractor which includes sums for retainage
 156 | must specify the portion of the amount claimed for retainage. An
 157 | ~~No~~ action for the labor, materials, or supplies may not be
 158 | instituted against the contractor or the surety unless both
 159 | notices have been given. Notices required or permitted under
 160 | this section must ~~may~~ be served in accordance with s. 713.18. A
 161 | claimant may not waive in advance his or her right to bring an
 162 | action under the bond against the surety. In any action brought
 163 | to enforce a claim against a payment bond under this section,
 164 | the prevailing party is entitled to recover a reasonable fee for
 165 | the services of his or her attorney for trial and appeal or for
 166 | arbitration, in an amount to be determined by the court, which
 167 | fee must be taxed as part of the prevailing party's costs, as
 168 | allowed in equitable actions. The time periods for service of a

169 notice of nonpayment or for bringing an action against a
 170 contractor or a surety shall be measured from the last day of
 171 furnishing labor, services, or materials by the claimant and may
 172 ~~shall~~ not be measured by other standards, such as the issuance
 173 of a certificate of occupancy or the issuance of a certificate
 174 of substantial completion.

175 Section 2. Paragraph (f) of subsection (1) and subsection
 176 (4) of section 713.132, Florida Statutes, are amended to read:

177 713.132 Notice of termination.—

178 (1) An owner may terminate the period of effectiveness of
 179 a notice of commencement by executing, swearing to, and
 180 recording a notice of termination that contains:

181 (f) A statement that the owner has, before recording the
 182 notice of termination, served a copy of the notice of
 183 termination on the contractor and on each lienor who has a
 184 direct contract with the owner or who has served a notice to
 185 owner given notice. The owner is not required to serve a copy of
 186 the notice of termination on any lienor who has executed a
 187 waiver and release of lien upon final payment in accordance with
 188 s. 713.20.

189 (4) A notice of termination is effective to terminate the
 190 notice of commencement at the later of 30 days after recording
 191 of the notice of termination or the date stated in the notice of
 192 termination as the date on which the notice of commencement is
 193 terminated, if provided that the notice of termination has been
 194 served pursuant to paragraph (1)(f) on the contractor and on
 195 each lienor who has a direct contract with the owner or who has
 196 served a notice to owner given notice.

197 Section 3. Section 713.16, Florida Statutes, is amended to
 198 read:

199 713.16 Demand for copy of contract and statements of
 200 account; form.—

201 (1) A copy of the contract of a lienor or owner and a
 202 statement of the amount due or to become due if fixed or
 203 ascertainable thereon must be furnished by any party thereto,
 204 upon written demand of an owner or a lienor contracting with or
 205 employed by the other party to such contract. If the owner or
 206 lienor refuses or neglects to furnish such copy of the contract
 207 or such statement, or willfully and falsely states the amount
 208 due or to become due if fixed or ascertainable under such
 209 contract, any person who suffers any detriment thereby has a
 210 cause of action against the person refusing or neglecting to
 211 furnish the same or willfully and falsely stating the amount due
 212 or to become due for his or her damages sustained thereby. The
 213 information contained in such copy or statement furnished
 214 pursuant to such written demand is binding upon the owner or
 215 lienor furnishing it unless actual notice of any modification is
 216 given to the person demanding the copy or statement before such
 217 person acts in good faith in reliance on it. The person
 218 demanding such documents must pay for the reproduction thereof;
 219 and, if such person fails or refuses to do so, he or she is
 220 entitled only to inspect such documents at reasonable times and
 221 places.

222 (2) The owner may serve in writing a demand of any lienor
 223 for a written statement under oath of his or her account showing
 224 the nature of the labor or services performed and to be

225 performed, if any, the materials furnished, the materials to be
 226 furnished, if known, the amount paid on account to date, the
 227 amount due, and the amount to become due, if known, as of the
 228 date of the statement by the lienor. Any such demand to a lienor
 229 must be served on the lienor at the address and to the attention
 230 of any person who is designated to receive the demand in the
 231 notice to owner served by such lienor and must include a
 232 description of the project, including the names of the owner,
 233 the contractor, and the lienor's customer, as set forth in the
 234 lienor's notice to owner, sufficient for the lienor to properly
 235 identify the account in question. The failure or refusal to
 236 furnish the statement does not deprive the lienor of his or her
 237 lien if the demand is not served at the address of the lienor or
 238 directed to the attention of the person designated to receive
 239 the demand in the notice to owner. The failure or refusal to
 240 furnish the statement under oath within 30 days after the
 241 demand, or the furnishing of a false or fraudulent statement,
 242 deprives the person so failing or refusing to furnish such
 243 statement of his or her lien. If the owner serves more than one
 244 demand for statement of account on a lienor and none of the
 245 information regarding the account has changed since the lienor's
 246 last response to a demand, the failure or refusal to furnish
 247 such statement does not deprive the lienor of his or her lien.
 248 The negligent inclusion or omission of any information deprives
 249 the person of his or her lien to the extent the owner can
 250 demonstrate prejudice from such act or omission by the lienor.
 251 The failure to furnish a response to a demand for statement of
 252 account does not affect the validity of any claim of lien being

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253 | enforced through a foreclosure case filed prior to the date the
 254 | demand for statement is received by the lienor.

255 | (3) A request for sworn statement of account must be in
 256 | substantially the following form:

257 |

258 | REQUEST FOR SWORN STATEMENT OF ACCOUNT

259 |

260 | WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED
 261 | UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
 262 | STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

263 |

264 | To: ...(Lienor's name and address)...

265 |

266 | The undersigned hereby demands a written statement under oath of
 267 | his or her account showing the nature of the labor or services
 268 | performed and to be performed, if any, the materials furnished,
 269 | the materials to be furnished, if known, the amount paid on
 270 | account to date, the amount due, and the amount to become due,
 271 | if known, as of the date of the statement for the improvement of
 272 | real property identified as ...(property description)....

273 |

274 | ...(name of contractor)...

275 | ...(name of the lienor's customer, as specified in the lienor's
 276 | Notice to Owner, if such notice has been served)....

277 |

278 | ...(signature and address of owner)...

279 | ...(date of request for sworn statement of account)...

280 |

281 (4) When a contractor has furnished a payment bond
 282 pursuant to s. 713.23, he or she may, when an owner makes any
 283 payment to the contractor or directly to a lienor, serve a
 284 written demand on any other lienor for a written statement under
 285 oath of his or her account showing the nature of the labor or
 286 services performed and to be performed, if any, the materials
 287 furnished, the materials to be furnished, if known, the amount
 288 paid on account to date, the amount due, and the amount to
 289 become due, if known, as of the date of the statement by the
 290 lienor. Any such demand to a lienor must be served on the lienor
 291 at the address and to the attention of any person who is
 292 designated to receive the demand in the notice to contractor
 293 served by such lienor. The demand must include a description of
 294 the project, the names of the owner, the contractor, and the
 295 lienor's customer, as specified in the lienor's notice to
 296 contractor, sufficient for the lienor to properly identify the
 297 account in question. The failure or refusal to furnish the
 298 statement does not deprive the lienor of his or her rights under
 299 the bond if the demand is not served at the address of the
 300 lienor or directed to the attention of the person designated to
 301 receive the demand in the notice to contractor. The failure to
 302 furnish the statement within 30 days after the demand, or the
 303 furnishing of a false or fraudulent statement, deprives the
 304 person who fails to furnish the statement, or who furnishes the
 305 false or fraudulent statement, of his or her rights under the
 306 bond. If the contractor serves more than one demand for
 307 statement of account on a lienor and none of the information
 308 regarding the account has changed since the lienor's last

309 response to a demand, the failure or refusal to furnish such
 310 statement does not deprive the lienor of his or her rights under
 311 the bond. The negligent inclusion or omission of any information
 312 deprives the person of his or her rights under the bond to the
 313 extent the contractor can demonstrate prejudice from such act or
 314 omission by the lienor. The failure to furnish a response to a
 315 demand for statement of account does not affect the validity of
 316 any claim on the bond being enforced in a lawsuit filed prior to
 317 the date the demand for statement of account is received by the
 318 lienor.

319 (5) (a) Any lienor ~~who has recorded a claim of lien~~ may
 320 make written demand on the owner for a written statement under
 321 oath showing:

322 1. The amount of the direct contract under which the lien
 323 was recorded;

324 2. The dates and amounts paid or to be paid by or on
 325 behalf of the owner for all improvements described in the direct
 326 contract;

327 3. The reasonable estimated costs of completing the direct
 328 contract under which the lien was claimed pursuant to the scope
 329 of the direct contract; and

330 4. If known, the actual cost of completion.

331 (b) Any owner who does not provide the statement within 30
 332 days after demand, or who provides a false or fraudulent
 333 statement, is not a prevailing party for purposes of an award of
 334 attorney ~~attorney's~~ fees under s. 713.29. The written demand
 335 must include the following warning in conspicuous type in
 336 substantially the following form:

337

338 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT
 339 WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL
 340 RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY
 341 ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING
 342 THIS STATEMENT.

343

344 (6) Any written demand served on the owner must include a
 345 description of the project, the names of the contractor and the
 346 lienor's customer, as specified in the lienor's notice to owner,
 347 sufficient for the owner to properly identify the project in
 348 question.

349

350 ~~(7)~~(6) For purposes of this section, the term
 351 "information" means the nature and quantity of the labor,
 352 services, and materials furnished or to be furnished by a lienor
 353 and the amount paid, the amount due, and the amount to become
 354 due on the lienor's account.

