

1                                   A bill to be entitled  
2       An act relating to motor vehicle insurance; amending  
3       s. 316.066, F.S.; revising provisions relating to the  
4       contents of written reports of motor vehicle crashes;  
5       creating s. 627.748, F.S.; providing for ss. 627.748-  
6       627.7491 to be cited as the Florida Motor Vehicle No-  
7       Fault Emergency Care Coverage Law; creating s.  
8       627.7481, F.S.; providing purpose of the Florida Motor  
9       Vehicle No-Fault Emergency Care Coverage Law ;  
10      creating s. 627.74811, F.S.; stating Legislative  
11      intent that provisions, schedules, or procedures of  
12      the Florida Motor Vehicle No-Fault Emergency Care  
13      Coverage Law are to be given full force and effect  
14      regardless of their express inclusion in insurer  
15      forms; creating s. 627.7482, F.S.; providing  
16      definitions; creating s. 627.7483, F.S.; requiring  
17      every owner or registrant of a motor vehicle required  
18      to be registered and licensed in this state to  
19      maintain specified security under the Florida Motor  
20      Vehicle No-Fault Emergency Care Coverage Law ;  
21      providing exceptions; requiring every nonresident  
22      owner or registrant of a motor vehicle that has been  
23      physically present within this state for a specified  
24      period to maintain security under the Florida Motor  
25      Vehicle No-Fault Emergency Care Coverage Law ;  
26      specifying means by which such security is provided;  
27      providing an exemption from security requirements for  
28      specified members of the United States Armed Forces;

29 | creating s. 627.7484, F.S.; providing requirements  
 30 | with respect to filing and maintaining proof of  
 31 | security required under the Florida Motor Vehicle No-  
 32 | Fault Emergency Care Coverage Law ; providing  
 33 | penalties for giving false information , forging  
 34 | evidence of proof of security, and filing forged or  
 35 | unauthorized evidence of proof of security; creating  
 36 | s. 627.7485, F.S.; requiring that insurance policies  
 37 | provide emergency care coverage to specified persons;  
 38 | providing limits of coverage; specifying limits for  
 39 | medical benefits; specifying limits for disability  
 40 | benefits; specifying limits for death benefits;  
 41 | providing restriction on insurers with respect to  
 42 | provision of required benefits and requiring purchase  
 43 | of other motor vehicle coverage as a condition for  
 44 | providing such benefits; prohibiting insurers from  
 45 | requiring the purchase of property damage liability  
 46 | insurance exceeding \$10,000 in conjunction with  
 47 | emergency care coverage insurance; providing that  
 48 | failure to comply with specified availability  
 49 | requirements constitutes an unfair method of  
 50 | competition or an unfair or deceptive act or practice;  
 51 | providing penalties; specifying benefits an insurer  
 52 | may exclude; providing procedure with respect to such  
 53 | exclusions; specifying when benefits are due from an  
 54 | insurer; prohibiting insurers from obtaining liens on  
 55 | recovery of special damages in tort claims for  
 56 | emergency care coverage benefits; providing that

57 | benefits under the Florida Motor Vehicle No-Fault  
 58 | Emergency Care Coverage Law are subject to the  
 59 | provisions of the Medicaid program under specified  
 60 | circumstances; specifying when benefits are overdue;  
 61 | providing for interest on overdue payments; requiring  
 62 | insurers to hold \$5,000 of emergency care coverage  
 63 | benefits in reserve for a certain time for the  
 64 | payment of health care providers and entities that  
 65 | provide emergency services; tolling the time period  
 66 | in which emergency care coverage benefits are required  
 67 | to be paid when the insurer has reasonable belief that  
 68 | fraud has been committed, reports its suspicions to  
 69 | the Division of Insurance Fraud, and provides notice  
 70 | to the claimant; providing immunity to persons or  
 71 | entities that report suspected fraud in good faith;  
 72 | specifying injuries for which an insurer must pay  
 73 | emergency care coverage benefits; disallowing  
 74 | benefits to an insured who has committed insurance  
 75 | fraud; providing that a physician, hospital, clinic,  
 76 | or other person or institution lawfully rendering  
 77 | treatment to an injured person for a bodily injury  
 78 | covered by emergency care coverage may charge the  
 79 | insurer and injured party only a reasonable amount for  
 80 | services and care; providing that the insurer may pay  
 81 | such charges directly to the person or institution  
 82 | lawfully rendering such treatment; providing a limit  
 83 | on such charges; providing for determination of  
 84 | reasonableness of charges; providing that payments

85 |       made by an insurer pursuant to the schedule of  
 86 |       maximum charges, or for lesser amounts billed by  
 87 |       providers, are considered reasonable; establishing a  
 88 |       schedule of maximum charges; specifying that  
 89 |       reimbursement under a schedule of maximum charges that  
 90 |       is based on Medicare is to be calculated under the  
 91 |       applicable Medicare schedule in effect on March 1<sup>st</sup> of  
 92 |       each year; authorizing insurers to utilize all  
 93 |       Medicare coding policies and CMS payment methodologies  
 94 |       in determining reimbursement under a schedule of  
 95 |       maximum charges that is Medicare based; establishing  
 96 |       limits on specified emergency services and care;  
 97 |       providing conditions under which an insurer or insured  
 98 |       is not required to pay a claim or charges; requiring  
 99 |       the Department of Health to adopt, by rule, a list of  
 100 |       diagnostic tests deemed not to be medically necessary  
 101 |       and to periodically revise the list; providing  
 102 |       procedures and requirements with respect to statements  
 103 |       of and bills for charges for emergency services and  
 104 |       care; directing the Financial Services Commission to  
 105 |       adopt by a disclosure and acknowledgment form to be  
 106 |       countersigned by claimants upon receipt of medical  
 107 |       services; providing procedures and requirements with  
 108 |       respect to investigation of claims of improper billing  
 109 |       by a physician or other medical provider; prohibiting  
 110 |       insurers from systematically downcoding with intent to  
 111 |       deny reimbursement; requires insureds and persons to  
 112 |       who the right to payment for emergency care coverage

113 | benefits have been assigned to comply with all terms  
 114 | of the emergency care coverage policy, including  
 115 | submission to examinations under oath; providing that  
 116 | compliance with policy terms is a condition precedent  
 117 | to the receipt of emergency care coverage benefits ;  
 118 | providing for reasonable payment for attendance at  
 119 | examinations under oath to health care providers and  
 120 | other persons produced by the provider in response to  
 121 | the insurer's request; permits persons appearing for  
 122 | an examination under oath to have an attorney present  
 123 | at the person's expense; requiring insurers to  
 124 | coordinate with claimants for emergency care coverage  
 125 | benefits to ensure an appropriate time and location  
 126 | for the examination; authorizing insurers to suspend  
 127 | benefits to claimants that fail to attend examination  
 128 | after the insurer has presented two documented offers  
 129 | of a reasonable time and location for the examination  
 130 | until the claimant submits to examination; providing  
 131 | for insurers to inspect the physical premises of  
 132 | physicians, hospitals, clinics or medical institutions  
 133 | who seek payment of emergency care coverage benefits;  
 134 | providing that when an insured fails to appear for two  
 135 | or more mental or physical examinations, the emergency  
 136 | care coverage carrier is not liable for subsequent  
 137 | emergency care coverage benefits; creating a  
 138 | rebuttable presumption that an insured's failure to  
 139 | appear for two examinations is an unreasonable  
 140 | refusal to appear; creating an attorney fee cap;

141 prohibiting the use of contingency risk multipliers in  
 142 calculating attorney fee awards for disputes arising  
 143 under the Florida Motor Vehicle No-Fault Emergency  
 144 Care Coverage Law; requiring that an insurer must be  
 145 provided with written notice of an intent to initiate  
 146 litigation as a condition precedent to filing any  
 147 action for benefits; providing requirements with  
 148 respect to a demand letter; providing procedures and  
 149 requirements with respect to payment of an overdue  
 150 claim; tolling the time period for an action against  
 151 an insurer; providing that failure to pay valid claims  
 152 with specified frequency constitutes an unfair or  
 153 deceptive trade practice; providing penalties;  
 154 providing circumstances under which an insurer has a  
 155 cause of action; providing for fraud advisory notice;  
 156 requiring that all claims related to the same health  
 157 care provider for the same injured person be brought  
 158 in one action unless good cause is shown; authorizing  
 159 the electronic transmission of notices and  
 160 communications required under act under certain  
 161 conditions; creating s. 627.7486, F.S.; providing a  
 162 limitation on legal actions under the Florida Motor  
 163 Vehicle No-Fault Emergency Care Coverage Law;  
 164 creating s. 627.7487, F.S.; providing for optional  
 165 deductibles for emergency care coverage policies;  
 166 creating s. 627.7488, F.S.; requiring the Financial  
 167 Services Commission to adopt by rule a form for the  
 168 notification of insureds of their right to receive

