Civil Justice Subcommittee

Wednesday, January 25, 2012
8:00 AM
404 HOB

Dean Cannon
Speaker

Eric Eisnaugle
Chair

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 states[2] with no-fault motor vehicle[3] 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

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[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 given 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.

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[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.floir.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 Report[17]

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.

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[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 exits, 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, 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).

A bill to be entitled

An act relating to motor vehicle insurance; amending s. 316.066, F.S.; revising provisions relating to the contents of written reports of motor vehicle crashes; amending s. 627.736, F.S.; providing limitations on attorney fees for certain actions under the Florida Motor Vehicle No-Fault Law; creating s. 627.748, F.S.; designating specified provisions as the Florida Motor Vehicle No-Fault Emergency Care Coverage Law; creating s. 627.7481, F.S.; providing purposes; creating s. 627.74811, F.S.; providing legislative intent that provisions, schedules, or procedures are to be given full force and effect regardless of their express inclusion in insurer forms; creating s. 627.7482, F.S.; providing definitions; creating s. 627.7483, F.S.; requiring every owner or registrant of a motor vehicle required to be registered and licensed in this state to maintain specified security; providing exceptions; requiring every nonresident owner or registrant of a motor vehicle that has been physically present within this state for a specified period to maintain security; specifying means by which such security is provided; providing an exemption; creating s. 627.7484, F.S.; providing requirements for filing and maintaining proof of security; providing penalties; creating s. 627.7485, F.S.; requiring that insurance policies provide emergency care coverage to specified persons; providing limits of coverage;

specifying limits for medical, disability, and death benefits; providing restrictions on insurers with respect to provision of required benefits; prohibiting requiring purchase of other motor vehicle coverage as a condition for providing such benefits; prohibiting insurers from requiring the purchase of property damage liability insurance exceeding a specified amount in conjunction with emergency care coverage insurance; providing that failure to comply with specified availability requirements constitutes an unfair method of competition or an unfair or deceptive act or practice; providing penalties; specifying benefits an insurer may exclude; providing procedure with respect to such exclusions; specifying when benefits are due from an insurer; prohibiting insurers from obtaining liens on recovery of special damages in tort claims for emergency care coverage benefits; providing that benefits under the Florida Motor Vehicle No-Fault Emergency Care Coverage Law are subject to the Medicaid program in specified circumstances; specifying when benefits are overdue; requiring insurers to hold a specified amount of benefits in reserve for a certain time for the payment of providers; providing for interest on overdue payments; providing for tolling the time period in which emergency care coverage benefits are required to be paid when the insurer has reasonable belief that fraud has been committed and performs certain actions;

providing immunity to persons or entities that report suspected fraud in good faith; specifying injuries for which an insurer must pay emergency care coverage benefits; disallowing benefits to an insured who has committed insurance fraud; providing that a person or entity lawfully rendering treatment to an injured person for a bodily injury covered by emergency care coverage may charge only a reasonable amount for services and care; providing that the insurer may pay such charges directly to the person or entity lawfully rendering such treatment; providing limits on such charges; providing for determination of reasonableness of charges; providing that payments made by an insurer pursuant to the schedule of maximum charges, or for lesser amounts billed by providers, are considered reasonable; establishing a schedule of maximum charges; specifying that reimbursement under a schedule of maximum charges that is based on Medicare is to be calculated under the applicable Medicare schedule in effect on a specified date each year; authorizing insurers to use all Medicare coding policies and CMS payment methodologies in determining reimbursement under a schedule of maximum charges that is Medicare-based; establishing limits on specified emergency services and care; providing conditions under which an insurer or insured is not required to pay a claim or charges; requiring the Department of Health to adopt, by rule, a list of diagnostic tests

deemed not to be medically necessary and to periodically revise the list; providing procedures and requirements with respect to statements of and bills for charges for emergency services and care; directing the Financial Services Commission to adopt by rule a disclosure and acknowledgment form to be countersigned by claimants upon receipt of medical services; providing procedures and requirements with respect to investigation of claims of improper billing by a physician or other medical provider; prohibiting insurers from systematically downcoding with intent to deny reimbursement; requiring insureds and persons to whom the right to payment for emergency care coverage benefits has been assigned to comply with all terms of the emergency care coverage policy, including submission to examinations under oath; providing that compliance with policy terms is a condition precedent to the receipt of emergency care coverage benefits; providing for reasonable payment for attendance at examinations under oath to health care providers and other persons produced by the provider in response to the insurer's request; permitting persons appearing for an examination under oath to have an attorney present at the person's expense; requiring insurers to coordinate with claimants for emergency care coverage benefits to ensure an appropriate time and location for the examination; authorizing insurers to suspend benefits to a claimant who fails to attend an