354

355 Section 4. Section 713.18, Florida Statutes, is amended to
 356 read:

356

357 713.18 Manner of serving notices and other instruments.—
 358 (1) Service of notices, claims of lien, affidavits,
 359 assignments, and other instruments permitted or required under
 360 this part, or copies thereof when so permitted or required,
 361 unless otherwise specifically provided in this part, must be
 362 made by one of the following methods:

362

363 (a) By actual delivery to the person to be served; if a
 364 partnership, to one of the partners; if a corporation, to an
 officer, director, managing agent, or business agent; or, if a

365 limited liability company, to a member or manager.

366 (b) By sending the service same by common carrier delivery
 367 service or by registered, Global Express Guaranteed, or
 368 certified mail, with postage or shipping paid by the sender and
 369 ~~prepaid, or by overnight or second-day delivery~~ with evidence of
 370 delivery, which may be in an electronic format.

371 (c) ~~If the method specified in paragraph (a) or paragraph~~
 372 ~~(b) cannot be accomplished,~~ By posting on the site of the
 373 improvement if service as provided by paragraph (a) or paragraph
 374 (b) cannot be accomplished premises.

375 (2) Notwithstanding subsection (1), service of ~~if~~ a notice
 376 to owner, a notice to contractor under s. 713.23, s. 337.18, or
 377 ~~a preliminary notice under s. 255.05 is mailed by registered or~~
 378 ~~certified mail with postage prepaid to the person to be served~~
 379 ~~at any of the addresses set forth in subsection (3) within 40~~
 380 ~~days after the date the lienor first furnishes labor, services,~~
 381 ~~or materials, service of that notice is~~ effective as of the date
 382 of mailing if:

383 (a) The notice is mailed by registered, Global Express
 384 Guaranteed, or certified mail, with postage prepaid, to the
 385 person to be served at any of the addresses set forth in
 386 subsection (3);

387 (b) The notice is mailed within 40 days after the date the
 388 lienor first furnishes labor, services, or materials; and

389 (c)1. The person who served the notice maintains a
 390 registered or certified mail log that shows the registered or
 391 certified mail number issued by the United States Postal
 392 Service, the name and address of the person served, and the date

393 stamp of the United States Postal Service confirming the date of
 394 mailing; or ~~if~~

395 2. The person who served the notice maintains electronic
 396 tracking records generated through use of the United States
 397 Postal Service Confirm service or a similar service containing
 398 the postal tracking number, the name and address of the person
 399 served, and verification of the date of receipt by the United
 400 States Postal Service.

401 (3)(a) Service of ~~If~~ an instrument ~~served~~ pursuant to this
 402 section is effective on the date of mailing if the instrument:

403 1. Is sent to the last address shown in the notice of
 404 commencement or any amendment thereto or, in the absence of a
 405 notice of commencement, to the last address shown in the
 406 building permit application, or to the last known address of the
 407 person to be served; ~~and, is not received, but~~

408 2. Is returned as being "refused," "moved, not
 409 forwardable," or "unclaimed," or is otherwise not delivered or
 410 deliverable through no fault of the person serving the item,
 411 ~~then service is effective on the date the instrument was sent.~~

412 (b) If the address shown in the notice of commencement or
 413 any amendment to the notice of commencement, or, in the absence
 414 of a notice of commencement, in the building permit application,
 415 is incomplete for purposes of mailing or delivery, the person
 416 serving the item may complete the address and properly format it
 417 according to United States Postal Service addressing standards
 418 using information obtained from the property appraiser or
 419 another public record or directory without affecting the
 420 validity of service under this section.

421 (4) A notice served by a lienor on one owner or one
422 partner of a partnership owning the real property ~~If the real~~
423 ~~property is owned by more than one person or a partnership, a~~
424 ~~lienor may serve any notices or other papers under this part on~~
425 ~~any one of such owners or partners, and such notice is deemed~~
426 ~~notice to all owners and partners.~~

427 Section 5. Section 713.22, Florida Statutes, is amended to
428 read:

429 713.22 Duration of lien.—

430 (1) A ~~No~~ lien provided by this part does not shall
431 continue for a longer period than 1 year after the claim of lien
432 has been recorded or 1 year after the recording of an amended
433 claim of lien that shows a later date of final furnishing of
434 labor, services, or materials, unless within that time an action
435 to enforce the lien is commenced in a court of competent
436 jurisdiction. A lien that has been continued beyond the 1-year
437 period ~~The continuation of the lien effected by the commencement~~
438 of an ~~the~~ action is shall not enforceable be good against
439 creditors or subsequent purchasers for a valuable consideration
440 and without notice, unless a notice of lis pendens is recorded.

441 (2) An owner or the owner's ~~agent or~~ attorney may elect to
442 shorten the time prescribed in subsection (1) within which to
443 commence an action to enforce any claim of lien or claim against
444 a bond or other security under s. 713.23 or s. 713.24 by
445 recording in the clerk's office a notice in substantially the
446 following form:

447
448

NOTICE OF CONTEST OF LIEN

449
450
451
452
453
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460
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476

To: ...(Name and address of lienor)...

You are notified that the undersigned contests the claim of lien filed by you on, ...(year)...., and recorded in Book, Page, of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This day of, ...(year)....

Signed: ...(Owner or Attorney)...

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The owner or the owner's attorney ~~clerk~~ shall serve mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. ~~Service shall be deemed complete upon mailing.~~

Section 6. Paragraphs (c), (e), and (f) of subsection (1) and subsections (2) and (4) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.—

(1)

(c) ~~Either~~ Before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who

477 is not in privity with the contractor, except a laborer, shall
 478 serve the contractor with notice in writing that the lienor will
 479 look to the contractor's bond for protection on the work. If a
 480 notice of commencement is not recorded, or a reference to the
 481 bond is not given in the notice of commencement, and in either
 482 case if the lienor not in privity with the contractor is not
 483 otherwise notified in writing of the existence of the bond, the
 484 lienor not in privity with the contractor shall have 45 days
 485 from the date the lienor is notified of the existence of the
 486 bond within which to serve the notice. The notice may be in
 487 substantially the following form and may be combined with a
 488 notice to owner given under s. 713.06 and, if so, may be
 489 entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR":

490
 491 NOTICE TO CONTRACTOR

492
 493 To ... (name and address of contractor)...

494
 495 The undersigned hereby informs you that he or she has furnished
 496 or is furnishing services or materials as follows:

497
 498 ...(general description of services or materials)... for the
 499 improvement of the real property identified as ...(property
 500 description)... under an order given by ...(lienor's
 501 customer)....

502
 503 This notice is to inform you that the undersigned intends to
 504 look to the contractor's bond to secure payment for the

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505 furnishing of materials or services for the improvement of the
 506 real property.

507

508 ...(name of lienor)...

509 ...(signature of lienor or lienor's representative)...

510 ...(date)...

511 ...(lienor's address)...

512

513 ~~The undersigned notifies you that he or she has furnished or is~~
 514 ~~furnishing ...(services or materials)... for the improvement of~~
 515 ~~the real property identified as ...(property description)...~~
 516 ~~owned by ...(owner's name and address)... under an order given~~
 517 ~~by and that the undersigned will look to the contractor's~~
 518 ~~bond for protection on the work.~~

519

520 ~~...(Lienor's signature and address)...~~

521

522 (e) An ~~Ne~~ action for the labor or materials or supplies
 523 may not be instituted or prosecuted against the contractor or
 524 surety unless both notices have been given, if required by this
 525 section. An ~~Ne~~ action may not ~~shall~~ be instituted or prosecuted
 526 against the contractor or against the surety on the bond under
 527 this section after 1 year from the performance of the labor or
 528 completion of delivery of the materials and supplies. The time
 529 period for bringing an action against the contractor or surety
 530 on the bond shall be measured from the last day of furnishing
 531 labor, services, or materials by the lienor. The time period may
 532 ~~and shall~~ not be measured by other standards, such as the

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533 issuance of a certificate of occupancy or the issuance of a
 534 certificate of substantial completion. A contractor or the
 535 contractor's ~~agent or~~ attorney may elect to shorten the
 536 ~~prescribed~~ time within which an action to enforce any claim
 537 against a payment bond provided under this section or s. 713.245
 538 must ~~may~~ be commenced at any time after a notice of nonpayment,
 539 if required, has been served for the claim by recording in the
 540 clerk's office a notice in substantially the following form:

541
 542 NOTICE OF CONTEST OF CLAIM
 543 AGAINST PAYMENT BOND
 544

545 To: ... (Name and address of lienor) ...
 546

547 You are notified that the undersigned contests your notice
 548 of nonpayment, dated,, and served on the undersigned
 549 on,, and that the time within which you may file suit
 550 to enforce your claim is limited to 60 days from the date of
 551 service of this notice.
 552

553 DATED on,

554 Signed: ... (Contractor or Attorney) ...
 555

556 The claim of any lienor upon whom the notice is served and who
 557 fails to institute a suit to enforce his or her claim against
 558 the payment bond within 60 days after service of the notice
 559 shall be extinguished automatically. The contractor or the
 560 contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the

561 notice of contest to the lienor at the address shown in the
 562 notice of nonpayment or most recent amendment thereto and shall
 563 certify to such service on the face of the notice and record the
 564 notice. ~~Service is complete upon mailing.~~

565 (f) Any lienor has a direct right of action on the bond
 566 against the surety. Any provision in a payment bond which
 567 restricts ~~A bond must not contain any provisions restricting the~~
 568 classes of persons defined in s. 713.01 who are protected by the
 569 payment bond, restricts thereby or the venue of any proceeding
 570 relating to such payment bond, or limits the effective duration
 571 of the payment bond is unenforceable. The surety is not entitled
 572 to the defense of pro tanto discharge as against any lienor
 573 because of changes or modifications in the contract to which the
 574 surety is not a party; but the liability of the surety may not
 575 be increased beyond the penal sum of the bond. A lienor may not
 576 waive in advance his or her right to bring an action under the
 577 bond against the surety.