169 emergency care coverage benefits ; specifying contents  
 170 of such notice; providing requirements for the  
 171 mailing or delivery of such notice; creating s.  
 172 627.7489, F.S.; providing for mandatory joinder of  
 173 specified claims; creating s. 627.749, F.S.;

174 providing for an insurer's right of reimbursement for  
 175 emergency medical care benefits paid to a person  
 176 injured by a commercial motor vehicle under specified  
 177 circumstances; creating s. 627.7491, F.S.; providing  
 178 for application of the Florida Motor Vehicle No-Fault  
 179 Emergency Care Coverage Law; amending ss. 817.234,  
 180 316.646, 318.18, 320.02, 320.0609, 320.27, 320.771,  
 181 322.34, 324.021, 324.0221, 324.032, 324.171, 400.9935,  
 182 409.901, 409.910, 456.057, 456.072, 626.9541,  
 183 627.06501, 627.0652, 627.0653, 627.4132, 627.6482,  
 184 627.7263, 627.727, 627.728, 627.7295, 627.8405,  
 185 628.909, 705.184, 627.915, 628.909, 705.184,  
 186 713.78, 627.736, F.S.; conforming and correcting  
 187 cross-references; amending s. 627.736, F.S.;

188 providing for limitation on attorney fee award;  
 189 prohibiting the use of contingency risk multipliers in  
 190 calculating attorney fee awards; providing an  
 191 effective date.

192  
 193 Be It Enacted by the Legislature of the State of Florida:

194  
 195 Section 1. Effective May 1, 2012, subsection (1) of  
 196 section 316.066, Florida Statutes, is amended to read:

197 316.066 Written reports of crashes.-

198 (1) (a) A Florida Traffic Crash Report must, ~~Long Form is~~

199 ~~required to~~ be completed and submitted to the entities specified

200 in (e) department within 10 days after ~~completing~~ an

201 investigation is completed by the every law enforcement officer

202 who in the regular course of duty investigates a motor vehicle

203 crash. ~~that:~~

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

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

206 (b) ~~In every crash for which a Florida Traffic Crash~~

207 ~~Report, Long Form is not required by this section, the law~~

208 ~~enforcement officer may complete a short form crash report or~~

209 ~~provide a driver exchange-of-information form to be completed by~~

210 ~~each party involved in the crash. The short-form report must~~

211 include:

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

213 2. A description of the vehicles involved.

214 3. The names and addresses of the parties involved,

215 including all drivers and passengers, each clearly identified as

216 being either a driver or a passenger and specifying the vehicle

217 in which each person was a driver or passenger.

218 4. The names and addresses of witnesses.

219 5. The name, badge number, and law enforcement agency of

220 the officer investigating the crash.

221 6. The names of the insurance companies for the respective

222 parties involved in the crash.

223 (c) Each party to the crash must provide the law

224 enforcement officer with proof of insurance, which must be



225 | documented in the crash report. If a law enforcement officer  
 226 | submits a report on the crash, proof of insurance must be  
 227 | provided to the officer by each party involved in the crash. Any  
 228 | party who fails to provide the required information commits a  
 229 | noncriminal traffic infraction, punishable as a nonmoving  
 230 | violation as provided in chapter 318, unless the officer  
 231 | determines that due to injuries or other special circumstances  
 232 | such insurance information cannot be provided immediately. If  
 233 | the person provides the law enforcement agency, within 24 hours  
 234 | after the crash, proof of insurance that was valid at the time  
 235 | of the crash, the law enforcement agency may void the citation.

236 |       (d) The driver of a vehicle that was in any manner  
 237 | involved in a crash resulting in damage to any vehicle or other  
 238 | property in an amount of \$500 or more which was not investigated  
 239 | by a law enforcement agency~~7~~ shall, within 10 days after the  
 240 | crash, submit a written report of the crash to the department.  
 241 | The entity receiving the report may require witnesses of the  
 242 | crash to render reports and may require any driver of a vehicle  
 243 | involved in a crash of which a written report must be made to  
 244 | file supplemental written reports if the original report is  
 245 | deemed insufficient by the receiving entity.

246 |       (e) For motor vehicle crashes that result in death or  
 247 | personal injury or involve a violation of s. 316.061(1) or s.  
 248 | 316.193, the crash report shall be submitted to the department.  
 249 | All other crash reports shall be maintained by the law  
 250 | enforcement officer's agency. ~~Short-form crash reports prepared~~  
 251 | ~~by law enforcement shall be maintained by the law enforcement~~  
 252 | ~~officer's agency.~~

253 Section 2. Section 627.748, Florida Statutes, is created  
 254 to read:

255 627.748 Florida Motor Vehicle No-Fault Emergency Care  
 256 Coverage Law.—Sections 627.748-627.7491 may be cited and known  
 257 as the "Florida Motor Vehicle No-Fault Emergency Care Coverage  
 258 Law."

259 Section 3. Section 627.7481, Florida Statutes, is created  
 260 to read:

261 627.7481 Purpose.—The purpose of ss. 627.748-627.7491 is  
 262 to provide for, without regard to fault, emergency services and  
 263 care, services and care provided in a hospital, prescribed  
 264 follow-up care, funeral, and disability insurance benefits, and  
 265 to require motor vehicle insurance securing such benefits, for  
 266 motor vehicles required to be registered in this state and, with  
 267 respect to motor vehicle accidents, a limitation on the right to  
 268 claim damages for pain, suffering, mental anguish, and  
 269 inconvenience.

270 Section 4. Section 627.74811, Florida Statutes, is created  
 271 to read:

272 627.74811 Effect of law on emergency care coverage  
 273 policies.— The provisions, schedules, and procedures authorized  
 274 in ss. 627.748-627.7491 shall be implemented by the insurers  
 275 offering policies pursuant to the Florida Motor Vehicle No-Fault  
 276 Emergency Care Coverage Law. The legislature intends that these  
 277 provisions, schedules, and procedures have full force and effect  
 278 regardless of their express inclusion in an insurance policy  
 279 form, and a specific provision, schedule, or procedure  
 280 authorized herein will govern over general provisions in an

281 insurance policy form. An insurer is not required to amend its  
 282 policy form or to expressly notify providers, claimants, or  
 283 insureds of the applicable fee schedules to implement and apply  
 284 such provisions, schedules, or procedures.

285 Section 5. Section 627.7482, Florida Statutes, is created  
 286 to read:

287 627.7482 Definitions.—As used in ss. 627.748-627.7491, the  
 288 term:

289 (1) "Emergency medical condition" means:

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

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

296 2. Serious impairment to bodily functions.

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

298 (b) With respect to a pregnant woman:

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

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

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

305 (2) "Emergency services and care" means medical screening,  
 306 examination and evaluation by a physician, or, to the extent  
 307 permitted by applicable law, by other appropriate personnel  
 308 under the supervision of a physician, to determine if an

309 emergency medical condition exists and, if it does, the care,  
 310 treatment, or surgery by a physician necessary to relieve or  
 311 eliminate the emergency medical condition, within the service  
 312 capability of the facility.

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

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

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

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

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

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

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

335  
 336 The term "motor vehicle" does not include a mobile home or any

337 motor vehicle which is used in mass transit, other than public  
 338 school transportation, and designed to transport more than five  
 339 passengers exclusive of the operator of the motor vehicle and  
 340 which is owned by a municipality, a transit authority, or a  
 341 political subdivision of the state.

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

345 (6) "Owner" means a person who holds the legal title to a  
 346 motor vehicle; or, in the event a motor vehicle is the subject  
 347 of a security agreement or lease with an option to purchase with  
 348 the debtor or lessee having the right to possession, then the  
 349 debtor or lessee shall be deemed the owner for the purposes of  
 350 ss. 627.74-627.7491.

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

355 (8) "Certify" means to swear or attest to being true or  
 356 represented in writing.

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

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

365 the provision of medical services or treatment.