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

injured person be brought in one action unless good cause is shown; authorizing the electronic transmission of notices and communications under certain conditions; creating s. 627.7486, F.S.; providing an exemption from tort liability for certain damages in legal actions under the Florida Motor Vehicle No-Fault Emergency Care Coverage Law in certain circumstances; providing for recovery of tort damages in certain circumstances; providing for motions to dismiss action on specified grounds; prohibiting the award of punitive damages; creating s. 627.7487, F.S.; providing for optional deductibles and limitations of coverage for emergency care coverage policies; requiring a specified notice to policyholders; creating s. 627.7488, F.S.; requiring the commission to adopt by rule a form for the notification of insureds of their right to receive emergency care coverage benefits; specifying contents of such notice; providing requirements for the mailing or delivery of such notice; creating s. 627.7489, F.S.; providing for mandatory joinder of specified claims; creating s. 627.749, F.S.; providing for an insurer's right of reimbursement for emergency medical care benefits paid to a person injured by a commercial motor vehicle under specified circumstances; creating s. 627.7491, F.S.; providing for application of the Florida Motor Vehicle No-Fault Emergency Care Coverage Law; providing for requirements for forms and rates

for policies issued or renewed on or after a specified date; requiring a specified notice to existing policyholders; amending 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.; conforming provisions; providing a directive to the Division of Statutory Revision; providing applicability; providing effective dates.

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

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

316.066 Written reports of crashes.—

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

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

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

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

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

1. The date, time, and location of the crash.

2. A description of the vehicles involved.

3. The names and addresses of the parties involved, including all drivers and passengers, each clearly identified as being either a driver or a passenger and specifying the vehicle in which each person was a driver or passenger.

4. The names and addresses of witnesses.

5. The name, badge number, and law enforcement agency of the officer investigating the crash.

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

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

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

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

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

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

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

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

(10) and (15) and except that any attorney fees recovered 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

627.7482 Definitions.—As used in ss. 627.748-627.7491, the term:

(1) "Broker" means any person not licensed under chapter 395, chapter 400, chapter 429, chapter 458, chapter 459, chapter 460, chapter 461, or chapter 641 who charges or receives compensation for any use of medical equipment and is not the 100-percent owner or the 100-percent lessee of such equipment. For purposes of this subsection, such owner or lessee may be an individual, a corporation, a partnership, or any other entity and any of its 100-percent-owned affiliates and subsidiaries. For purposes of this subsection, the term "lessee" means a long-term lessee under a capital or operating lease but does not include a part-time lessee. For purposes of this subsection, the term "broker" does not include a hospital or physician management company whose medical equipment is ancillary to the practices managed; a debt collection agency; an entity that has contracted with the insurer to obtain a discounted rate; a management company that has contracted to provide general management services for a licensed physician or health care facility and whose compensation is not materially affected by the usage or frequency of usage of medical equipment; or an entity that is 100-percent owned by one or more hospitals or physicians. The term "broker" does not include a person or entity that certifies, upon request of an insurer, that:

(a) It is a clinic licensed under part X of chapter 400;

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

(c) The owner's only part-time lease of medical equipment for emergency care coverage patients is on a temporary basis not to exceed 30 days in a 12-month period and is necessitated by:

1. Repair or maintenance of existing 100-percent-owned medical equipment;

2. The pending arrival and installation of newly purchased or replacement 100-percent-owned medical equipment; or

3. A determination by the medical director or clinical director that open-style medical equipment is medically necessary for the performance of tests or procedures for patients due to a patient's physical size or claustrophobia. The leased medical equipment may not be used by patients who are not patients of the registered clinic for medical treatment of services.

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

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

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

(3) "Emergency medical condition" means:

(a) 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:

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

2. Serious impairment to bodily functions.

3. Serious dysfunction of any bodily organ or part.

(b) With respect to a pregnant woman:

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

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

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

(4) "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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

627.7483 Required security.—

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

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

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

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

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

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

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

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

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

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

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

627.7484 Proof of security; security requirements; penalties.—

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

(2) Any person who:

(a) Gives information required in a report or otherwise as provided for in ss. 627.748-627.7491, knowing or having reason to believe that such information is false;

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

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

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

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

627.7485 Required emergency care coverage benefits; exclusions; priority; claims.—

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

(a) Medical benefits.—Eighty percent of all reasonable

expenses as follows:

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

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

3. Services and care rendered when an insured is admitted to a hospital, as defined in s. 395.002(12), 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 subparagraph 2., subparagraph 3., or subparagraph 4., subsequent services and care directly related to the medical diagnosis arising from the motor vehicle accident, subject to the following:

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

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

chapter 464.

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

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

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

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

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

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

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

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

1. Causing injury to herself or himself intentionally; or

2. Being injured while committing a felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Submitted a false material statement, document, record, or bill;

2. Submitted false material information; or

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

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

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

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

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

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

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

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

c. For emergency services and care 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.

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

e. For hospital outpatient services, other than emergency

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

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

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

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

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

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

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

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

behalf of a broker;

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

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

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

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

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

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

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

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

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

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

a. A denial letter from the incorrect insurer; or

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

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

Health Care Finance Administration.