578 (2) The bond shall secure every lien under the direct
 579 contract accruing subsequent to its execution and delivery,
 580 except that of the contractor. Every claim of lien, except that
 581 of the contractor, filed subsequent to execution and delivery of
 582 the bond shall be transferred to it with the same effect as
 583 liens transferred under s. 713.24. Record notice of the transfer
 584 shall be effected by the contractor, or any person having an
 585 interest in the property against which the claim of lien has
 586 been asserted, by recording in the clerk's office a notice, with
 587 the bond attached, in substantially the following form:
 588

HB 897

2012

589 NOTICE OF BOND

590

591 To ... (Name and Address of Lienor)...

592

593 You are notified that the claim of lien filed by you on,
 594, and recorded in Official Records Book at page of
 595 the public records of County, Florida, is secured by a
 596 bond, a copy being attached.

597

598 Signed: ... (Name of person recording notice)...

599

600 The notice shall be verified. The person recording the notice of
 601 bond ~~clerk~~ shall serve ~~mail~~ a copy of the notice along with a
 602 copy of the bond to the lienor at the address shown in the claim
 603 of lien, or the most recent amendment to it; shall certify to
 604 the service on the face of the notice; and shall record the
 605 notice. ~~The clerk shall receive the same fee as prescribed in s.~~
 606 ~~713.24(1) for certifying to a transfer of lien.~~

607 (4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds
 608 under this section except where those provisions conflict with
 609 this section.

610 Section 7. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 935 Child Support Enforcement

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: None IDEN./SIM. BILLS: SB 1342

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Caridad DC	Bond YB

SUMMARY ANALYSIS

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994. A "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act. To remain eligible for the Temporary Assistance for Needy Families (TANF) Block Grant, Florida must have a federally compliant child support program, meaning the state's program must provide certain services such as enforcement of child support orders. Statute provides DOR with alternative means of enforcing such orders, such as suspension of an obligor's driver license.

The bill:

- Provides that an obligor's license will not be suspended if the obligor pays the delinquency through income deduction;
- Authorizes DOR to send notices to a garnishee by secure e-mail or facsimile upon consent by the garnishee;
- Requires the Chief Financial Officer (CFO) and DOR work together to establish an automated method for identifying individuals doing business with the state and owe overdue support so that support payments may be withheld by the state;
- Makes changes related to the use of unclaimed property for payment of past due support; and
- Authorizes DOR to place an administrative lien on certain claims, judgments, and property.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994.¹ A "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act. DOR provides services under the federally required program in 65 counties and through contracts in two counties.²

DOR is responsible for some case-processing activities including opening and closing cases; collecting and maintaining case, location, and financial data; and receiving and responding to verbal and written inquiries. To remain eligible for the Temporary Assistance for Needy Families (TANF) Block Grant,³ Florida must have a federally compliant child support program.⁴ The program must contain the following services:

- Paternity establishment;
- Support order establishment;
- Support order review and modification;
- Location of parents, employers, assets;
- Payment collection and disbursement; and
- Order enforcement.

Under Florida's program, DOR establishes the initial child support order and modifies existing orders when a family's circumstances change.

DOR may utilize various statutory resources in its attempt to collect past due child support. For instance, DOR may suspend the obligor's driver's license. Pursuant to s. 61.13016, F.S., a person (the obligor) who is 15 days delinquent in paying child support may have his or her driver's license suspended after notice and an opportunity for a hearing in circuit court. The obligor may avoid suspension by paying the full amount of the delinquency, entering into a written agreement with DOR to pay the past due amount, or filing a petition in circuit court to contest suspension.⁵ Although not provided for in statute, DOR also allows an obligor to begin paying a delinquent support order by income deduction in order to avoid license suspension.

If a person has a support obligation subject to enforcement by DOR, the department may inform all persons with credits or personal property (i.e. wages) belonging to the obligor under their control to not transfer any of the credits or personal property up to the amount listed in the notice, without DOR consent.⁶

Under current law, DOR must provide notice to the Chief Financial Officer (CFO) identifying the obligor and the amount of support outstanding. The CFO must then withhold all payments to any obligor who

¹ Florida Department of Revenue, http://dor.myflorida.com/dor/childsupport/about_us.html (last visited Jan. 22, 2012).

² *Id.* Miami-Dade County cases are handled by the state attorney's office, and Manatee County cases are handled by the clerk of court.

³ TANF is a block grant program to help move recipients into work and turn welfare into a program of temporary assistance. Under the welfare reform legislation of 1996, TANF replaced the old welfare programs known as the Aid to Families with Dependent Children (AFDC) program, the Job Opportunities and Basic Skills Training (JOBS) program, and the Emergency Assistance (EA) program. The law ended Federal entitlement to assistance and instead created TANF as a block grant that provides States, Territories, and Tribes Federal funds each year. These funds cover benefits and services targeted to needy families. U.S. Dep't of Health and Human Servs., http://www.acf.hhs.gov/opa/fact_sheets/tanf_factsheet.html (last visited Jan. 22, 2012).

⁴ Section 61.1826(1)(d), F.S.

⁵ Section 61.13016(1)(c), F.S.

⁶ Section 409.25656(1), F.S.

provides commodities or services to the state, leases real property to the state, or constructs a public building or public work for the state. DOR may then levy upon the withheld payments.⁷

Effect of Proposed Changes

This bill amends Florida law relating to child support enforcement. Specifically, the bill:

- Allows an obligor to pay any delinquency in child support through income deduction so as to avoid suspension of his or her license;
- Provides that if the garnishee provides written consent, the department may send notices to the garnishee by secure e-mail or facsimile;
- Requires the CFO and DOR to establish an automated method for disclosing to DOR the names of individuals doing business with the state who owe past due support so the state may withhold payments owed to such individuals;⁸

Current law authorizes DOR to intercept unclaimed property for payment of past due support once DFS approves a claim. When a claim is approved, DOR notifies the obligor by certified mail of the intent to intercept the claim up to the amount of past-due support owed. The obligor is also notified of his or her right to contest the action at an administrative hearing pursuant to ch. 120, F.S. If there is a hearing and the action is sustained, DOR enters a final order directing DFS to transfer the property to DOR. DOR is required to enter final orders in all cases, even when the action is uncontested.

The bill provides that:

- If a claim for unclaimed property is approved by DFS, DOR shall send a notice by certified mail to the obligor at the address provided by the obligor to DFS, advising the obligor of the department's intent to intercept the approved claim.
- DFS must retain custody of the property until a final order has been entered and any appeals have concluded or, if the intercept is uncontested, until notified by DOR;
- If an obligor does not request a hearing, DOR must notify DFS, electronically or in writing, to transfer the property to the department;
- Eliminates the requirement for DOR to enter a final order when the obligor does not contest the action.

Under current law, DOR may place an administrative lien on a motor vehicle or vessel that is registered in the name of an obligor who is delinquent in support payments, "if the title to the property is held by a lienholder."⁹ The statute does not authorize DOR to place a lien on property owned "free and clear" by the obligor.

The bill authorizes DOR to place an administrative lien for unpaid support (1) on a motor vehicle or vessel, even if owned free and clear by the obligor, and (2) upon a claim, settlement, or judgment that may result in payment to the obligor. The bill further provides that DOR must notify the obligor of the intent to place a lien by regular mail sent to the obligor's address on file with the depository. The notice must state the amount of past due support owed and inform the obligor of the right to contest the lien at an administrative hearing.

B. SECTION DIRECTORY:

Section 1 amends s. 61.13016, F.S., relating to suspension of driver licenses and motor vehicle registrations.

⁷ Section 409.25656(10), F.S.

⁸ Under current law, DOR provides to the CFO a listing of obligors for whom warrants are outstanding. The CFO then withholds all payments to any obligor doing business with the state and DOR may levy upon the withheld payments. The change made by this bill essentially reverses this method, so that the CFO is disclosing to the department a file of individuals to whom the state pays money.

⁹ Section 409.2575(1), F.S.

Section 2 amends s. 322.058, F.S., relating to suspension of driving privileges due to support delinquency.

Section 3 amends s. 409.25656, F.S., relating to garnishment.

Section 4 amends s. 409.25658, F.S., relating to uses of unclaimed property for past due support.

Section 5 amends s. 409.2575, F.S., relating to administrative liens.

Section 6 provides for an effective date of July 1, 2012.