366 (11) "Hospital" means a facility that, at the time  
 367 services or treatment were rendered, was licensed under chapter  
 368 395.

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

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

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

389 (15) "Broker" means any person not possessing a license  
 390 under chapter 395, chapter 400, chapter 429, chapter 458,  
 391 chapter 459, chapter 460, chapter 461, or chapter 641 who  
 392 charges or receives compensation for any use of medical

393 equipment and is not the 100-percent owner or the 100-percent  
 394 lessee of such equipment. For purposes of this section, such  
 395 owner or lessee may be an individual, a corporation, a  
 396 partnership, or any other entity and any of its 100-percent-  
 397 owned affiliates and subsidiaries. For purposes of this  
 398 subsection, the term "lessee" means a long-term lessee under a  
 399 capital or operating lease, but does not include a part-time  
 400 lessee. The term "broker" does not include a hospital or  
 401 physician management company whose medical equipment is  
 402 ancillary to the practices managed, a debt collection agency, or  
 403 an entity that has contracted with the insurer to obtain a  
 404 discounted rate for such services; nor does the term include a  
 405 management company that has contracted to provide general  
 406 management services for a licensed physician or health care  
 407 facility and whose compensation is not materially affected by  
 408 the usage or frequency of usage of medical equipment or an  
 409 entity that is 100-percent owned by one or more hospitals or  
 410 physicians. The term "broker" does not include a person or  
 411 entity that certifies, upon request of an insurer, that:  
 412 (a) It is a clinic licensed under ss. 400.990-400.995;  
 413 (b) It is a 100-percent owner of medical equipment; and  
 414 (c) The owner's only part-time lease of medical equipment  
 415 for personal injury protection patients is on a temporary basis  
 416 not to exceed 30 days in a 12-month period, and such lease is  
 417 solely for the purposes of necessary repair or maintenance of  
 418 the 100-percent-owned medical equipment or pending the arrival  
 419 and installation of the newly purchased or a replacement for the  
 420 100-percent-owned medical equipment, or for patients for whom,

421 because of physical size or claustrophobia, it is determined by  
 422 the medical director or clinical director to be medically  
 423 necessary that the test be performed in medical equipment that  
 424 is open-style. The leased medical equipment cannot be used by  
 425 patients who are not patients of the registered clinic for  
 426 medical treatment of services. Any person or entity making a  
 427 false certification under this subsection commits insurance  
 428 fraud as defined in s. 817.234. However, the 30-day period  
 429 provided in this paragraph may be extended for an additional 60  
 430 days as applicable to magnetic resonance imaging equipment if  
 431 the owner certifies that the extension otherwise complies with  
 432 this paragraph.

433 Section 6. Section 627.7483, Florida Statutes, is created  
 434 to read:

435 627.7483 Required security.-

436 (1) (a) Every owner or registrant of a motor vehicle, other  
 437 than a motor vehicle used as a school bus as defined in s.  
 438 1006.25 or limousine, required to be registered and licensed in  
 439 this state shall maintain security as required by subsection (3)  
 440 in effect continuously throughout the registration or licensing  
 441 period.

442 (b) Every owner or registrant of a motor vehicle used as a  
 443 taxicab shall not be governed by paragraph (1) (a) but shall  
 444 maintain security as required under s. 324.032(1), and s.  
 445 627.7486 shall not apply to any motor vehicle used as a taxicab.

446 (2) Every nonresident owner or registrant of a motor  
 447 vehicle which, whether operated or not, has been physically  
 448 present within this state for more than 90 days during the



449 preceding 365 days shall thereafter maintain security as defined  
 450 by subsection (3) in effect continuously throughout the period  
 451 such motor vehicle remains within this state.

452 (3) Such security shall be provided:

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

460 (b) By any other method authorized by s. 324.031(2), (3),  
 461 or (4) and approved by the Department of Highway Safety and  
 462 Motor Vehicles as affording security equivalent to that afforded  
 463 by a policy of insurance or by self-insuring as authorized by s.  
 464 768.28(16). The person filing such security shall have all of  
 465 the obligations and rights of an insurer under ss. 627.748-  
 466 627.7491.

467 (4) An owner of a motor vehicle with respect to which  
 468 security is required by this section who fails to have such  
 469 security in effect at the time of an accident shall have no  
 470 immunity from tort liability, but shall be personally liable for  
 471 the payment of benefits under s. 627.7485. With respect to such  
 472 benefits, such an owner shall have all of the rights and  
 473 obligations of an insurer under ss. 627.748-627.7491.

474 (5) In addition to other persons who are not required to  
 475 provide required security as required under this section and s.  
 476 324.022, the owner or registrant of a motor vehicle is exempt

477 from such requirements if she or he is a member of the United  
 478 States Armed Forces and is called to or on active duty outside  
 479 the United States in an emergency situation. The exemption  
 480 provided by this subsection applies only as long as the member  
 481 of the armed forces is on such active duty outside the United  
 482 States and applies only while the vehicle covered by the  
 483 security required by this section and s. 324.022 is not operated  
 484 by any person. Upon receipt of a written request by the insured  
 485 to whom the exemption provided in this subsection applies, the  
 486 insurer shall cancel the coverages and return any unearned  
 487 premium or suspend the security required by this section and s.  
 488 324.022. Notwithstanding s. 324.0221(2), the Department of  
 489 Highway Safety and Motor Vehicles may not suspend the  
 490 registration or operator's license of any owner or registrant of  
 491 a motor vehicle during the time she or he qualifies for an  
 492 exemption under this subsection. Any owner or registrant of a  
 493 motor vehicle who qualifies for an exemption under this  
 494 subsection shall immediately notify the department prior to and  
 495 at the end of the expiration of the exemption.

496 Section 7. Section 627.7484, Florida Statutes, is created  
 497 to read:

498 627.7484 Proof of security; security requirements;  
 499 penalties.-

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

- 505       (2) Any person who:  
 506       (a) Gives information required in a report or otherwise as  
 507 provided for in ss. 627.748-627.7491, knowing or having reason  
 508 to believe that such information is false;  
 509       (b) Forges or, without authority, signs any evidence of  
 510 proof of security; or  
 511       (c) Files, or offers for filing, any such evidence of  
 512 proof, knowing or having reason to believe that it is forged or  
 513 signed without authority, is guilty of a misdemeanor of the  
 514 first degree, punishable as provided in s. 775.082 or s.  
 515 775.083.

516       Section 8. Section 627.7485, Florida Statutes, is created  
 517 to read:

518       627.7485 Required emergency care coverage benefits;  
 519 exclusions; priority; claims.-

520       (1) REQUIRED BENEFITS.-Every insurance policy complying  
 521 with the security requirements of s. 627.7483 shall provide  
 522 emergency care coverage to the named insured, relatives residing  
 523 in the same household, persons operating the insured motor  
 524 vehicle, passengers in such motor vehicle, and other persons  
 525 struck by such motor vehicle and suffering bodily injury while  
 526 not an occupant of a self-propelled vehicle, subject to the  
 527 provisions of subsection (2) and paragraph (4)(f), to a limit of  
 528 \$10,000 for loss sustained by any such person as a result of  
 529 bodily injury, sickness, disease, or death arising out of the  
 530 ownership, maintenance, or use of a motor vehicle as follows:

531       (a) Medical benefits.-Eighty percent of all reasonable  
 532 expenses as follows:

533       1. Emergency transport and treatment rendered by an  
 534 ambulance provider licensed under part III of chapter 401 within  
 535 24 hours after the motor vehicle accident.

536       2. Emergency services and care rendered within 72 hours  
 537 after the motor vehicle accident in a hospital licensed pursuant  
 538 to chapter 395.

539       3. Services and care rendered when an insured is admitted  
 540 to a hospital as defined in s. 395.0012(12), within 72 hours  
 541 after the motor vehicle accident.

542       4. Services and care rendered to an insured who is  
 543 determined more than 72 hours after the motor vehicle accident  
 544 to have an emergency medical condition related to the initial  
 545 diagnosis and arising from the motor vehicle accident.

546       5. If the insured receives services and care pursuant to  
 547 subparagraph 2.3., or 4., subsequent services and care directly  
 548 related to the medical diagnosis arising from the motor vehicle  
 549 accident, subject to the following:

550       a. The diagnosis shall be rendered in a hospital licensed  
 551 under chapter 395 and rendered by a physician licensed under  
 552 chapter 458 or an osteopathic physician licensed under chapter  
 553 459; and

554       b. The care and services shall be rendered by a physician  
 555 licensed under chapter 458, an osteopathic physician licensed  
 556 under chapter 459, a dentist licensed under chapter 466, a  
 557 physician assistant licensed under chapter 458 or 459, or an  
 558 advanced registered nurse practitioner licensed under chapter  
 559 464.