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

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

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

Procedural Terminology (CPT) or Healthcare Correct Procedural Coding System (HCPCS), or ICD-9 in effect for the year in which services are rendered and comply with the Centers for Medicare and Medicaid Services (CMS) 1500 form instructions and the American Medical Association Current Procedural Terminology (CPT) Editorial Panel and Healthcare Correct Procedural Coding System (HCPCS). All providers other than hospitals shall include on the applicable claim form the professional license number of the provider in the line or space provided for "Signature of Physician or Supplier, Including Degrees or Credentials." In determining compliance with applicable CPT and HCPCS coding, guidance shall be provided by the Physicians' Current Procedural Terminology (CPT) or the Healthcare Correct Procedural Coding System (HCPCS) in effect for the year in which services were rendered, the Office of the Inspector General (OIG), Physicians Compliance Guidelines, and other authoritative treatises designated by rule by the Agency for Health Care Administration. No statement of medical services may include charges for medical services of a person or entity that performed such services without possessing the valid licenses required to perform such services. For purposes of paragraph (4)(b), an insurer may not be considered to have been furnished with notice of the amount of the covered loss or medical bills due unless the statements or bills comply with this paragraph and are properly completed in their entirety as to all material provisions, with all relevant information being provided therein.

(e)1. At the time the initial treatment or service is provided, each physician, other licensed professional, clinic,

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

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

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

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

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

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

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

3. Countersignature by the insured or her or his guardian

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

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

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

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

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

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

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

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

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

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

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

(a) In all circumstances, an insured seeking benefits

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

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

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

reasonably obtainable by the claimant. No later than the time of the examination under oath, the insurer must pay the medical provider, and other persons produced in response to the insurer's request, reasonable compensation for attending the examination under oath. Such compensation shall be based upon 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 examination under oath. If additional time is necessary for completion of the examination under oath, the insurer must provide compensation for the time that exceeds the good faith estimate within 15 days after the examination under oath to each person that completes the examination. Each person appearing for an examination under oath may have an attorney present at her or his own expense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—

(a) With respect to any dispute under ss. 627.748-627.7491 between the insured and the insurer, or between an assignee of an insured's rights and the insurer, s. 627.428 applies, except as provided in paragraphs (b) and (c) and subsections (9) and (13) and except that any attorney fees recovered 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:

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

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

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

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

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

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

(9) DEMAND LETTER.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Significant and permanent scarring or disfigurement; or

(d) Death.

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

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

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

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

627.7487 Emergency care coverage; optional limitations; deductibles.—

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

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

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

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

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

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

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

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

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

627.7488 Notice of insured's rights.—

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

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

(b) An advisory informing insureds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

320.02 Registration required; application for registration; forms.—

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

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

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

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

Such affidavit shall include the following warning:

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

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

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

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

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

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

(1)

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

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

320.27 Motor vehicle dealers.—

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

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

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

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

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

320.771 License required of recreational vehicle dealers.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) OWNER; OWNER/LESSOR.—

(c) Application.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

324.171 Self-insurer.—

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

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

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

400.9935 Clinic responsibilities.—

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

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

billings are not fraudulent or unlawful.

Section 29. Subsection (28) of section 409.901, Florida Statutes, is amended to read:

409.901 Definitions; ss. 409.901-409.920.—As used in ss. 409.901-409.920, except as otherwise specifically provided, the term:

(28) "Third-party benefit" means any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the agency, for any Medicaid-covered injury, illness, goods, or services, including costs of medical services related thereto, for personal injury or for death of the recipient, but specifically excluding policies of life insurance on the recipient, unless available under terms of the policy to pay medical expenses prior to death. The term includes, without limitation, collateral, as defined in this section, health insurance, any benefit under a health maintenance organization, a preferred provider arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance or personal injury protection <u>or emergency care</u> coverage, medical benefits under workers' compensation, and any obligation under law or equity to provide medical support.

Section 30. Paragraph (f) of subsection (11) of section 409.910, Florida Statutes, is amended to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

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

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

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

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

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

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

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

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

456.057 Ownership and control of patient records; report or copies of records to be furnished.—

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

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

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

456.072 Grounds for discipline; penalties; enforcement.—

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

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

627.732 or s. 627.7482, as applicable.

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

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

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

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

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

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

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

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

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

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

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

(I) Lawfully parked;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

627.0652 Insurance discounts for certain persons completing safety course.—

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

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

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

627.0653 Insurance discounts for specified motor vehicle equipment.—

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

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

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

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

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

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

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

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

627.6482 Definitions.—As used in ss. 627.648-627.6498, the term:

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

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

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

be primary; exception.—

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

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

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

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

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

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

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

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

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

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

627.7275 Motor vehicle liability.—

(1) A motor vehicle insurance policy providing personal

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

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

627.728 Cancellations; nonrenewals.—

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

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

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

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

hazards.

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

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

627.7295 Motor vehicle insurance contracts.—

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

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

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

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

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

cancel a new policy only as provided in s. 627.7275.

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

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

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

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

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

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

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

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

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

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

627.915 Insurer experience reporting.—

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

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

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

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

(c) Policyholder dividends incurred.

(d) Expenses for other acquisition and general expense.

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

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

(g) Losses paid.

(h) Losses unpaid.

(i) Loss adjustment expenses paid.

(j) Loss adjustment expenses unpaid.

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

628.909 Applicability of other laws.—

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

inconsistent with this part:

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

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

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

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

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

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

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

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

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

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

1. The name and address of the airport.

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

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

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

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

CLAIM OF LIEN

State of .....

County of .....

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

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

owned by ....., whose address is ....., has accrued

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

...(Signature)...

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

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

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

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

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

served before recordation.