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 direct economic 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:

According to DOR, its procedures must be modified to implement the changes made by this bill. However, the department expects that any operational impact of the bill will be insignificant.¹⁰

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

¹⁰ Dep't of Revenue, 2012 Bill Analysis, HB 935, p. 5 (Dec. 16, 2011) (on file with the House Civil Justice Subcommittee).
STORAGE NAME: pcs0935.CVJS.DOCX
DATE: 1/20/2012

1 A bill to be entitled
2 An act relating to child support enforcement; amending
3 s. 61.13016, F.S.; providing that a child support
4 obligor may avoid the suspension of his or her driver
5 license and motor vehicle registration by beginning to
6 pay his or her obligation by income deduction within a
7 specified period; amending s. 322.058, F.S.; providing
8 that a child support obligor may avoid the suspension
9 of his or her driver license and motor vehicle
10 registration by beginning to pay his or her obligation
11 by income deduction within a specified period;
12 amending s. 409.25656, F.S.; providing that a
13 garnishee may consent to receive certain notices by
14 secure e-mail or fax; requiring establishment of an
15 automated method for the Chief Financial Officer to
16 periodically provide the Department of Revenue an
17 electronic file of individuals to whom the state pays
18 money for goods or services or who lease real property
19 to the state; requiring garnishment of such payments
20 for past due or overdue support; deleting provisions
21 requiring the Department of Revenue to provide certain
22 information to the Chief Financial Officer for such
23 purpose; amending s. 409.25658, F.S.; revising
24 provisions concerning use of unclaimed property for
25 collection of past due support; amending s. 409.2575,
26 F.S.; revising language concerning who may cause
27 certain liens to be placed for unpaid and delinquent
28 support; authorizing liens on a claim, settlement, or

29 judgment that may result in payment to the obligor;
30 providing for notice to the obligor; providing
31 requirements for such notice; providing an effective
32 date.

33
34 Be It Enacted by the Legislature of the State of Florida:

35
36 Section 1. Subsection (1), paragraph (a) of subsection
37 (2), and subsection (3) of section 61.13016, Florida Statutes,
38 are amended to read:

39 61.13016 Suspension of driver ~~driver's~~ licenses and motor
40 vehicle registrations.—

41 (1) The driver ~~driver's~~ license and motor vehicle
42 registration of a support obligor who is delinquent in payment
43 or who has failed to comply with subpoenas or a similar order to
44 appear or show cause relating to paternity or support
45 proceedings may be suspended. When an obligor is 15 days
46 delinquent making a payment in support or failure to comply with
47 a subpoena, order to appear, order to show cause, or similar
48 order in IV-D cases, the Title IV-D agency may provide notice to
49 the obligor of the delinquency or failure to comply with a
50 subpoena, order to appear, order to show cause, or similar order
51 and the intent to suspend by regular United States mail that is
52 posted to the obligor's last address of record with the
53 Department of Highway Safety and Motor Vehicles. When an obligor
54 is 15 days delinquent in making a payment in support in non-IV-D
55 cases, and upon the request of the obligee, the depository or
56 the clerk of the court must provide notice to the obligor of the

57 delinquency and the intent to suspend by regular United States
 58 mail that is posted to the obligor's last address of record with
 59 the Department of Highway Safety and Motor Vehicles. In either
 60 case, the notice must state:

61 (a) The terms of the order creating the support
 62 obligation;

63 (b) The period of the delinquency and the total amount of
 64 the delinquency as of the date of the notice or describe the
 65 subpoena, order to appear, order to show cause, or other similar
 66 order that ~~which~~ has not been complied with;

67 (c) That notification will be given to the Department of
 68 Highway Safety and Motor Vehicles to suspend the obligor's
 69 driver ~~driver's~~ license and motor vehicle registration unless,
 70 within 20 days after the date the notice is mailed, the obligor:

71 1.a. Pays the delinquency in full and any other costs and
 72 fees accrued between the date of the notice and the date the
 73 delinquency is paid;

74 b. Enters into a written agreement for payment with the
 75 obligee in non-IV-D cases or with the Title IV-D agency in IV-D
 76 cases; or in IV-D cases, complies with a subpoena or order to
 77 appear, order to show cause, or a similar order; ~~or~~

78 c. Files a petition with the circuit court to contest the
 79 delinquency action; or ~~and~~

80 d. Begins paying the delinquency by income deduction; and

81 2. Pays any applicable delinquency fees.

82
 83 If the obligor in non-IV-D cases enters into a written agreement
 84 for payment before the expiration of the 20-day period, the

85 obligor must provide a copy of the signed written agreement to
 86 the depository or the clerk of the court.

87 (2) (a) Upon petition filed by the obligor in the circuit
 88 court within 20 days after the mailing date of the notice, the
 89 court may, in its discretion, direct the department to issue a
 90 license for driving privileges restricted to business purposes
 91 only, as defined by s. 322.271, if the person is otherwise
 92 qualified for such a license. As a condition for the court to
 93 exercise its discretion under this subsection, the obligor must
 94 agree to a schedule of payment on any child support arrearages
 95 and to maintain current child support obligations. If the
 96 obligor fails to comply with the schedule of payment, the court
 97 shall direct the Department of Highway Safety and Motor Vehicles
 98 to suspend the obligor's driver ~~driver's~~ license.

99 (3) If the obligor does not, within 20 days after the
 100 mailing date on the notice, pay the delinquency; ~~enter into a~~
 101 written payment ~~agreement;~~ ~~comply with the subpoena, order to~~
 102 appear, order to show cause, or other similar order; begin
 103 paying the delinquency by income deduction; ~~or file a motion to~~
 104 ~~contest, the Title IV-D agency in IV-D cases, or the depository~~
 105 ~~or clerk of the court in non-IV-D cases, may shall~~ file the
 106 notice with the Department of Highway Safety and Motor Vehicles
 107 and request the suspension of the obligor's driver ~~driver's~~
 108 license and motor vehicle registration in accordance with s.
 109 322.058.

110 Section 2. Subsections (1) and (2) of section 322.058,
 111 Florida Statutes, are amended to read:

112 322.058 Suspension of driving privileges due to support
 113 delinquency; reinstatement.—

114 (1) When the department receives notice from the Title IV-
 115 D agency or depository or the clerk of the court that any person
 116 licensed to operate a motor vehicle in the State of Florida
 117 under the provisions of this chapter has a delinquent support
 118 obligation or has failed to comply with a subpoena, order to
 119 appear, order to show cause, or similar order, the department
 120 shall suspend the driver driver's license of the person named in
 121 the notice and the registration of all motor vehicles owned by
 122 that person.

123 (2) The department must reinstate the driving privilege
 124 and allow registration of a motor vehicle when the Title IV-D
 125 agency in IV-D cases or the depository or the clerk of the court
 126 in non-IV-D cases provides to the department an affidavit
 127 stating that:

- 128 (a) The person has paid the delinquency;
- 129 (b) The person has reached a written agreement for payment
 130 with the Title IV-D agency or the obligee in non-IV-D cases;
- 131 (c) A court has entered an order granting relief to the
 132 obligor ordering the reinstatement of the license and motor
 133 vehicle registration; or
- 134 (d) The person has complied with the subpoena, order to
 135 appear, order to show cause, or similar order; or
- 136 (e) The obligor is paying the delinquency by income
 137 deduction.

138 Section 3. Subsections (4) and (10) of section 409.25656,
 139 Florida Statutes, are amended to read:

140 409.25656 Garnishment.—

141 (4) A notice that is delivered under this section is
 142 effective at the time of delivery against all credits, other
 143 personal property, or debts of the obligor which are not at the
 144 time of such notice subject to an attachment, garnishment, or
 145 execution issued through a judicial process. Upon the
 146 garnishee's written consent, the department may send notices to
 147 the garnishee by secure e-mail or fax.

148 (10) The Chief Financial Officer shall work cooperatively
 149 with the department to establish an automated method for
 150 periodically disclosing to the department an electronic file of
 151 individuals to whom the state pays money for goods or services
 152 or who lease real property to the state. The department shall
 153 use the data provided to identify individuals who owe past due
 154 or overdue support and may garnish payments owed to such
 155 individuals by the state as provided in this section ~~The~~
 156 ~~department shall provide notice to the Chief Financial Officer,~~
 157 ~~in electronic or other form specified by the Chief Financial~~
 158 ~~Officer, listing the obligors for whom warrants are outstanding.~~
 159 ~~Pursuant to subsection (1), the Chief Financial Officer shall,~~
 160 ~~upon notice from the department, withhold all payments to any~~
 161 ~~obligor who provides commodities or services to the state,~~
 162 ~~leases real property to the state, or constructs a public~~
 163 ~~building or public work for the state. The department may levy~~
 164 ~~upon the withheld payments in accordance with subsection (3).~~
 165 Section 215.422 does not apply from the date the notice is filed
 166 with the Chief Financial Officer until the date the department
 167 notifies the Chief Financial Officer of its consent to make

168 payment to the person or 60 days after receipt of the
 169 department's notice in accordance with subsection (1), whichever
 170 occurs earlier.

171 Section 4. Subsections (1) and (4) of section 409.25658,
 172 Florida Statutes, are amended to read:

173 409.25658 Use of unclaimed property for past due support.—

174 (1) In a joint effort to facilitate the collection and
 175 payment of past due support, the Department of Revenue, in
 176 cooperation with the Department of Financial Services, shall
 177 identify persons owing support collected by the department
 178 ~~through a court~~ who are presumed to have unclaimed property held
 179 by the Department of Financial Services.