560

561 For purposes of this act, a medical diagnosis that an emergency  
 562 medical condition exists is presumed to be correct, unless  
 563 rebutted by clear and convincing evidence to the contrary.

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

573 (c) Death benefits.—Death benefits equal to the lesser of  
 574 \$5,000 or the remainder of unused emergency care coverage  
 575 insurance benefits per individual. The insurer may pay such  
 576 benefits to the executor or administrator of the deceased, to  
 577 any of the deceased's relatives by blood or legal adoption or  
 578 connection by marriage, or to any person appearing to the  
 579 insurer to be equitably entitled thereto.

580  
 581 Only insurers writing motor vehicle liability insurance in this  
 582 state may provide the required benefits of this section, and no  
 583 such insurer shall require the purchase of any other motor  
 584 vehicle coverage other than the purchase of property damage  
 585 liability coverage as required by s. 627.7275 as a condition for  
 586 providing such required benefits. Insurers may not require that  
 587 property damage liability insurance in an amount greater than  
 588 \$10,000 be purchased in conjunction with emergency care coverage

589 insurance. Such insurers shall make benefits and required  
 590 property damage liability insurance coverage available through  
 591 normal marketing channels. Any insurer writing motor vehicle  
 592 liability insurance in this state who fails to comply with such  
 593 availability requirement as a general business practice shall be  
 594 deemed to have violated part IX of chapter 626, and such  
 595 violation shall constitute an unfair method of competition or an  
 596 unfair or deceptive act or practice involving the business of  
 597 insurance; and any such insurer committing such violation shall  
 598 be subject to the penalties afforded in such part, as well as  
 599 those which may be afforded elsewhere in the insurance code.

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

602 (a) For injury sustained by the named insured and  
 603 relatives residing in the same household while occupying another  
 604 motor vehicle owned by the named insured and not insured under  
 605 the policy or for injury sustained by any person operating the  
 606 insured motor vehicle without the express or implied consent of  
 607 the insured.

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

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

613  
 614 Whenever an insured is charged with conduct as set forth in  
 615 subparagraph 2., the 30-day payment provision of paragraph  
 616 (4) (b) shall be held in abeyance, and the insurer shall withhold

617 payment of any emergency care coverage benefits pending the  
 618 outcome of the case at the trial level. If the charge is nolle  
 619 prossed or dismissed or the insured is acquitted, the 30-day  
 620 payment provision shall run from the date the insurer is  
 621 notified of such action.

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

638 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under  
 639 ss. 627.748-627.7491 shall be primary, except that benefits  
 640 received under any workers' compensation law shall be credited  
 641 against the benefits provided by subsection (1) and shall be due  
 642 and payable as loss accrues, upon receipt of reasonable proof of  
 643 such loss and the amount of expenses and loss incurred which are  
 644 covered by the policy issued under ss. 627.748-627.7491. When

645 the Agency for Health Care Administration provides, pays, or  
646 becomes liable for medical assistance under the Medicaid program  
647 related to injury, sickness, disease, or death arising out of  
648 the ownership, maintenance, or use of a motor vehicle, benefits  
649 under ss. 627.748-627.7491 shall be subject to the provisions of  
650 the Medicaid program.

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

655 (b) Emergency care coverage benefits paid pursuant to this  
656 section shall be overdue if not paid within 30 days after the  
657 insurer is furnished written notice of the fact of a covered  
658 loss and of the amount of same. If such written notice is not  
659 furnished to the insurer as to the entire claim, any partial  
660 amount supported by written notice is overdue if not paid within  
661 30 days after such written notice is furnished to the insurer.  
662 Any part or all of the remainder of the claim that is  
663 subsequently supported by written notice is overdue if not paid  
664 within 30 days after such written notice is furnished to the  
665 insurer. When an insurer pays only a portion of a claim or  
666 rejects a claim, the insurer shall provide at the time of the  
667 partial payment or rejection an itemized specification of each  
668 item that the insurer had reduced, omitted, or declined to pay  
669 and any information that the insurer desires the claimant to  
670 consider related to the medical necessity of the denied  
671 treatment or to explain the reasonableness of the reduced  
672 charge, provided that this shall not limit the introduction of



PCS for HB 119

ORIGINAL

2012

673 evidence at trial; and the insurer shall include the name and  
674 address of the person to whom the claimant should respond and a  
675 claim number to be referenced in future correspondence. However,  
676 notwithstanding the fact that written notice has been furnished  
677 to the insurer, any payment shall not be deemed overdue when the  
678 insurer has reasonable proof to establish that the insurer is  
679 not responsible for the payment. For the purpose of calculating  
680 the extent to which any benefits are overdue, payment shall be  
681 treated as being made on the date a draft or other valid  
682 instrument which is equivalent to payment was placed in the  
683 United States mail in a properly addressed, postpaid envelope  
684 or, if not so posted, on the date of delivery. This paragraph  
685 does not preclude or limit the ability of the insurer to assert  
686 that the claim was unrelated, was not medically necessary, or  
687 was unreasonable or that the amount of the charge was in excess  
688 of that permitted under, or in violation of, subsection (5).  
689 Such assertion by the insurer may be made at any time, including  
690 after payment of the claim or after the 30-day time period for  
691 payment set forth in this paragraph.

692 (c) Upon receiving notice of an accident that is  
693 potentially covered by emergency care coverage benefits, the  
694 insurer must reserve \$5,000 of emergency care coverage benefits  
695 for payment to physicians licensed under chapter 458 or chapter  
696 459, dentists licensed under chapter 466, physician assistants  
697 licensed under chapter 458 or 459, or advanced registered nurse  
698 practitioners licensed under chapter 464 who provide emergency  
699 care coverage pursuant to s. 627.7485(1)(a)2. The amount  
700 required to be held in reserve may be used only to pay claims

701 from such medical providers until 30 days after the date the  
 702 insurer receives notice of the accident. After the 30-day  
 703 period, any amount of the reserve for which the insurer has not  
 704 received notice of a claim from such medical provider for  
 705 emergency care coverage benefits may then be used by the insurer  
 706 to pay other claims. The time periods specified in paragraph (b)  
 707 for required payment of emergency care coverage benefits shall  
 708 be tolled for the period of time that an insurer is required by  
 709 this paragraph to hold payment of a claim that is not from a  
 710 medical provider eligible to receive payment of emergency care  
 711 coverage benefits to the extent that the emergency care coverage  
 712 benefits not held in reserve are insufficient to pay the claim.  
 713 This paragraph does not require an insurer to establish a claim  
 714 reserve for insurance accounting purposes.

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

722 (e)1. If an insurer has reasonable belief that a fraudulent  
 723 insurance act, as defined in s. 626.989, has been committed and  
 724 reports its suspicions to the Division of Insurance Fraud, the  
 725 30-day period for payment is tolled as to any portions of the  
 726 claim reported for investigation. The insurer must notify the  
 727 claimant in writing that the claim is being investigated for  
 728 fraud within 30 days after the insurer is furnished with written

729 notice of the fact of a covered loss and of the amount of same.  
 730 Within 30 days after receipt of notice from the Division of  
 731 Insurance Fraud that a claim has been investigated and that no  
 732 criminal action will be recommended, the insurer must pay the  
 733 claim with simple interest as provided in paragraph (d).

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

740 (f) The insurer of the owner of a motor vehicle shall pay  
 741 emergency care coverage benefits for accidental bodily injury  
 742 requiring medical treatment as provided in s. 627.7482(1) (a):

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

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

750 3. Sustained by a relative of the owner residing in the  
 751 same household, under the circumstances described in  
 752 subparagraph 1. or subparagraph 2., provided the relative at the  
 753 time of the accident is domiciled in the owner's household and  
 754 is not himself or herself the owner of a motor vehicle with  
 755 respect to which security is required under ss. 627.748-  
 756 627.7491.