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

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

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

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

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

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

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

817.234 False and fraudulent insurance claims.—

(7)

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

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

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

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

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

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

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

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

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

PCS for HB 213

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 VMC	Bond MB

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 situation[3], 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 complaint[6], which must allege that the plaintiff is the present owner and holder of the note and mortgage[7], contain a copy of the note and mortgage[8], 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 fee[10] 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 procedure[21], 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]

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[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.

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[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

A bill to be entitled

An act relating to mortgage foreclosures; amending s. 95.11, F.S.; reducing the limitations period for commencing an action to enforce a claim of a deficiency judgment subsequent to a foreclosure action; providing for application to existing causes of action; amending s. 702.10, F.S.; expanding the class of persons authorized to move for expedited foreclosure; creating a definition; providing requirements and procedures with respect to an order directed to defendants to show cause why a final judgment of foreclosure should not be entered; providing that certain failures by a defendant to make certain filings or to make certain appearances may have specified legal consequences; requiring the court to enter a final judgment of foreclosure and order a foreclosure sale under certain circumstances; amending a restriction on a mortgagee to request a court to order a mortgagor defendant to make payments or to vacate the premises during an action to foreclose on residential real estate to provide that the restriction applies to all but owner-occupied residential property; providing a presumption regarding owner-occupied property; requesting the Supreme Court to promulgate rules and forms for use in expedited foreclosure proceedings; creating s. 702.11, F.S.; establishing expedited foreclosure proceedings for abandoned residential real property and procedures

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

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

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

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

(2) WITHIN FIVE YEARS.—

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

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

(4) WITHIN TWO YEARS.—

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

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

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

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

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

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

(a) The order shall:

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

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

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

~~attached~~ final judgment.

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

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

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

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

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

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

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

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

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

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

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

alternative procedure may run simultaneously with other court procedures.

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

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

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

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

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

(a) The order shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall be governed by the provisions of s. 83.62.

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

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

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

702.11 Expedited foreclosure of abandoned residential real property.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The original promissory note; or

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

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

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

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

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

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

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

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

702.13 Defaults and case management conferences in foreclosure actions.—

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

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

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

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

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

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 DC	Bond YTB
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]

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[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 lien[10] 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

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[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 providees 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

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[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 he 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.

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[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 owner[27];
- 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

A bill to be entitled

An act relating to construction liens and bonds; amending s. 255.05, F.S.; requiring that the bond number be stated on the first page of the bond; providing that a provision in a payment bond furnished for a public works contract that limits the effective duration of the bond is unenforceable; requiring a contractor, or the contractor's attorney, to serve rather than mail a notice of contest of claim against the payment bond; providing additional time for service when the bond is not recorded; specifying the duration of the bond; amending s. 713.132, F.S.; requiring notice of termination to be served on lienors in privity with the owner; amending s. 713.16, F.S.; revising requirements for demands for a copy of a construction contract and a statement of account; authorizing a lienor to make certain written demands to an owner for certain written statements; providing requirements for such written demands; amending s. 713.18, F.S.; providing additional methods by which certain items may be served; revising provisions relating to when service of specified items is effective; specifying requirements for certain written instruments under certain circumstances; amending s. 713.22, F.S.; requiring that a contractor serve rather than mail a notice of contest of lien; amending s. 713.23, F.S.; revising the contents of a notice to contractor; requiring that a contractor serve rather

than mail a notice of contest of claim against the payment bond and a notice of bond; clarifying the attachment of the bond to the notice; specifying the duration of the bond; clarifying applicability of certain provisions; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and paragraph (a) of subsection (2) of section 255.05, Florida Statutes, are amended 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 payment and performance bond with a surety insurer authorized to do business in this state as surety. A public entity may not require a contractor to secure a surety bond under this section from a specific agent or bonding company. The bond must state on its front page: the name, principal business address, and phone number of the contractor, the surety, the 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; the bond number assigned by the surety; and a description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement. Such bond shall be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract and promptly making payments to all persons defined in s. 713.01 who furnish labor, services, or materials for the prosecution of the work provided for in the contract. Any claimant may apply to the governmental entity having charge of the work for copies of the contract and bond and shall thereupon be furnished with a certified copy of the contract and bond. The claimant shall have a right of action against the contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract. Such action shall not involve the public authority in any expense. When such work is done for the state and the contract is for $100,000 or less, no payment and performance bond shall be required. At the discretion of the official or board awarding such contract when such work is done for any county, city, political subdivision, or public authority, any person entering into such a contract which is for $200,000 or less may be exempted from executing the payment and performance bond. When such work is done for the state, the Secretary of Management Services may delegate to state agencies the authority to exempt any person entering into such a contract amounting to

more than $100,000 but less than $200,000 from executing the payment and performance bond. In the event such exemption is granted, the officer or officials shall not be personally liable to persons suffering loss because of granting such exemption. The Department of Management Services shall maintain information on the number of requests by state agencies for delegation of authority to waive the bond requirements by agency and project number and whether any request for delegation was denied and the justification for the denial. Any provision in a payment bond furnished for public work contracts as provided by this subsection which restricts the classes of persons as defined in s. 713.01 protected by the bond or the venue of any proceeding relating to such bond, or which limits the effective duration of the bond, is unenforceable.