180 (4) Before ~~Prior to~~ paying an obligor's approved claim,
 181 the Department of Financial Services shall notify the department
 182 that the ~~such~~ claim has been approved. Upon confirmation that
 183 the Department of Financial Services has approved the claim, the
 184 department shall immediately send a notice by certified mail to
 185 the obligor at the address provided by the obligor to the
 186 Department of Financial Services, with a copy to the Department
 187 of Financial Services, advising the obligor of the department's
 188 intent to intercept the approved claim up to the amount of the
 189 past due support, and informing the obligor of the obligor's
 190 right to request a hearing under chapter 120. The Department of
 191 Financial Services shall retain custody of the property until a
 192 final order has been entered and any appeals thereon have been
 193 concluded, or, if the intercept is uncontested, until notified
 194 by the department. If the obligor fails to request a hearing,
 195 the department shall notify ~~enter a final order instructing the~~

196 Department of Financial Services, electronically or in writing,
 197 to transfer to the department the property in the amount stated
 198 in the notice or electronic file ~~final order~~. Upon ~~such~~
 199 transfer, the Department of Financial Services shall be released
 200 from further liability related to the transferred property.

201 Section 5. Section 409.2575, Florida Statutes, is amended
 202 to read:

203 409.2575 Administrative liens ~~on motor vehicles and~~
 204 ~~vessels.-~~

205 (1) The department ~~director of the state IV-D program, or~~
 206 ~~the director's designee,~~ may cause a lien for unpaid and
 207 delinquent support to be placed upon motor vehicles, as defined
 208 in chapter 320, ~~and~~ upon vessels, as defined in chapter 327,
 209 that are registered in the name of an obligor who is delinquent
 210 in support payments, ~~if the title to the property is held by a~~
 211 ~~lienholder,~~ in the manner provided in chapter 319 or chapter
 212 328, and upon a claim, settlement, or judgment that may result
 213 in payment to the obligor. The department shall notify the
 214 obligor of the intent to place a lien by certified mail sent to
 215 the obligor's address of record on file with the depository. The
 216 notice must state the amount of past due support owed and inform
 217 the obligor of the right to contest the lien at an
 218 administrative hearing as provided by chapter 120. Notice of
 219 lien shall not be mailed unless the delinquency in support
 220 exceeds \$600.

221 (2) If the first lienholder fails, neglects, or refuses to
 222 forward the certificate of title to the appropriate department
 223 as requested pursuant to s. 319.24 or s. 328.15, the department

PCS for HB 935

ORIGINAL

2012

224 ~~director of the IV-D program, or the director's designee,~~ may
225 apply to the circuit court for an order to enforce the
226 requirements of s. 319.24 or s. 328.15, whichever applies.
227 Section 6. This act shall take effect July 1, 2012.



Civil Justice Subcommittee

Wednesday, January 25, 2012

8:00 AM

404 HOB

AMENDMENT PACKET

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCS Name: PCS for HB 213 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing PCS: Civil Justice Subcommittee
2 Representative Passidomo offered the following:

3
4 **Amendment**

5 Remove lines 483-487 and insert:

6 Section 7. The amendments to s. 702.10, Florida Statutes,
7 and the creation of ss. 702.11 and 702.13, Florida Statutes, are
8 remedial in nature and shall apply to causes of action pending
9 on the effective date of this act. Section 702.12, Florida
10 Statutes, created by this act, applies to cases filed on or
11 after
12

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Moraitis offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) and paragraph (a) of subsection (2) of section 255.05, Florida Statutes, are amended, and subsection (11) is added to said section, to read:

255.05 Bond of contractor constructing public buildings; form; action by materialmen.-

(1) (a) Any person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority or private entity, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver to the public owner, and record in the public records of the county where the improvement is located, a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 897 (2012)

Amendment No. 1

20 payment and performance bond with a surety insurer authorized to
21 do business in this state as surety. A public entity may not
22 require a contractor to secure a surety bond under this section
23 from a specific agent or bonding company. The bond must state on
24 its front page: the name, principal business address, and phone
25 number of the contractor, the surety, the owner of the property
26 being improved, and, if different from the owner, the
27 contracting public entity; the contract number assigned by the
28 contracting public entity; the bond number assigned by the
29 surety; and a description of the project sufficient to identify
30 it, such as a legal description or the street address of the
31 property being improved, and a general description of the
32 improvement. Such bond shall be conditioned upon the
33 contractor's performance of the construction work in the time
34 and manner prescribed in the contract and promptly making
35 payments to all persons defined in s. 713.01 who furnish labor,
36 services, or materials for the prosecution of the work provided
37 for in the contract. Any claimant may apply to the governmental
38 entity having charge of the work for copies of the contract and
39 bond and shall thereupon be furnished with a certified copy of
40 the contract and bond. The claimant shall have a right of action
41 against the contractor and surety for the amount due him or her,
42 including unpaid finance charges due under the claimant's
43 contract. Such action shall not involve the public authority in
44 any expense. When such work is done for the state and the
45 contract is for \$100,000 or less, no payment and performance
46 bond shall be required. At the discretion of the official or
47 board awarding such contract when such work is done for any

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Published On: 1/24/2012 6:16:19 PM

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Amendment No. 1

48 county, city, political subdivision, or public authority, any
49 person entering into such a contract which is for \$200,000 or
50 less may be exempted from executing the payment and performance
51 bond. When such work is done for the state, the Secretary of
52 Management Services may delegate to state agencies the authority
53 to exempt any person entering into such a contract amounting to
54 more than \$100,000 but less than \$200,000 from executing the
55 payment and performance bond. In the event such exemption is
56 granted, the officer or officials shall not be personally liable
57 to persons suffering loss because of granting such exemption.
58 The Department of Management Services shall maintain information
59 on the number of requests by state agencies for delegation of
60 authority to waive the bond requirements by agency and project
61 number and whether any request for delegation was denied and the
62 justification for the denial. Any provision in a payment bond
63 furnished for public work contracts as provided by this
64 subsection which further restricts the classes of persons ~~as~~
65 ~~defined in s. 713.01~~ protected by the bond, which restricts ~~or~~
66 the venue of any proceeding relating to such bond, which limits
67 or expands the effective duration of the bond, or which adds
68 conditions precedent to the enforcement of a claim against the
69 bond beyond those provided in this section is unenforceable.

70 (b) The Department of Management Services shall adopt
71 rules with respect to all contracts for \$200,000 or less, to
72 provide:

73 1. Procedures for retaining up to 10 percent of each
74 request for payment submitted by a contractor and procedures for
75 determining disbursements from the amount retained on a pro rata

Amendment No. 1

76 basis to laborers, materialmen, and subcontractors, as defined
77 in s. 713.01.

78 2. Procedures for requiring certification from laborers,
79 materialmen, and subcontractors, as defined in s. 713.01, prior
80 to final payment to the contractor that such laborers,
81 materialmen, and subcontractors have no claims against the
82 contractor resulting from the completion of the work provided
83 for in the contract.

84
85 The state shall not be held liable to any laborer, materialman,
86 or subcontractor for any amounts greater than the pro rata share
87 as determined under this section.

88 (c)1. The amount of the bond shall equal the contract
89 price, except that for a contract in excess of \$250 million, if
90 the state, county, municipality, political subdivision, or other
91 public entity finds that a bond in the amount of the contract
92 price is not reasonably available, the public owner shall set
93 the amount of the bond at the largest amount reasonably
94 available, but not less than \$250 million.

95 2. For construction-management or design-build contracts,
96 if the public owner does not include in the bond amount the cost
97 of design or other nonconstruction services, the bond may not be
98 conditioned on performance of such services or payment to
99 persons furnishing such services. Notwithstanding paragraph (a),
100 such a bond may exclude persons furnishing such services from
101 the classes of persons protected by the bond.

102 (2)(a)1. If a claimant is no longer furnishing labor,
103 services, or materials on a project, a contractor or the

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104 contractor's agent or attorney may elect to shorten the
105 ~~prescribed time in this paragraph~~ within which an action to
106 enforce any claim against a payment bond must ~~provided pursuant~~
107 ~~to this section may~~ be commenced by recording in the clerk's
108 office a notice in substantially the following form:

109
110 NOTICE OF CONTEST OF CLAIM
111 AGAINST PAYMENT BOND
112

113 To: ...(Name and address of claimant)...

114
115 You are notified that the undersigned contests your notice
116 of nonpayment, dated,, and served on the
117 undersigned on,, and that the time within
118 which you may file suit to enforce your claim is limited to 60
119 days after the date of service of this notice.

120
121 DATED on,

122
123 Signed: ...(Contractor or Attorney)...