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

762 a. The owner of a motor vehicle with respect to which  
 763 security is required under ss. 627.748-627.7491; or

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

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

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

776 (i) Benefits shall not be due or payable to or on the  
 777 behalf of an insured, claimant, medical provider, or attorney if  
 778 the insured, claimant, medical provider, or attorney has:

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

781 2. Submitted false material information; or

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

784

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

791 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

792 (a) Any physician, hospital, clinic, or other person or  
 793 institution lawfully rendering treatment to an injured person  
 794 for a bodily injury covered by emergency care coverage insurance  
 795 may charge the insurer and injured party only a reasonable  
 796 amount pursuant to this section for the services and supplies  
 797 rendered, and the insurer providing such coverage may pay for  
 798 such charges directly to such person or institution lawfully  
 799 rendering such treatment, if the insured receiving such  
 800 treatment or his or her guardian has countersigned the properly  
 801 completed, invoice, bill, or claim form approved by the office  
 802 upon which such charges are to be paid for as having actually  
 803 been rendered, to the best of the knowledge of the insured or  
 804 his or her guardian. However, such a charge may not exceed the  
 805 amount the person or institution customarily charges for like  
 806 services or supplies. When determining whether a charge for a  
 807 particular service, treatment, or otherwise is reasonable,  
 808 consideration may be given to evidence of usual and customary  
 809 charges and payments accepted by the provider involved in the  
 810 dispute, reimbursement levels in the community and various  
 811 federal and state medical fee schedules applicable to motor  
 812 vehicle and other insurance coverages, and other information

813 relevant to the reasonableness of the reimbursement for the  
814 service, treatment, or supply.

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

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

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

826 c. For emergency services and care provided in a facility  
827 licensed under chapter 395 rendered by a physician or dentist,  
828 and related hospital inpatient services rendered by a physician  
829 or dentist, the usual and customary charges in the community.

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

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

838 f. For all other medical services, supplies, and care, 200  
839 percent of the allowable amount under the participating  
840 physicians schedule of Medicare Part B. For medical supplies,

841 care, and services rendered by clinical laboratories, 200  
 842 percent of the allowable amount under Medicare Part B. For  
 843 durable medical equipment, the amount contained in the Durable  
 844 Medical Equipment Prosthetics/Orthotics & Supplies (DMEPOS) fee  
 845 schedule of Medicare Part B. However, if such services,  
 846 supplies, or care is not reimbursable under Medicare Part B, the  
 847 insurer may limit reimbursement to 80 percent of the maximum  
 848 reimbursable allowance under workers' compensation, as  
 849 determined under s. 440.13 and rules adopted thereunder which  
 850 are in effect at the time such services, supplies, or care is  
 851 provided. Services, supplies, or care that is not reimbursable  
 852 under Medicare or workers' compensation is not required to be  
 853 reimbursed by the insurer.

854 2. For purposes of subparagraph 1., the applicable fee  
 855 schedule or payment limitation under Medicare is the fee  
 856 schedule or payment limitation that was in effect as of March 1  
 857 of the year in which the services, supplies, or care was  
 858 rendered and for the area in which such services were rendered,  
 859 and shall apply until March 1 of the following year,  
 860 notwithstanding any subsequent changes made to such fee schedule  
 861 or payment limitation, except that it may not be less than the  
 862 allowable amount under the participating physicians schedule of  
 863 Medicare Part B for 2007 for medical services, supplies, and  
 864 care subject to Medicare Part B.

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

869 subparagraph 1. must reimburse a provider who lawfully provided  
 870 care or treatment under the scope of his or her license  
 871 regardless of whether such provider is entitled to reimbursement  
 872 under Medicare due to restrictions or limitations on the types  
 873 or discipline of health care providers who may be reimbursed for  
 874 particular procedures or procedure codes. However, nothing in  
 875 subparagraph 1. prohibits an insurer from using any and all  
 876 Medicare coding policies and CMS payment methodologies,  
 877 including applicable modifiers, to determine the appropriate  
 878 amount of reimbursement for medical services, supplies, or care.

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

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

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

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

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

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

895 e. For any treatment or service that is upcoded, or that  
 896 is unbundled when such treatment or services should be bundled,



897 in accordance with paragraph (d). To facilitate prompt payment  
 898 of lawful services, an insurer may change codes that it  
 899 determines to have been improperly or incorrectly upcoded or  
 900 unbundled, and may make payment based on the changed codes,  
 901 without affecting the right of the provider to dispute the  
 902 change by the insurer, provided that before doing so, the  
 903 insurer must contact the health care provider and discuss the  
 904 reasons for the insurer's change and the health care provider's  
 905 reason for the coding, or make a reasonable good faith effort to  
 906 do so, as documented in the insurer's file; and

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

913 2. The Department of Health, in consultation with the  
 914 appropriate professional licensing boards, shall adopt, by rule,  
 915 a list of diagnostic tests deemed not to be medically necessary  
 916 for use in the treatment of persons sustaining bodily injury  
 917 covered by personal injury protection benefits under this  
 918 section. The list shall be revised from time to time as  
 919 determined by the Department of Health, in consultation with the  
 920 respective professional licensing boards. Inclusion of a test on  
 921 the list of invalid diagnostic tests shall be based on lack of  
 922 demonstrated medical value and a level of general acceptance by  
 923 the relevant provider community and shall not be dependent for  
 924 results entirely upon subjective patient response.

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

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

948 2. If, however, the insured fails to furnish the provider  
 949 with the correct name and address of the insured's emergency  
 950 care coverage insurer, the provider has 35 days from the date  
 951 the provider obtains the correct information to furnish the  
 952 insurer with a statement of the charges. The insurer is not

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

958 a. A denial letter from the incorrect insurer; or  
 959 b. Proof of mailing, which may include an affidavit under  
 960 penalty of perjury, reflecting timely mailing to the incorrect  
 961 address or insurer.

962 3. For emergency services and care rendered in a hospital  
 963 emergency department or for transport and treatment rendered by  
 964 an ambulance provider licensed pursuant to part III of chapter  
 965 401, the provider is not required to furnish the statement of  
 966 charges within the time periods established by this paragraph;  
 967 and the insurer shall not be considered to have been furnished  
 968 with notice of the amount of covered loss for purposes of  
 969 paragraph (4)(b) until it receives a statement complying with  
 970 paragraph (d), or copy thereof, which specifically identifies  
 971 the place of service to be a hospital emergency department or an  
 972 ambulance in accordance with billing standards recognized by the  
 973 Health Care Finance Administration.

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

977 BILLING REQUIREMENTS.—Florida Statutes provide that with respect  
 978 to any treatment or services, other than certain hospital and  
 979 emergency services, the statement of charges furnished to the

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

990 (d) All statements and bills for medical services rendered  
 991 by any physician, hospital, clinic, or other person or  
 992 institution shall be submitted to the insurer on a properly  
 993 completed Centers for Medicare and Medicaid Services (CMS) 1500  
 994 form, UB 92 forms, or any other standard form approved by the  
 995 office or adopted by the commission for purposes of this  
 996 paragraph. All billings for such services rendered by providers  
 997 shall, to the extent applicable, follow the Physicians' Current  
 998 Procedural Terminology (CPT) or Healthcare Correct Procedural  
 999 Coding System (HCPCS), or ICD-9 in effect for the year in which  
 1000 services are rendered and comply with the Centers for Medicare  
 1001 and Medicaid Services (CMS) 1500 form instructions and the  
 1002 American Medical Association Current Procedural Terminology  
 1003 (CPT) Editorial Panel and Healthcare Correct Procedural Coding  
 1004 System (HCPCS). All providers other than hospitals shall include  
 1005 on the applicable claim form the professional license number of  
 1006 the provider in the line or space provided for "Signature of

1007 Physician or Supplier, Including Degrees or Credentials." In  
 1008 determining compliance with applicable CPT and HCPCS coding,  
 1009 guidance shall be provided by the Physicians' Current Procedural  
 1010 Terminology (CPT) or the Healthcare Correct Procedural Coding  
 1011 System (HCPCS) in effect for the year in which services were  
 1012 rendered, the Office of the Inspector General (OIG), Physicians  
 1013 Compliance Guidelines, and other authoritative treatises  
 1014 designated by rule by the Agency for Health Care Administration.  
 1015 No statement of medical services may include charges for medical  
 1016 services of a person or entity that performed such services  
 1017 without possessing the valid licenses required to perform such  
 1018 services. For purposes of paragraph (4) (b), an insurer shall not  
 1019 be considered to have been furnished with notice of the amount  
 1020 of covered loss or medical bills due unless the statements or  
 1021 bills comply with this paragraph, and unless the statements or  
 1022 bills are properly completed in their entirety as to all  
 1023 material provisions, with all relevant information being  
 1024 provided therein.