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the ~~prescribed~~ time ~~in this paragraph~~ within which an action to enforce any claim against a payment bond must ~~provided pursuant to this section may~~ be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

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 after the date of service of this notice.

DATED on ....., ...

Signed: ...(Contractor or Attorney)...

The claim of any claimant upon whom such 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 such 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 claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. ~~Service is complete upon mailing.~~

2. A claimant, except a laborer, who is not in privity with the contractor must ~~shall~~, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, furnish the contractor with a written notice that he or she intends to look to the bond for protection. 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 existence of the bond. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, services, or materials shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment must ~~may~~ be served ~~at any time~~ during the progress of the work or thereafter but may not be served earlier than ~~before~~ 45 days after the first furnishing of labor, services, or materials or~~,~~ ~~and not~~ later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, ~~not~~ later than 90 days after the date that the rental equipment was last on the job site available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An ~~No~~ action for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Notices required or permitted under this section must ~~may~~ be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a

notice of nonpayment or for bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and may ~~shall~~ not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion.

Section 2. Paragraph (f) of subsection (1) and subsection (4) of section 713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains:

(f) 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 a direct contract with the owner or who has served a notice to owner ~~given notice~~. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(4) A notice of termination is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or the date stated in the notice of termination as the date on which the notice of commencement is terminated, if ~~provided that~~ the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner ~~given notice~~.

Section 3. Section 713.16, Florida Statutes, is amended to read:

713.16 Demand for copy of contract and statements of account; form.—

(1) A copy of the contract of a lienor or owner and a statement of the amount due or to become due if fixed or ascertainable thereon must be furnished by any party thereto, upon written demand of an owner or a lienor contracting with or employed by the other party to such contract. If the owner or lienor refuses or neglects to furnish such copy of the contract or such statement, or willfully and falsely states the amount due or to become due if fixed or ascertainable under such contract, any person who suffers any detriment thereby has a cause of action against the person refusing or neglecting to furnish the same or willfully and falsely stating the amount due or to become due for his or her damages sustained thereby. The information contained in such copy or statement furnished pursuant to such written demand is binding upon the owner or lienor furnishing it unless actual notice of any modification is given to the person demanding the copy or statement before such person acts in good faith in reliance on it. The person demanding such documents must pay for the reproduction thereof; and, if such person fails or refuses to do so, he or she is entitled only to inspect such documents at reasonable times and places.

(2) The 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 or services performed and to be

performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, 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 and 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. The failure or refusal to furnish the statement does not deprive the lienor of his or her lien if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to owner. The failure or refusal to furnish the statement under oath within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person so failing or refusing to furnish such statement of his or her lien. If the owner serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her lien. The negligent inclusion or omission of any information deprives the person of his or her lien to the extent the owner can demonstrate prejudice from such act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim of lien being

enforced through a foreclosure case filed prior to the date the demand for statement is received by the lienor.

(3) A request for sworn statement of account must be in substantially the following form:

REQUEST FOR SWORN STATEMENT OF ACCOUNT

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

To: ...(Lienor's name and address)...

The undersigned hereby demands a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement for the improvement of real property identified as ...(property description)....

<u>...(name of contractor)...</u>
<u>...(name of the lienor's customer, as specified in the lienor's Notice to Owner, if such notice has been served)....</u>

...(signature and address of owner)...
...(date of request for sworn statement of account)...

(4) When a contractor has furnished a payment bond pursuant to s. 713.23, he or she may, when an owner makes any payment to the contractor or directly to a lienor, serve a written demand on any other lienor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, 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 contractor served by such lienor. The demand must include a description of the project, the names of the owner, the contractor, and the lienor's customer, as specified in the lienor's notice to contractor, sufficient for the lienor to properly identify the account in question. The failure or refusal to furnish the statement does not deprive the lienor of his or her rights under the bond if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to contractor. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the bond. If the contractor serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last

response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her rights under the bond. The negligent inclusion or omission of any information deprives the person of his or her rights under the bond to the extent the contractor can demonstrate prejudice from such act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim on the bond being enforced in a lawsuit filed prior to the date the demand for statement of account is received by the lienor.

(5)(a) Any lienor ~~who has recorded a claim of lien~~ may make written demand on the owner for a written statement under oath showing:

1. The amount of the direct contract under which the lien was recorded;

2. The dates and amounts paid or to be paid by or on behalf of the owner for all improvements described in the direct contract;

3. The reasonable estimated costs of completing the direct contract under which the lien was claimed pursuant to the scope of the direct contract; and

4. If known, the actual cost of completion.

(b) Any owner who does not provide the statement within 30 days after demand, or who provides a false or fraudulent statement, is not a prevailing party for purposes of an award of attorney ~~attorney's~~ fees under s. 713.29. The written demand must include the following warning in conspicuous type in substantially the following form:

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING THIS STATEMENT.

(6) Any written demand served on the owner must include a description of the project, the names of the contractor and the lienor's customer, as specified in the lienor's notice to owner, sufficient for the owner to properly identify the project in question.

(7) ~~(6)~~ For purposes of this section, the term "information" means the nature and quantity of the labor, services, and materials furnished or to be furnished by a lienor and the amount paid, the amount due, and the amount to become due on the lienor's account.