124
125 The claim of any claimant upon whom such notice is served and
126 who fails to institute a suit to enforce his or her claim
127 against the payment bond within 60 days after service of such
128 notice shall be extinguished automatically. The contractor of
129 the contractor's attorney ~~clerk~~ shall serve mail a copy of the
130 notice of contest to the claimant at the address shown in the
131 notice of nonpayment or most recent amendment thereto and shall

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132 certify to such service on the face of such notice and record
133 the notice. ~~Service is complete upon mailing.~~

134 2. A claimant, except a laborer, who is not in privity
135 with the contractor must ~~shall~~, before commencing or not later
136 than 45 days after commencing to furnish labor, services, or
137 materials for the prosecution of the work, furnish the
138 contractor with a written notice that he or she intends to look
139 to the bond for protection. A claimant who is not in privity
140 with the contractor and who has not received payment for his or
141 her labor, services, or materials shall deliver to the
142 contractor and to the surety written notice of the performance
143 of the labor or delivery of the materials or supplies and of the
144 nonpayment. The notice of nonpayment must ~~may~~ be served ~~at any~~
145 ~~time~~ during the progress of the work or thereafter but may not
146 be served earlier than ~~before~~ 45 days after the first furnishing
147 of labor, services, or materials or, ~~and not~~ later than 90 days
148 after the final furnishing of the labor, services, or materials
149 by the claimant or, with respect to rental equipment, not later
150 than 90 days after the date that the rental equipment was last
151 on the job site available for use. Any notice of nonpayment
152 served by a claimant who is not in privity with the contractor
153 which includes sums for retainage must specify the portion of
154 the amount claimed for retainage. An ~~No~~ action for the labor,
155 materials, or supplies may not be instituted against the
156 contractor or the surety unless the notice to the contractor and
157 notice of nonpayment have been served, if required by this
158 section both notices have been given. If the payment bond is not
159 recorded before commencement of construction, the time periods

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160 for the claimant to serve the required notices may at the option
161 of the claimant be calculated from the dates specified in this
162 section or from the date the claimant is served a copy of the
163 bond. In no event, however, shall the limitation period for
164 commencement of an action against a payment bond as established
165 in s. 95.11 be expanded. Notices required or permitted under
166 this section may be served in accordance with s. 713.18. A
167 claimant may not waive in advance his or her right to bring an
168 action under the bond against the surety. In any action brought
169 to enforce a claim against a payment bond under this section,
170 the prevailing party is entitled to recover a reasonable fee for
171 the services of his or her attorney for trial and appeal or for
172 arbitration, in an amount to be determined by the court, which
173 fee must be taxed as part of the prevailing party's costs, as
174 allowed in equitable actions. The time periods for service of a
175 notice of nonpayment or for bringing an action against a
176 contractor or a surety shall be measured from the last day of
177 furnishing labor, services, or materials by the claimant and
178 shall not be measured by other standards, such as the issuance
179 of a certificate of occupancy or the issuance of a certificate
180 of substantial completion.

181 (11) If a contractor furnishes and records a payment and
182 performance bond for a public works project in accordance with
183 this section, the public authority may not condition its
184 payments to the contractor on the production of a release,
185 waiver, or like documentation from a claimant demonstrating that
186 the claimant does not have an outstanding claim against the
187 contractor, the surety, the payment bond, or the public

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188 authority for payments due on labor, services, or materials
189 furnished on the public works project.

190 Section 2. Paragraph (b) of subsection (2) of section
191 713.10, Florida Statutes, is amended to read:

192 713.10 Extent of liens.—

193 (2)

194 (b) The interest of the lessor shall not be subject to
195 liens for improvements made by the lessee when:

196 1. The lease, or a short form or a memorandum of the lease
197 that contains the specific language in the lease prohibiting
198 such liability, is recorded in the official records of the
199 county where the premises are located before the recording of a
200 notice of commencement for improvements to the premises and the
201 terms of the lease expressly prohibit such liability; or

202 2. The terms of the lease expressly prohibit such
203 liability, and a notice advising that leases for the rental of
204 premises on a parcel of land prohibit such liability has been
205 recorded in the official records of the county in which the
206 parcel of land is located before the recording of a notice of
207 commencement for improvements to the premises, and the notice
208 includes the following:

209 a. The name of the lessor.

210 b. The legal description of the parcel of land to which
211 the notice applies.

212 c. The specific language contained in the various leases
213 prohibiting such liability.

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214 d. A statement that all or a majority of the leases
215 entered into for premises on the parcel of land expressly
216 prohibit such liability.

217

218 The notice required by this subparagraph shall still be
219 effective and the lessor's interest in a premises on the parcel
220 of land shall not be subject to liens for improvements made by
221 the lessee of such premises notwithstanding that all of the
222 leases for all of the premises on the parcel of land do not
223 contain language prohibiting such liability or the language
224 prohibiting such liability varies in the various leases or does
225 not match the language in the notice, if the lease for the
226 specific premises as to which a lien could otherwise be claimed
227 against the lessor's interest expressly provides that the
228 interest of the lessor shall not be subject to liens for
229 improvements made by the lessee.

230 3. The lessee is a mobile home owner who is leasing a
231 mobile home lot in a mobile home park from the lessor.

232 Section 3. Paragraph (e) of subsection (1) of section
233 713.13, Florida Statutes, is amended to read:

234 713.13 Notice of commencement.—

235 (1)

236 (e) A copy of any payment bond must be attached at the
237 time of recordation of the notice of commencement. The failure
238 to attach a copy of the bond to the notice of commencement when
239 the notice is recorded negates the exemption provided in s.
240 713.02(6). However, if a payment bond under s. 713.23 exists but
241 was not attached at the time of recordation of the notice of

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242 commencement, the bond may be used to transfer any recorded lien
243 of a lienor except that of the contractor by the recordation and
244 service of a notice of bond pursuant to s. 713.23(2). The notice
245 requirements of s. 713.23 apply to any claim against the bond;
246 however, the time limits for serving any required notices shall,
247 at the option of the lienor, be calculated from the dates begin
248 ~~running from the later of the time~~ specified in s. 713.23 or the
249 date the notice of bond is served on the lienor.

250 Section 4. Paragraph (f) of subsections (1), and
251 subsection (4), of section 713.132, Florida Statutes, are
252 amended to read:

253 713.132 Notice of termination.—

254 (1) An owner may terminate the period of effectiveness of
255 a notice of commencement by executing, swearing to, and
256 recording a notice of termination that contains:

257 (f) A statement that the owner has, before recording the
258 notice of termination, served a copy of the notice of
259 termination on the contractor and on each lienor who has a
260 direct contract with the owner or who has served a notice to
261 owner given notice. The owner is not required to serve a copy of
262 the notice of termination on any lienor who has executed a
263 waiver and release of lien upon final payment in accordance with
264 s. 713.20.

265 (4) A notice of termination is effective to terminate the
266 notice of commencement at the later of 30 days after recording
267 of the notice of termination or the date stated in the notice of
268 termination as the date on which the notice of commencement is
269 terminated, if provided that the notice of termination has been

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270 served pursuant to paragraph (1)(f) on the contractor and on
271 each lienor who has a direct contract with the owner or who has
272 served a notice to owner ~~given notice~~.

273 Section 5. Section 713.16, Florida Statutes, is amended to
274 read:

275 713.16 Demand for copy of contract and statements of
276 account; form.—

277 (1) A copy of the contract of a lienor or owner and a
278 statement of the amount due or to become due if fixed or
279 ascertainable thereon must be furnished by any party thereto,
280 upon written demand of an owner or a lienor contracting with or
281 employed by the other party to such contract. If the owner or
282 lienor refuses or neglects to furnish such copy of the contract
283 or such statement, or willfully and falsely states the amount
284 due or to become due if fixed or ascertainable under such
285 contract, any person who suffers any detriment thereby has a
286 cause of action against the person refusing or neglecting to
287 furnish the same or willfully and falsely stating the amount due
288 or to become due for his or her damages sustained thereby. The
289 information contained in such copy or statement furnished
290 pursuant to such written demand is binding upon the owner or
291 lienor furnishing it unless actual notice of any modification is
292 given to the person demanding the copy or statement before such
293 person acts in good faith in reliance on it. The person
294 demanding such documents must pay for the reproduction thereof;
295 and, if such person fails or refuses to do so, he or she is
296 entitled only to inspect such documents at reasonable times and
297 places.

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298 (2) The owner may serve in writing a demand of any lienor
299 for a written statement under oath of his or her account showing
300 the nature of the labor or services performed and to be
301 performed, if any, the materials furnished, the materials to be
302 furnished, if known, the amount paid on account to date, the
303 amount due, and the amount to become due, if known, as of the
304 date of the statement by the lienor. Any such demand to a lienor
305 must be served on the lienor at the address and to the attention
306 of any person who is designated to receive the demand in the
307 notice to owner served by such lienor and must include a
308 description of the project, including the names of the owner,
309 the contractor, and the lienor's customer, as set forth in the
310 lienor's notice to owner. The failure or refusal to furnish the
311 statement does not deprive the lienor of his or her lien if the
312 demand is not served at the address of the lienor or directed to
313 the attention of the person designated to receive the demand in
314 the notice to owner. The failure or refusal to furnish the
315 statement under oath within 30 days after the demand, or the
316 furnishing of a false or fraudulent statement, deprives the
317 person so failing or refusing to furnish such statement of his
318 or her lien. If the owner serves more than one demand for
319 statement of account on a lienor and none of the information
320 regarding the account has changed since the lienor's last
321 response to a demand, the failure or refusal to furnish such
322 statement does not deprive the lienor of his or her lien. The
323 negligent inclusion or omission of any information deprives the
324 person of his or her lien to the extent the owner can
325 demonstrate prejudice from such act or omission by the lienor.

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326 The failure to furnish a response to a demand for statement of
327 account does not affect the validity of any claim of lien being
328 enforced through a foreclosure case filed prior to the date the
329 demand for statement is received by the lienor.

330 (3) A request for sworn statement of account must be in
331 substantially the following form:

332
333 REQUEST FOR SWORN STATEMENT OF ACCOUNT

334
335 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED
336 UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
337 STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

338
339 To: ... (Lienor's name and address) ...

340
341 The undersigned hereby demands a written statement under oath of
342 his or her account showing the nature of the labor or services
343 performed and to be performed, if any, the materials furnished,
344 the materials to be furnished, if known, the amount paid on
345 account to date, the amount due, and the amount to become due,
346 if known, as of the date of the statement for the improvement of
347 real property identified as ... (property description)

348
349 ... (name of contractor) ...

350
351 ... (name of the lienor's customer, as set forth in the lienor's
352 Notice to Owner, if such notice has been served)

353

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354 ... (signature and address of owner)...