1025 (e)1. At the initial treatment or service provided, each  
 1026 physician, other licensed professional, clinic, or other medical  
 1027 institution providing medical services upon which a claim for  
 1028 emergency care coverage benefits is based shall require an  
 1029 insured person, or his or her guardian, to execute a disclosure  
 1030 and acknowledgment form, which reflects at a minimum that:

1031 a. The insured, or his or her guardian, must countersign  
 1032 the form attesting to the fact that the services set forth  
 1033 therein were actually rendered;

1034 b. The insured, or his or her guardian, has both the right  
 1035 and affirmative duty to confirm that the services were actually  
 1036 rendered;

1037 c. The insured, or his or her guardian, was not solicited  
 1038 by any person to seek any services from the medical provider;

1039 d. The physician, other licensed professional, clinic, or  
 1040 other medical institution rendering services for which payment  
 1041 is being claimed explained the services to the insured or his or  
 1042 her guardian; and

1043 e. If the insured notifies the insurer in writing of a  
 1044 billing error, the insured may be entitled to a certain  
 1045 percentage of a reduction in the amounts paid by the insured's  
 1046 motor vehicle insurer.

1047 2. The physician, other licensed professional, clinic, or  
 1048 other medical institution rendering services for which payment  
 1049 is being claimed has the affirmative duty to explain the  
 1050 services rendered to the insured, or his or her guardian, so  
 1051 that the insured, or his or her guardian, countersigns the form  
 1052 with informed consent.

1053 3. Countersignature by the insured, or his or her  
 1054 guardian, is not required for the reading of diagnostic tests or  
 1055 other services that are of such a nature that they are not  
 1056 required to be performed in the presence of the insured.

1057 4. The licensed medical professional rendering treatment  
 1058 for which payment is being claimed must sign, by his or her own  
 1059 hand, the form complying with this paragraph.

1060 5. The original completed disclosure and acknowledgment  
 1061 form shall be furnished to the insurer pursuant to paragraph

1062 (4) (b) and may not be electronically furnished.

1063 6. This disclosure and acknowledgment form is not required  
 1064 for services billed by a provider for emergency services and  
 1065 care rendered in a hospital emergency department, or for  
 1066 transport and treatment rendered by an ambulance provider  
 1067 licensed pursuant to part III of chapter 401.

1068 7. The Financial Services Commission shall adopt, by rule,  
 1069 a standard disclosure and acknowledgment form that shall be used  
 1070 to fulfill the requirements of this paragraph, effective 90 days  
 1071 after such form is adopted and becomes final. The commission  
 1072 shall adopt a proposed rule by January 1, 2013. Until the rule  
 1073 is final, the provider may use a form of its own which otherwise  
 1074 complies with the requirements of this paragraph.

1075 8. As used in this paragraph, "countersigned" means a  
 1076 second or verifying signature, as on a previously signed  
 1077 document, and is not satisfied by the statement "signature on  
 1078 file" or any similar statement.

1079 9. The requirements of this paragraph apply only with  
 1080 respect to the initial treatment or service of the insured by a  
 1081 provider. For subsequent treatments or service, the provider  
 1082 must maintain a patient log signed by the patient, in  
 1083 chronological order by date of service, that is consistent with  
 1084 the services being rendered to the patient as claimed. The  
 1085 requirements of this subparagraph for maintaining a patient log  
 1086 signed by the patient may be met by a hospital that maintains  
 1087 medical records as required by s. 395.3025 and applicable rules  
 1088 and makes such records available to the insurer upon request.

1089 (f) Upon written notification by any person, an insurer

1090 shall investigate any claim of improper billing by a physician  
 1091 or other medical provider. The insurer shall determine if the  
 1092 insured was properly billed for only those services and  
 1093 treatments that the insured actually received. If the insurer  
 1094 determines that the insured has been improperly billed, the  
 1095 insurer shall notify the insured, the person making the written  
 1096 notification and the provider of its findings and shall reduce  
 1097 the amount of payment to the provider by the amount determined  
 1098 to be improperly billed. If a reduction is made due to such  
 1099 written notification by any person, the insurer shall pay to the  
 1100 person 20 percent of the amount of the reduction, up to \$500. If  
 1101 the provider is arrested due to the improper billing, then the  
 1102 insurer shall pay to the person 40 percent of the amount of the  
 1103 reduction, up to \$500.

1104 (g) An insurer may not systematically downcode with the  
 1105 intent to deny reimbursement otherwise due. Such action  
 1106 constitutes a material misrepresentation under s.  
 1107 626.9541(1)(i)2.

1108 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—

1109 (a) In all circumstances, an insured seeking benefits  
 1110 under ss. 627.748-627.7491, including omnibus insureds, must  
 1111 comply with the terms of the policy, which include, but are not  
 1112 limited to, submitting to an examination under oath. Compliance  
 1113 with this paragraph is a condition precedent to the insured  
 1114 receiving benefits. Every employer shall, if a request is made  
 1115 by an insurer providing emergency care coverage under ss.  
 1116 627.748-627.7491 against whom a claim has been made, furnish  
 1117 forthwith, in a form approved by the office, a sworn statement



1118 of the earnings, since the time of the bodily injury and for a  
 1119 reasonable period before the injury, of the person upon whose  
 1120 injury the claim is based.

1121 (b) If an insured seeking to recover benefits pursuant to  
 1122 ss. 627.748-627.7491 assigns the contractual right to these  
 1123 benefits or payment of those benefits to any person or entity,  
 1124 the assignee must comply with the terms of the policy. In all  
 1125 circumstances the assignee is obligated to cooperate under the  
 1126 policy, including, but not limited to, submitting to an  
 1127 examination under oath. Examinations under oath may be recorded  
 1128 by audio, video, court reporter, or any combination thereof.  
 1129 Compliance with this paragraph by the assignee is a condition  
 1130 precedent to the assignee's recovery of benefits.

1131 1. If an insurer requests an examination under oath of a  
 1132 medical provider, the provider must produce those individuals  
 1133 identified in the request, or if no person is specifically  
 1134 identified, then the persons having the most knowledge of the  
 1135 issues identified by the insurer in the request for the  
 1136 examination under oath. All claimants must produce and allow for  
 1137 the inspection of all documents requested by the insurer that  
 1138 are relevant to the services rendered and reasonably obtainable  
 1139 by the claimant. No later than the time of the examination under  
 1140 oath, the insurer must pay the medical provider, and other  
 1141 persons produced in response to the insurer's request,  
 1142 reasonable compensation for attending the examination under  
 1143 oath. Such compensation shall be based upon good faith estimates  
 1144 of the hourly rate for the health care provider and other  
 1145 persons to be examined and the time required to conduct the

1146 examination under oath. If additional time is necessary for  
 1147 completion of the examination under oath, the insurer must  
 1148 provide compensation for the time that exceeds the good faith  
 1149 estimate within 15 days after the examination under oath to each  
 1150 person that completes the examination. All persons appearing for  
 1151 an examination under oath may have an attorney present at their  
 1152 own expense.

1153 2. Before requesting that an assignee participate in an  
 1154 examination under oath, the insurer must send a written request  
 1155 to the assignee requesting all information that the insurer  
 1156 believes is necessary to process the claim and relevant to the  
 1157 services rendered, including the information contemplated under  
 1158 this subparagraph.

1159 3. An insurer that, as a general practice, requests  
 1160 examinations under oath of an assignee without a reasonable  
 1161 basis is subject to s. 626.9541.

1162 4. An insurer must coordinate with the claimant for  
 1163 emergency care coverage benefits to ensure an appropriate time  
 1164 and location for the examination. A claimant's failure to agree  
 1165 to attend an examination after an insurer presents two  
 1166 documented offers of a reasonable time and location allows the  
 1167 insurer to suspend benefits, until such time that the claimant  
 1168 agrees to submit to, and does actually submit to, an  
 1169 examination.