Section 4. Section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving notices and other instruments.—

(1) Service of notices, claims of lien, affidavits, assignments, and other instruments permitted or required under this part, or copies thereof when so permitted or required, unless otherwise specifically provided in this part, must be made by one of the following methods:

(a) By actual delivery to the person to be served; if a partnership, to one of the partners; if a corporation, to an officer, director, managing agent, or business agent; or, if a

limited liability company, to a member or manager.

(b) By sending the service ~~same~~ by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and ~~prepaid~~, ~~or by overnight or second-day delivery~~ with evidence of delivery, which may be in an electronic format.

(c) ~~If the method specified in paragraph (a) or paragraph (b) cannot be accomplished,~~ By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished ~~premises~~.

(2) Notwithstanding subsection (1), service of ~~if~~ a notice to owner, a notice to contractor under s. 713.23, s. 337.18, or ~~a preliminary notice under~~ s. 255.05 is ~~mailed by registered or certified mail with postage prepaid to the person to be served at any of the addresses set forth in subsection (3) within 40 days after the date the lienor first furnishes labor, services, or materials, service of that notice is~~ effective as of the date of mailing if:

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served at any of the addresses set forth in subsection (3);

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials; and

(c)1. The person who served the notice maintains a registered or certified mail log that shows the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date

stamp of the United States Postal Service confirming the date of mailing; or ~~if~~

2. The person who served the notice maintains electronic tracking records generated through use of the United States Postal Service Confirm service or a similar service containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.

(3)(a) Service of ~~If~~ an instrument ~~served~~ pursuant to this section is effective on the date of mailing if the instrument:

1. Is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served; and~~, is not received, but~~

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item~~, then service is effective on the date the instrument was sent~~.

(b) If the address shown in the notice of commencement or any amendment to the notice of commencement, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the item may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record or directory without affecting the validity of service under this section.

(4) A notice served by a lienor on one owner or one partner of a partnership owning the real property ~~If the real property is owned by more than one person or a partnership, a lienor may serve any notices or other papers under this part on any one of such owners or partners, and such notice~~ is deemed notice to all owners and partners.

Section 5. Section 713.22, Florida Statutes, is amended to read:

713.22 Duration of lien.—

(1) A ~~No~~ lien provided by this part does not ~~shall~~ continue for a longer period than 1 year after the claim of lien has been recorded or 1 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. A lien that has been continued beyond the 1-year period ~~The continuation of the lien effected~~ by the commencement of an ~~the~~ action is ~~shall~~ not enforceable ~~be good~~ against creditors or subsequent purchasers for a valuable consideration and without notice, unless a notice of lis pendens is recorded.

(2) An owner or the owner's ~~agent or~~ attorney may elect to shorten the time prescribed in subsection (1) within which to commence an action to enforce any claim of lien or claim against a bond or other security under s. 713.23 or s. 713.24 by recording in the clerk's office a notice in substantially the following form:

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 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

is not in privity with the contractor, except a laborer, shall serve the contractor with notice in writing that the lienor will look to the contractor's bond for protection on the work. 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. The notice may be in substantially the following form and may be combined with a notice to owner given under s. 713.06 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR":

NOTICE TO CONTRACTOR

To ...(name and address of contractor)...

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

...(general description of services or materials)... for the improvement of the real property identified as ...(property description)... under an order given by ...(lienor's customer)....

This notice is to inform you that the undersigned intends to look to the contractor's bond to secure payment for the

furnishing of materials or services for the improvement of the real property.

...(name of lienor)...
...(signature of lienor or lienor's representative)...
...(date)...
...(lienor's address)...

~~The undersigned notifies you that he or she has furnished or is furnishing ...(services or materials)... for the improvement of the real property identified as ...(property description)... owned by ...(owner's name and address)... under an order given by .... and that the undersigned will look to the contractor's bond for protection on the work.~~

~~...(Lienor's signature and address)...~~

(e) An ~~No~~ action for the labor or materials or supplies may not be instituted or prosecuted against the contractor or surety unless both notices have been given, if required by this section. An ~~No~~ action may not ~~shall~~ be instituted or prosecuted against the contractor or against the surety on the bond under this section after 1 year from the performance of the labor or completion of delivery of the materials and supplies. The time period for bringing an action against the contractor or surety on the bond shall be measured from the last day of furnishing labor, services, or materials by the lienor. The time period may ~~and shall~~ not be measured by other standards, such as the

issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. A contractor or the contractor's ~~agent or~~ attorney may elect to shorten the ~~prescribed~~ time within which an action to enforce any claim against a payment bond provided under this section or s. 713.245 must ~~may~~ be commenced at any time after a notice of nonpayment, if required, has been served for the claim by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

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 restricts ~~A bond must not contain any provisions restricting~~ the classes of persons defined in s. 713.01 who are protected by the payment bond, restricts ~~thereby or~~ the venue of any proceeding relating to such payment bond, or limits the effective duration of the payment bond is unenforceable. The surety is not entitled to the defense of pro tanto discharge as against any lienor because of changes or modifications in the contract to which the surety is not a party; but the liability of the surety may not be increased beyond the penal sum of the bond. A lienor may not waive in advance his or her right to bring an action under the bond against the surety.