355 ... (date of request for sworn statement of account)...

356

357 (4) When a contractor has furnished a payment bond
358 pursuant to s. 713.23, he or she may, when an owner makes any
359 payment to the contractor or directly to a lienor, serve a
360 written demand on any other lienor for a written statement under
361 oath of his or her account showing the nature of the labor or
362 services performed and to be performed, if any, the materials
363 furnished, the materials to be furnished, if known, the amount
364 paid on account to date, the amount due, and the amount to
365 become due, if known, as of the date of the statement by the
366 lienor. Any such demand to a lienor must be served on the lienor
367 at the address and to the attention of any person who is
368 designated to receive the demand in the notice to contractor
369 served by such lienor. The demand must include a description of
370 the project, including the names of the owner, the contractor,
371 and the lienor's customer, as set forth in the lienor's notice
372 to contractor. The failure or refusal to furnish the statement
373 does not deprive the lienor of his or her rights under the bond
374 if the demand is not served at the address of the lienor or
375 directed to the attention of the person designated to receive
376 the demand in the notice to contractor. The failure to furnish
377 the statement within 30 days after the demand, or the furnishing
378 of a false or fraudulent statement, deprives the person who
379 fails to furnish the statement, or who furnishes the false or
380 fraudulent statement, of his or her rights under the bond. If
381 the contractor serves more than one demand for statement of

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382 account on a lienor and none of the information regarding the
383 account has changed since the lienor's last response to a
384 demand, the failure or refusal to furnish such statement does
385 not deprive the lienor of his or her rights under the bond. The
386 negligent inclusion or omission of any information deprives the
387 person of his or her rights under the bond to the extent the
388 contractor can demonstrate prejudice from such act or omission
389 by the lienor. The failure to furnish a response to a demand for
390 statement of account does not affect the validity of any claim
391 on the bond being enforced in a lawsuit filed prior to the date
392 the demand for statement of account is received by the lienor.

393 (5) (a) Any lienor who is perfecting a claim of lien ~~has~~
394 ~~recorded a claim of lien~~ may serve with the claim of lien or
395 thereafter a ~~make~~ written demand on the owner for a written
396 statement under oath showing:

397 1. The amount of the direct contract under which the lien
398 was recorded;

399 2. The dates and amounts paid or to be paid by or on
400 behalf of the owner for all improvements described in the direct
401 contract;

402 3. The reasonable estimated costs of completing the direct
403 contract under which the lien was claimed pursuant to the scope
404 of the direct contract; and

405 4. If known, the actual cost of completion.

406 (b) Any owner who does not provide the statement within 30
407 days after demand, or who provides a false or fraudulent
408 statement, is not a prevailing party for purposes of an award of
409 attorney's fees under s. 713.29. The written demand must include

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410 the following warning in conspicuous type in substantially the
411 following form:

412
413 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED
414 STATEMENT WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
415 STATEMENT WILL RESULT IN THE LOSS OF YOUR RIGHT TO
416 RECOVER ATTORNEY FEES IN ANY ACTION TO ENFORCE THE
417 CLAIM OF LIEN OF THE PERSON REQUESTING THIS STATEMENT.

418
419 (6) Any written demand served on the owner must include a
420 description of the project, including the names of the
421 contractor and the lienor's customer, as set forth in the
422 lienor's notice to owner.

423 (7) For purposes of this section, the term "information"
424 means the nature and quantity of the labor, services, and
425 materials furnished or to be furnished by a lienor and the
426 amount paid, the amount due, and the amount to become due on the
427 lienor's account.

428 Section 6. Section 713.18, Florida Statutes, is amended to
429 read:

430 713.18 Manner of serving notices and other instruments.-

431 (1) Service of notices, claims of lien, affidavits,
432 assignments, and other instruments permitted or required under
433 this part, or copies thereof when so permitted or required,
434 unless otherwise specifically provided in this part, must be
435 made by one of the following methods:

436 (a) By actual delivery to the person to be served; if a
437 partnership, to one of the partners; if a corporation, to an

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438 officer, director, managing agent, or business agent; or, if a
439 limited liability company, to a member or manager.

440 (b) By ~~sending the same by~~ common carrier delivery service
441 or by registered, Global Express Guaranteed, or certified mail,
442 with postage or shipping paid by the sender and prepaid, ~~or by~~
443 ~~overnight or second day delivery~~ with evidence of delivery,
444 which may be in an electronic format.

445 (c) ~~If the method specified in paragraph (a) or paragraph~~
446 ~~(b) cannot be accomplished,~~ By posting on the site of the
447 improvement if service as provided by paragraph (a) or paragraph
448 (b) cannot be accomplished premises.

449 (2) Notwithstanding subsection (1), service of ~~if~~ a notice
450 to owner, or a notice to contractor under s. 713.23, s. 337.18,
451 ~~or a preliminary notice under s. 255.05 is mailed by registered~~
452 ~~or certified mail with postage prepaid to the person to be~~
453 ~~served at any of the addresses set forth in subsection (3)~~
454 ~~within 40 days after the date the lienor first furnishes labor,~~
455 ~~services, or materials, service of that notice is effective as~~
456 of the date of mailing if:

457 (a) The notice is mailed by registered, Global Express
458 Guaranteed, or certified mail, with postage prepaid, to the
459 person to be served at any of the addresses set forth in
460 subsection (3);

461 (b) The notice is mailed within 40 days after the date the
462 lienor first furnishes labor, services, or materials; and

463 (c) The person who served the notice maintains a
464 registered or certified mail log that shows the registered or
465 certified mail number issued by the United States Postal

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466 Service, the name and address of the person served, and the date
467 stamp of the United States Postal Service confirming the date of
468 mailing or if the person who served the notice maintains
469 electronic tracking records generated through use of the United
470 States Postal Service Confirm service or a similar service
471 containing the postal tracking number, the name and address of
472 the person served, and verification of the date of receipt by
473 the United States Postal Service.

474 (3) (a) Service of ~~if~~ an instrument served pursuant to this
475 section is effective on the date of mailing the instrument if
476 it:

477 1. Is sent to the last address shown in the notice of
478 commencement or any amendment thereto or, in the absence of a
479 notice of commencement, to the last address shown in the
480 building permit application, or to the last known address of the
481 person to be served; and ~~, is not received, but~~

482 2. Is returned as being "refused," "moved, not
483 forwardable," or "unclaimed," or is otherwise not delivered or
484 deliverable through no fault of the person serving the item,
485 ~~then service is effective on the date the instrument was sent.~~

486 (b) If the address shown in the notice of commencement or
487 any amendment to the notice of commencement, or, in the absence
488 of a notice of commencement, in the building permit application,
489 is incomplete for purposes of mailing or delivery, the person
490 serving the item may complete the address and properly format it
491 according to United States Postal Service addressing standards
492 using information obtained from the property appraiser or

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493 another public record without affecting the validity of service
494 under this section.

495 (4) A notice served by a lienor on one owner or one
496 partner of a partnership owning the real property ~~If the real~~
497 ~~property is owned by more than one person or a partnership, a~~
498 ~~lienor may serve any notices or other papers under this part on~~
499 ~~any one of such owners or partners, and such notice is deemed~~
500 notice to all owners and partners.

501 Section 7. Section 713.22, Florida Statutes, is amended to
502 read:

503 713.22 Duration of lien.—

504 (1) A ~~No~~ lien provided by this part does not shall
505 continue for a longer period than 1 year after the claim of lien
506 has been recorded or 1 year after the recording of an amended
507 claim of lien that shows a later date of final furnishing of
508 labor, services, or materials, unless within that time an action
509 to enforce the lien is commenced in a court of competent
510 jurisdiction. A lien that has been continued beyond the 1-year
511 period ~~The continuation of the lien effected by the commencement~~
512 ~~of an the action is shall not enforceable be good~~ against
513 creditors or subsequent purchasers for a valuable consideration
514 and without notice, unless a notice of lis pendens is recorded.

515 (2) An owner or the owner's ~~agent or~~ attorney may elect to
516 shorten the time prescribed in subsection (1) within which to
517 commence an action to enforce any claim of lien or claim against
518 a bond or other security under s. 713.23 or s. 713.24 by
519 recording in the clerk's office a notice in substantially the
520 following form:

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NOTICE OF CONTEST OF LIEN

To: ...(Name and address of lienor)...

You are notified that the undersigned contests the claim of lien filed by you on, ...(year)...., and recorded in Book, Page, of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This day of, ...(year)....

Signed: ...(Owner or Attorney)...

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve in accordance with s. 713.18, ~~mail~~ a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of such notice and record the notice. ~~Service shall be deemed complete upon mailing.~~

Section 8. Paragraphs (c), (d), (e), and (f) of subsection (1) and subsections (2) and (4) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.-

(1)

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549 (c) ~~Either~~ Before beginning or within 45 days after
550 beginning to furnish labor, materials, or supplies, a lienor who
551 is not in privity with the contractor, except a laborer, shall
552 serve the contractor with notice in writing that the lienor will
553 look to the contractor's bond for protection on the work. If a
554 notice of commencement with the attached bond is not recorded,
555 before commencement of construction ~~or a reference to the bond~~
556 ~~is not given in the notice of commencement, and in either case~~
557 ~~if the lienor not in privity with the contractor is not~~
558 ~~otherwise notified in writing of the existence of the bond, the~~
559 ~~lienor not in privity with the contractor~~ may, in the
560 alternative, elect to serve the notice to contractor up to shall
561 have 45 days from the date the lienor is served with a copy
562 ~~notified of the existence of the bond within which to serve the~~
563 ~~notice.~~ The notice may be in substantially the following form
564 and may be combined with a notice to owner given under s. 713.06
565 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO
566 CONTRACTOR:

567
568 NOTICE TO CONTRACTOR

569

570 To ... (name and address of contractor)...

571

572 The undersigned hereby informs you that he or she has furnished
573 or is furnishing services or materials as follows:

574

575 ...(general description of services or materials)... for the
576 improvement of the real property identified as ...(property

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577 description)... under an order given by ...(lienor's
578 customer)....