1170 (c) Every physician, hospital, clinic, or other medical  
 1171 institution providing, before or after bodily injury upon which  
 1172 a claim for emergency care coverage benefits is based, any  
 1173 products, services, or accommodations in relation to that or any

1174 other injury, or in relation to a condition claimed to be  
 1175 connected with that or any other injury, shall, if requested to  
 1176 do so by the insurer against whom the claim has been made,  
 1177 permit the insurer or the insurer's representative to conduct an  
 1178 onsite physical review and examination of the treatment  
 1179 location, treatment apparatuses, diagnostic devices, and any  
 1180 other medical equipment used for the services rendered within 10  
 1181 days after the insurer's request and furnish forthwith a written  
 1182 report of the history, condition, treatment, dates, and costs of  
 1183 such treatment of the injured person and why the items  
 1184 identified by the insurer were reasonable in amount and  
 1185 medically necessary, together with a sworn statement that the  
 1186 treatment or services rendered were reasonable and necessary  
 1187 with respect to the bodily injury sustained and identifying  
 1188 which portion of the expenses for such treatment or services was  
 1189 incurred as a result of such bodily injury, and produce  
 1190 forthwith, and permit the inspection and copying of, his or her  
 1191 or its records regarding such history, condition, treatment,  
 1192 dates, and costs of treatment; provided that this shall not  
 1193 limit the introduction of evidence at trial. Such sworn  
 1194 statement shall read as follows: "Under penalty of perjury, I  
 1195 declare that I have read the foregoing, and the facts alleged  
 1196 are true, to the best of my knowledge and belief." No cause of  
 1197 action for violation of the physician-patient privilege or  
 1198 invasion of the right of privacy shall be permitted against any  
 1199 physician, hospital, clinic, or other medical institution  
 1200 complying with the provisions of this section. The person  
 1201 requesting such records and such sworn statement shall pay all

1202 reasonable costs connected therewith. If an insurer makes a  
 1203 written request for documentation or information under this  
 1204 paragraph within 30 days after having received notice of the  
 1205 amount of a covered loss under paragraph (4) (a), the amount or  
 1206 the partial amount which is the subject of the insurer's inquiry  
 1207 shall become overdue if the insurer does not pay in accordance  
 1208 with paragraph (4) (b) or within 10 days after the insurer's  
 1209 receipt of the requested documentation or information, whichever  
 1210 occurs later. For purposes of this paragraph, the term "receipt"  
 1211 includes, but is not limited to, inspection and copying pursuant  
 1212 to this paragraph. Any insurer that requests documentation or  
 1213 information pertaining to reasonableness of charges or medical  
 1214 necessity under this paragraph without a reasonable basis for  
 1215 such requests as a general business practice is engaging in an  
 1216 unfair trade practice under the insurance code. The provisions  
 1217 of s. 626.989(4) (d) shall apply to the sharing of information  
 1218 related to reviews and examinations conducted pursuant to this  
 1219 section.

1220 (d) In the event of any dispute regarding an insurer's  
 1221 right to discovery of facts under this section, the insurer may  
 1222 petition a court of competent jurisdiction to enter an order  
 1223 permitting such discovery. The order may be made only on motion  
 1224 for good cause shown and upon notice to all persons having an  
 1225 interest, and it shall specify the time, place, manner,  
 1226 conditions, and scope of the discovery. Such court may, in order  
 1227 to protect against annoyance, embarrassment, or oppression, as  
 1228 justice requires, enter an order refusing discovery or  
 1229 specifying conditions of discovery and may order payments of

1230 costs and expenses of the proceeding, including reasonable fees  
 1231 for the appearance of attorneys at the proceedings, as justice  
 1232 requires.

1233 (e) The injured person shall be furnished, upon request, a  
 1234 copy of all information obtained by the insurer under the  
 1235 provisions of this section, and shall pay a reasonable charge,  
 1236 if required by the insurer.

1237 (f) Notice to an insurer of the existence of a claim shall  
 1238 not be unreasonably withheld by an insured.

1239 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;  
 1240 REPORTS.—

1241 (a) Whenever the mental or physical condition of an  
 1242 injured person covered by emergency care coverage insurance is  
 1243 material to any claim that has been or may be made for past or  
 1244 future emergency care coverage insurance benefits, such person  
 1245 shall, upon the request of an insurer, submit to mental or  
 1246 physical examination by a physician or physicians. The costs of  
 1247 any examinations requested by an insurer shall be borne entirely  
 1248 by the insurer. Such examination shall be conducted within the  
 1249 municipality where the insured is receiving treatment, or in a  
 1250 location reasonably accessible to the insured, which, for  
 1251 purposes of this paragraph, means any location within the  
 1252 municipality in which the insured resides, or any location  
 1253 within 10 miles by road of the insured's residence, provided  
 1254 such location is within the county in which the insured resides.  
 1255 If the examination is to be conducted in a location reasonably  
 1256 accessible to the insured, and if there is no qualified  
 1257 physician to conduct the examination in a location reasonably

1258 accessible to the insured, then such examination shall be  
 1259 conducted in an area of the closest proximity to the insured's  
 1260 residence. Emergency care coverage insurers are authorized to  
 1261 include reasonable provisions in emergency care coverage  
 1262 insurance policies for mental and physical examination of those  
 1263 claiming emergency care coverage insurance benefits. An insurer  
 1264 may not withdraw payment of a treating physician without the  
 1265 consent of the injured person covered by the emergency care  
 1266 coverage insurance, unless the insurer first obtains a valid  
 1267 report by a Florida physician licensed under the same chapter as  
 1268 the treating physician whose treatment authorization is sought  
 1269 to be withdrawn, stating that treatment was not reasonable,  
 1270 related, or necessary. A valid report is one that is prepared  
 1271 and signed by the physician examining the injured person or  
 1272 reviewing the treatment records of the injured person and is  
 1273 factually supported by the examination and treatment records if  
 1274 reviewed and that has not been modified by anyone other than the  
 1275 physician. The physician preparing the report must be in active  
 1276 practice, unless the physician is physically disabled. Active  
 1277 practice means that during the 3 years immediately preceding the  
 1278 date of the physical examination or review of the treatment  
 1279 records the physician must have devoted professional time to the  
 1280 active clinical practice of evaluation, diagnosis, or treatment  
 1281 of medical conditions or to the instruction of students in an  
 1282 accredited health professional school or accredited residency  
 1283 program or a clinical research program that is affiliated with  
 1284 an accredited health professional school or teaching hospital or  
 1285 accredited residency program. The physician preparing a report

1286 at the request of an insurer and physicians rendering expert  
 1287 opinions on behalf of persons claiming medical benefits for  
 1288 emergency care coverage, or on behalf of an insured through an  
 1289 attorney or another entity, shall maintain, for at least 3  
 1290 years, copies of all examination reports as medical records and  
 1291 shall maintain, for at least 3 years, records of all payments  
 1292 for the examinations and reports. Neither an insurer nor any  
 1293 person acting at the direction of or on behalf of an insurer may  
 1294 materially change an opinion in a report prepared under this  
 1295 paragraph or direct the physician preparing the report to change  
 1296 such opinion. The denial of a payment as the result of such a  
 1297 changed opinion constitutes a material misrepresentation under  
 1298 s. 626.9541(1)(i)2.; however, this provision does not preclude  
 1299 the insurer from calling to the attention of the physician  
 1300 errors of fact in the report based upon information in the claim  
 1301 file.

1302 (b) If requested by the person examined, a party causing  
 1303 an examination to be made shall deliver to him or her a copy of  
 1304 every written report concerning the examination rendered by an  
 1305 examining physician, at least one of which reports must set out  
 1306 the examining physician's findings and conclusions in detail.  
 1307 After such request and delivery, the party causing the  
 1308 examination to be made is entitled, upon request, to receive  
 1309 from the person examined every written report available to him  
 1310 or her or his or her representative concerning any examination,  
 1311 previously or thereafter made, of the same mental or physical  
 1312 condition. By requesting and obtaining a report of the  
 1313 examination so ordered, or by taking the deposition of the

1314 examiner, the person examined waives any privilege he or she may  
 1315 have, in relation to the claim for benefits, regarding the  
 1316 testimony of every other person who has examined, or may  
 1317 thereafter examine, him or her in respect to the same mental or  
 1318 physical condition. If a person unreasonably refuses to submit  
 1319 to or fails to appear at an examination, the emergency care  
 1320 coverage carrier is no longer liable for subsequent emergency  
 1321 care coverage benefits. Refusal or failure to appear for two  
 1322 examinations raises a rebuttable presumption that such refusal  
 1323 or failure was unreasonable.