(2) The bond shall secure every lien under the direct contract accruing subsequent to its execution and delivery, except that of the contractor. Every claim of lien, except that of the contractor, filed subsequent to execution and delivery of the bond shall be transferred to it with the same effect as liens transferred under s. 713.24. Record notice of the transfer shall be effected by the contractor, or any person having an interest in the property against which the claim of lien has been asserted, by recording in the clerk's office a notice, with the bond attached, in substantially the following form:

NOTICE OF BOND

To ...(Name and Address of Lienor)...

You are notified that the claim of lien filed by you on ...., ..., and recorded in Official Records Book .... at page .... of the public records of .... County, Florida, is secured by a bond, a copy being attached.

Signed: ...(Name of person recording notice)...

The notice shall be verified. The person recording the notice of bond ~~clerk~~ shall serve ~~mail~~ a copy of the notice along with a copy of the bond to the lienor at the address shown in the claim of lien, or the most recent amendment to it; shall certify to the service on the face of the notice; and shall record the notice. ~~The clerk shall receive the same fee as prescribed in s. 713.24(1) for certifying to a transfer of lien.~~

(4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds under this section except where those provisions conflict with this section.

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 MB

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

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[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.

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[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).

A bill to be entitled

An act relating to child support enforcement; amending s. 61.13016, F.S.; providing that a child support obligor may avoid the suspension of his or her driver license and motor vehicle registration by beginning to pay his or her obligation by income deduction within a specified period; amending s. 322.058, F.S.; providing that a child support obligor may avoid the suspension of his or her driver license and motor vehicle registration by beginning to pay his or her obligation by income deduction within a specified period; amending s. 409.25656, F.S.; providing that a garnishee may consent to receive certain notices by secure e-mail or fax; requiring establishment of an automated method for the Chief Financial Officer to periodically provide the Department of Revenue an electronic file of individuals to whom the state pays money for goods or services or who lease real property to the state; requiring garnishment of such payments for past due or overdue support; deleting provisions requiring the Department of Revenue to provide certain information to the Chief Financial Officer for such purpose; amending s. 409.25658, F.S.; revising provisions concerning use of unclaimed property for collection of past due support; amending s. 409.2575, F.S.; revising language concerning who may cause certain liens to be placed for unpaid and delinquent support; authorizing liens on a claim, settlement, or

judgment that may result in payment to the obligor; providing for notice to the obligor; providing requirements for such notice; providing an effective date.

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

Section 1. Subsection (1), paragraph (a) of subsection (2), and subsection (3) of section 61.13016, Florida Statutes, are amended to read:

61.13016 Suspension of driver ~~driver's~~ licenses and motor vehicle registrations.—

(1) The driver ~~driver's~~ license and motor vehicle registration of a support obligor who is delinquent in payment or who has failed to comply with subpoenas or a similar order to appear or show cause relating to paternity or support proceedings may be suspended. When an obligor is 15 days delinquent making a payment in support or failure to comply with a subpoena, order to appear, order to show cause, or similar order in IV-D cases, the Title IV-D agency may provide notice to the obligor of the delinquency or failure to comply with a subpoena, order to appear, order to show cause, or similar order and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. When an obligor is 15 days delinquent in making a payment in support in non-IV-D cases, and upon the request of the obligee, the depository or the clerk of the court must provide notice to the obligor of the

delinquency and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. In either case, the notice must state:

(a) The terms of the order creating the support obligation;

(b) The period of the delinquency and the total amount of the delinquency as of the date of the notice or describe the subpoena, order to appear, order to show cause, or other similar order that ~~which~~ has not been complied with;

(c) That notification will be given to the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver ~~driver's~~ license and motor vehicle registration unless, within 20 days after the date the notice is mailed, the obligor:

1.a. Pays the delinquency in full and any other costs and fees accrued between the date of the notice and the date the delinquency is paid;

b. Enters into a written agreement for payment with the obligee in non-IV-D cases or with the Title IV-D agency in IV-D cases; or in IV-D cases, complies with a subpoena or order to appear, order to show cause, or a similar order; ~~or~~

c. Files a petition with the circuit court to contest the delinquency action; or ~~and~~

d. Begins paying the delinquency by income deduction; and

2. Pays any applicable delinquency fees.

If the obligor in non-IV-D cases enters into a written agreement for payment before the expiration of the 20-day period, the

obligor must provide a copy of the signed written agreement to the depository or the clerk of the court.

(2)(a) Upon petition filed by the obligor in the circuit court within 20 days after the mailing date of the notice, the court may, in its discretion, direct the department to issue a license for driving privileges restricted to business purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. As a condition for the court to exercise its discretion under this subsection, the obligor must agree to a schedule of payment on any child support arrearages and to maintain current child support obligations. If the obligor fails to comply with the schedule of payment, the court shall direct the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver ~~driver's~~ license.

(3) If the obligor does not, within 20 days after the mailing date on the notice, pay the delinquency; ~~,~~ enter into a written ~~payment~~ agreement; ~~,~~ comply with the subpoena, order to appear, order to show cause, or other similar order; begin paying the delinquency by income deduction; ~~,~~ or file a motion to contest, the Title IV-D agency in IV-D cases, or the depository or clerk of the court in non-IV-D cases, may ~~shall~~ file the notice with the Department of Highway Safety and Motor Vehicles and request the suspension of the obligor's driver ~~driver's~~ license and motor vehicle registration in accordance with s. 322.058.