579
580 This notice is to inform you that the undersigned intends to
581 look to the contractor's bond to secure payment for the
582 furnishing of materials or services for the improvement of the
583 real property.

584
585 ...(name of lienor)...
586 ...(signature of lienor or lienor's representative)...
587 ...(date)...
588 ...(lienor's address)...

589
590 ~~The undersigned notifies you that he or she has furnished or is~~
591 ~~furnishing ...(services or materials)... for the improvement of~~
592 ~~the real property identified as ...(property description)...~~
593 ~~owned by ...(owner's name and address)... under an order given~~
594 ~~by and that the undersigned will look to the contractor's~~
595 ~~bond for protection on the work.~~

596 ~~...(Lienor's signature and address)...~~

597 (d) In addition, a lienor is required, as a condition
598 precedent to recovery under the bond, to serve a written notice
599 of nonpayment to the contractor and the surety not later than 90
600 days after the final furnishing of labor, services, or materials
601 by the lienor. A written notice satisfies this condition
602 precedent with respect to the payment described in the notice of
603 nonpayment, including unpaid finance charges due under the
604 lienor's contract, and with respect to any other payments which

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605 become due to the lienor after the date of the notice of
606 nonpayment. The time period for serving a written notice of
607 nonpayment shall be measured from the last day of furnishing
608 labor, services, or materials by the lienor and shall not be
609 measured by other standards, such as the issuance of a
610 certificate of occupancy or the issuance of a certificate of
611 substantial completion. The failure of a lienor to receive
612 retainage sums not in excess of 10 percent of the value of
613 labor, services, or materials furnished by the lienor is not
614 considered a nonpayment requiring the service of the notice
615 provided under this paragraph. If the payment bond is not
616 recorded before commencement of construction, the time period
617 for the lienor to serve a notice of nonpayment may at the option
618 of the lienor be calculated from the date specified in this
619 section or the date the lienor is served a copy of the bond. In
620 no event, however, shall the limitation period for commencement
621 of an action against a payment bond as established in s. 95.11
622 be expanded. The notice under this paragraph may be in
623 substantially the following form:

624
625 NOTICE OF NONPAYMENT

626
627 To ...(name of contractor and address)..
628 ...(name of surety and address)...

629
630 The undersigned notifies you that he or she has furnished
631 ...(describe labor, services, or materials)... for the

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632 improvement of the real property identified as ...(property
633 description).... The amount now due and unpaid is \$.....

634

635 ...(signature and address of lienor)...

636

637 (e) An ~~Ne~~ action for the labor or materials or supplies
638 may not be instituted or prosecuted against the contractor or
639 surety unless both notices have been given, if required by this
640 section. An ~~Ne~~ action may not ~~shall~~ be instituted or prosecuted
641 against the contractor or against the surety on the bond under
642 this section after 1 year from the performance of the labor or
643 completion of delivery of the materials and supplies. The time
644 period for bringing an action against the contractor or surety
645 on the bond shall be measured from the last day of furnishing
646 labor, services, or materials by the lienor. The time period ~~and~~
647 shall not be measured by other standards, such as the issuance
648 of a certificate of occupancy or the issuance of a certificate
649 of substantial completion. A contractor or the contractor's
650 ~~agent or~~ attorney may elect to shorten the ~~prescribed~~ time
651 within which an action to enforce any claim against a payment
652 bond provided under this section or s. 713.245 must ~~may~~ be
653 commenced at any time after a notice of nonpayment, if required,
654 has been served for the claim by recording in the clerk's office
655 a notice in substantially the following form:

656

657 NOTICE OF CONTEST OF CLAIM

658

AGAINST PAYMENT BOND

659

Amendment No. 1

To: ... (Name and address of lienor)...

You are notified that the undersigned contests your notice of nonpayment, dated,, and served on the undersigned on,, and that the time within which you may file suit to enforce your claim is limited to 60 days from the date of service of this notice.

DATED on,

Signed: ... (Contractor or Attorney)...

The claim of any lienor upon whom the notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of the notice shall be extinguished automatically. The contractor or the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the notice of contest to the lienor at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice. ~~Service is complete upon mailing.~~

(f) Any lienor has a direct right of action on the bond against the surety. Any provision in a payment bond which further restricts ~~A bond must not contain any provisions restricting~~ the classes of persons who are protected by the payment bond, which restricts ~~thereby or~~ the venue of any proceeding relating to such payment bond, which limits or expands the effective duration of the payment bond, or which adds conditions precedent to the enforcement of a claim against

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Amendment No. 1

688 | a payment bond beyond those provided in this part is
689 | enforceable. The surety is not entitled to the defense of pro
690 | tanto discharge as against any lienor because of changes or
691 | modifications in the contract to which the surety is not a
692 | party; but the liability of the surety may not be increased
693 | beyond the penal sum of the bond. A lienor may not waive in
694 | advance his or her right to bring an action under the bond
695 | against the surety.

696 | (2) The bond shall secure every lien under the direct
697 | contract accruing subsequent to its execution and delivery,
698 | except that of the contractor. Every claim of lien, except that
699 | of the contractor, filed subsequent to execution and delivery of
700 | the bond shall be transferred to it with the same effect as
701 | liens transferred under s. 713.24. Record notice of the transfer
702 | shall be effected by the contractor, or any person having an
703 | interest in the property against which the claim of lien has
704 | been asserted, by recording in the clerk's office a notice, with
705 | the bond attached, in substantially the following form:

706 |
707 | NOTICE OF BOND
708 |

709 | To ... (Name and Address of Lienor) ...
710 |

711 | You are notified that the claim of lien filed by you on,
712 |, and recorded in Official Records Book at page of
713 | the public records of County, Florida, is secured by a
714 | bond, a copy being attached.
715 |

Amendment No. 1

716 Signed: ... (Name of person recording notice)...

717

718 The notice shall be verified. The person recording the notice of
719 bond clerk shall serve mail a copy of the notice along with a
720 copy of the bond to the lienor at the address shown in the claim
721 of lien, or the most recent amendment to it; shall certify to
722 the service on the face of the notice; and shall record the
723 notice. ~~The clerk shall receive the same fee as prescribed in s.~~
724 ~~713.24(1) for certifying to a transfer of lien.~~

725 (4) The provisions of s. 713.24(3) shall apply to bonds
726 under this section except where those provisions conflict with
727 this section.

728 Section 9. This act shall take effect October 1, 2012.

729

730

731

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

732 Remove the entire title and insert:

733 An act relating to construction liens and bonds; amending s.
734 255.05, F.S.; requiring that the bond number be stated on the
735 first page of the bond; providing that a provision in a payment
736 bond furnished for a public works contract that limits or
737 expands the effective duration of the bond or adds conditions
738 precedent is unenforceable; requiring a contractor, or the
739 contractor's attorney, to serve rather than mail a notice of
740 contest of claim against the payment bond; providing additional
741 time for service when the bond is not recorded; specifying the
742 duration of the bond; providing that payment to a contractor who

Amendment No. 1

744 has furnished a payment bond on a public works project may not
745 be conditioned upon production of certain documents; providing
746 prerequisites for commencement of an action against a payment
747 bond; amending s. 713.10, F.S.; providing that a specified
748 notice concerning a lessor's liability for liens for
749 improvements made by the lessee is effective notwithstanding
750 that all of the leases for all of the premises on the parcel of
751 land do not contain language prohibiting such liability or the
752 language prohibiting such liability varies in the various leases
753 or does not match the language in the notice, if the lease for
754 the specific premises as to which a lien could otherwise be
755 claimed against the lessor's interest expressly provides that
756 the interest of the lessor shall not be subject to liens for
757 improvements made by the lessee; amending s. 713.13, F.S.;
758 providing additional time for service when a notice of
759 commencement is not recorded with a copy of the bond attached;
760 amending s. 713.132, F.S.; requiring notice of termination to be
761 served on lienors in privity with the owner; amending s. 713.16,
762 F.S.; revising requirements for demands for a copy of a
763 construction contract and a statement of account; authorizing a
764 lienor to make certain written demands to an owner for certain
765 written statements; providing requirements for such written
766 demands; amending s. 713.18, F.S.; providing additional methods
767 by which certain items may be served; revising provisions
768 relating to when service of specified items is effective;
769 specifying requirements for certain written instruments under
770 certain circumstances; amending s. 713.22, F.S.; requiring that
771 the clerk serve rather than mail a notice of contest of lien;

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 897 (2012)

Amendment No. 1

772 amending s. 713.23, F.S.; revising the contents of a notice to
773 contractor; requiring that a contractor serve rather than mail a
774 notice of contest of claim against the payment bond and a notice
775 of bond; clarifying the attachment of the bond to the notice;
776 providing that a provision in a payment bond that limits or
777 expands the effective duration of the bond or adds conditions
778 precedent is unenforceable; clarifying applicability of certain
779 provisions; providing an effective date.