Section 2. Subsections (1) and (2) of section 322.058, Florida Statutes, are amended to read:

322.058 Suspension of driving privileges due to support delinquency; reinstatement.—

(1) When the department receives notice from the Title IV-D agency or depository or the clerk of the court that any person licensed to operate a motor vehicle in the State of Florida under the provisions of this chapter has a delinquent support obligation or has failed to comply with a subpoena, order to appear, order to show cause, or similar order, the department shall suspend the driver driver's license of the person named in the notice and the registration of all motor vehicles owned by that person.

(2) The department must reinstate the driving privilege and allow registration of a motor vehicle when the Title IV-D agency in IV-D cases or the depository or the clerk of the court in non-IV-D cases provides to the department an affidavit stating that:

(a) The person has paid the delinquency;

(b) The person has reached a written agreement for payment with the Title IV-D agency or the obligee in non-IV-D cases;

(c) A court has entered an order granting relief to the obligor ordering the reinstatement of the license and motor vehicle registration; or

(d) The person has complied with the subpoena, order to appear, order to show cause, or similar order; or

(e) The obligor is paying the delinquency by income deduction.

Section 3. Subsections (4) and (10) of section 409.25656, Florida Statutes, are amended to read:

409.25656 Garnishment.—

(4) A notice that is delivered under this section is effective at the time of delivery against all credits, other personal property, or debts of the obligor which are not at the time of such notice subject to an attachment, garnishment, or execution issued through a judicial process. Upon the garnishee's written consent, the department may send notices to the garnishee by secure e-mail or fax.

(10) The Chief Financial Officer shall work cooperatively with the department to establish an automated method for periodically disclosing to the department an electronic file of individuals to whom the state pays money for goods or services or who lease real property to the state. The department shall use the data provided to identify individuals who owe past due or overdue support and may garnish payments owed to such individuals by the state as provided in this section ~~The department shall provide notice to the Chief Financial Officer, in electronic or other form specified by the Chief Financial Officer, listing the obligors for whom warrants are outstanding. Pursuant to subsection (1), the Chief Financial Officer shall, upon notice from the department, withhold all payments to any obligor who provides commodities or services to the state, leases real property to the state, or constructs a public building or public work for the state. The department may levy upon the withheld payments in accordance with subsection (3)~~. Section 215.422 does not apply from the date the notice is filed with the Chief Financial Officer until the date the department notifies the Chief Financial Officer of its consent to make

payment to the person or 60 days after receipt of the department's notice in accordance with subsection (1), whichever occurs earlier.

Section 4. Subsections (1) and (4) of section 409.25658, Florida Statutes, are amended to read:

409.25658 Use of unclaimed property for past due support.—

(1) In a joint effort to facilitate the collection and payment of past due support, the Department of Revenue, in cooperation with the Department of Financial Services, shall identify persons owing support collected by the department ~~through a court~~ who are presumed to have unclaimed property held by the Department of Financial Services.

(4) Before ~~Prior to~~ paying an obligor's approved claim, the Department of Financial Services shall notify the department that the ~~such~~ claim has been approved. Upon confirmation that the Department of Financial Services has approved the claim, the department shall immediately send a notice by certified mail to the obligor at the address provided by the obligor to the Department of Financial Services, with a copy to the Department of Financial Services, advising the obligor of the department's intent to intercept the approved claim up to the amount of the past due support, and informing the obligor of the obligor's right to request a hearing under chapter 120. The Department of Financial Services shall retain custody of the property until a final order has been entered and any appeals thereon have been concluded, or, if the intercept is uncontested, until notified by the department. If the obligor fails to request a hearing, the department shall notify ~~enter a final order instructing~~ the

Department of Financial Services, electronically or in writing, to transfer to the department the property in the amount stated in the notice or electronic file ~~final order~~. Upon ~~such~~ transfer, the Department of Financial Services shall be released from further liability related to the transferred property.

Section 5. Section 409.2575, Florida Statutes, is amended to read:

409.2575 Administrative liens ~~on motor vehicles and vessels~~.—

(1) The department ~~director of the state IV-D program, or the director's designee,~~ may cause a lien for unpaid and delinquent support to be placed upon motor vehicles, as defined in chapter 320, ~~and~~ upon vessels, as defined in chapter 327, that are registered in the name of an obligor who is delinquent in support payments~~, if the title to the property is held by a lienholder,~~ in the manner provided in chapter 319 or chapter 328, and upon a claim, settlement, or judgment that may result in payment to the obligor. The department shall notify the obligor of the intent to place a lien by certified mail sent to the obligor's address of record 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 as provided by chapter 120. Notice of lien shall not be mailed unless the delinquency in support exceeds $600.

(2) If the first lienholder fails, neglects, or refuses to forward the certificate of title to the appropriate department as requested pursuant to s. 319.24 or s. 328.15, the department

~~director of the IV-D program, or the director's designee,~~ may apply to the circuit court for an order to enforce the requirements of s. 319.24 or s. 328.15, whichever applies.

Section 6. This act shall take effect July 1, 2012.