1324 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S  
 1325 FEES.—

1326 (a) With respect to any dispute under ss. 627.748-627.7491  
 1327 between the insured and the insurer, or between an assignee of  
 1328 an insured's rights and the insurer, s. 627.428 applies, except  
 1329 as provided in paragraphs (b) and (c) and subsections (9) and  
 1330 (14) and except that any attorney fees recovered are limited to  
 1331 the lesser of the actual fee incurred based upon a rate for  
 1332 attorney services not to exceed \$200 per billable hour or:

1333 1. For any disputed amount of less than \$500, 15 times any  
 1334 disputed amount recovered by the attorney under ss. 627.748-  
 1335 627.7491, limited to a total of \$5,000.

1336 2. For any disputed amount of \$500 or more and less than  
 1337 \$5,000, 10 times any disputed amount recovered by the attorney  
 1338 under ss. 627.748-627.7491, limited to a total of \$10,000.

1339 3. For any disputed amount of \$5,000 or more and up to  
 1340 \$10,000, 5 times any disputed amount recovered by the attorney  
 1341 under ss. 627.748-627.7491, limited to a total of \$15,000.



1342  
 1343 Fees incurred in litigating or quantifying the amount of fees  
 1344 due to the prevailing party under ss. 627.748-627.7491 are not  
 1345 recoverable.

1346 (b) Notwithstanding s. 627.428, the attorney fees  
 1347 recovered under ss. 627.748-627.7491 shall be calculated without  
 1348 regard to any contingency risk multiplier.

1349 (c) Attorney fees in a class action under ss. 627.748-  
 1350 627.7491 are limited to the lesser of \$50,000 or 3 times the  
 1351 total of any disputed amount recovered in the class action  
 1352 proceeding.

1353 (9) DEMAND LETTER.—

1354 (a) As a condition precedent to filing any action for  
 1355 benefits under this section, the insurer must be provided with  
 1356 written notice of an intent to initiate litigation. Such notice  
 1357 may not be sent until the claim is overdue, including any  
 1358 additional time the insurer has to pay the claim pursuant to  
 1359 paragraph (4) (b).

1360 (b) The notice required shall state that it is a "demand  
 1361 letter under s. 627.736(910)" and shall state with specificity:

1362 1. The name of the insured upon which such benefits are  
 1363 being sought, including a copy of the assignment giving rights  
 1364 to the claimant if the claimant is not the insured.

1365 2. The claim number or policy number upon which such claim  
 1366 was originally submitted to the insurer.

1367 3. To the extent applicable, the name of any medical  
 1368 provider who rendered to an insured the treatment, services,  
 1369 accommodations, or supplies that form the basis of such claim;

1370 and an itemized statement specifying each exact amount, the date  
 1371 of treatment, service, or accommodation, and the type of benefit  
 1372 claimed to be due. A completed form satisfying the requirements  
 1373 of paragraph (5) (d) or the lost-wage statement previously  
 1374 submitted may be used as the itemized statement. To the extent  
 1375 that the demand involves an insurer's withdrawal of payment  
 1376 under paragraph (7) (a) for future treatment not yet rendered,  
 1377 the claimant shall attach a copy of the insurer's notice  
 1378 withdrawing such payment and an itemized statement of the type,  
 1379 frequency, and duration of future treatment claimed to be  
 1380 reasonable and medically necessary.

1381 (c) Each notice required by this subsection must be  
 1382 delivered to the insurer by United States certified or  
 1383 registered mail, return receipt requested. Such postal costs  
 1384 shall be reimbursed by the insurer if so requested by the  
 1385 claimant in the notice, when the insurer pays the claim. Such  
 1386 notice must be sent to the person and address specified by the  
 1387 insurer for the purposes of receiving notices under this  
 1388 subsection. Each licensed insurer, whether domestic, foreign, or  
 1389 alien, shall file with the office designation of the name and  
 1390 address of the person to whom notices pursuant to this  
 1391 subsection shall be sent which the office shall make available  
 1392 on its Internet website. The name and address on file with the  
 1393 office pursuant to s. 624.422 shall be deemed the authorized  
 1394 representative to accept notice pursuant to this subsection in  
 1395 the event no other designation has been made.

1396 (d) If, within 30 days after receipt of notice by the  
 1397 insurer, the overdue claim specified in the notice is paid by

1398 the insurer together with applicable interest and a penalty of  
 1399 10 percent of the overdue amount paid by the insurer, subject to  
 1400 a maximum penalty of \$250, no action may be brought against the  
 1401 insurer. If the demand involves an insurer's withdrawal of  
 1402 payment under paragraph (7) (a) for future treatment not yet  
 1403 rendered, no action may be brought against the insurer if,  
 1404 within 30 days after its receipt of the notice, the insurer  
 1405 mails to the person filing the notice a written statement of the  
 1406 insurer's agreement to pay for such treatment in accordance with  
 1407 the notice and to pay a penalty of 10 percent, subject to a  
 1408 maximum penalty of \$250, when it pays for such future treatment  
 1409 in accordance with the requirements of this section. To the  
 1410 extent the insurer determines not to pay any amount demanded,  
 1411 the penalty shall not be payable in any subsequent action. For  
 1412 purposes of this subsection, payment or the insurer's agreement  
 1413 shall be treated as being made on the date a draft or other  
 1414 valid instrument that is equivalent to payment, or the insurer's  
 1415 written statement of agreement, is placed in the United States  
 1416 mail in a properly addressed, postpaid envelope, or if not so  
 1417 posted, on the date of delivery. The insurer is not obligated to  
 1418 pay any attorney's fees if the insurer pays the claim or mails  
 1419 its agreement to pay for future treatment within the time  
 1420 prescribed by this subsection.

1421 (e) The applicable statute of limitation for an action  
 1422 under this section shall be tolled for a period of 30 business  
 1423 days by the mailing of the notice required by this subsection.

1424 (f) Any insurer making a general business practice of not  
 1425 paying valid claims until receipt of the notice required by this

1426 subsection is engaging in an unfair trade practice under the  
 1427 insurance code.

1428 (10) FAILURE TO PAY VALID CLAIMS; UNFAIR OR DECEPTIVE  
 1429 PRACTICE.—

1430 (a) If an insurer fails to pay valid claims for emergency  
 1431 care coverage with such frequency so as to indicate a general  
 1432 business practice, the insurer is engaging in a prohibited  
 1433 unfair or deceptive practice that is subject to the penalties  
 1434 provided in s. 626.9521 and the office has the powers and duties  
 1435 specified in ss. 626.9561-626.9601 with respect thereto.

1436 (b) Notwithstanding s. 501.212, the Department of Legal  
 1437 Affairs may investigate and initiate actions for a violation of  
 1438 this subsection, including, but not limited to, the powers and  
 1439 duties specified in part II of chapter 501.

1440 (11) CIVIL ACTION FOR INSURANCE FRAUD.—An insurer shall  
 1441 have a cause of action against any person convicted of, or who,  
 1442 regardless of adjudication of guilt, pleads guilty or nolo  
 1443 contendere to insurance fraud under s. 817.234, patient  
 1444 brokering under s. 817.505, or kickbacks under s. 456.054,  
 1445 associated with a claim for emergency care coverage benefits in  
 1446 accordance with this section. An insurer prevailing in an action  
 1447 brought under this subsection may recover compensatory,  
 1448 consequential, and punitive damages subject to the requirements  
 1449 and limitations of part II of chapter 768, and attorney's fees  
 1450 and costs incurred in litigating a cause of action against any  
 1451 person convicted of, or who, regardless of adjudication of  
 1452 guilt, pleads guilty or nolo contendere to insurance fraud under  
 1453 s. 817.234, patient brokering under s. 817.505, or kickbacks

1454 under s. 456.054, associated with a claim for emergency care  
1455 coverage benefits in accordance with this section.

1456 (12) FRAUD ADVISORY NOTICE.—Upon receiving notice of a  
1457 claim under this section, an insurer shall provide a notice to  
1458 the insured or to a person for whom a claim for reimbursement  
1459 for diagnosis or treatment of injuries has been filed, advising  
1460 that:

1461 (a) Pursuant to s. 626.9892, the Department of Financial  
1462 Services may pay rewards of up to \$25,000 to persons providing  
1463 information leading to the arrest and conviction of persons  
1464 committing crimes investigated by the Division of Insurance  
1465 Fraud arising from violations of s. 440.105, s. 624.15, s.  
1466 626.9541, s. 626.989, or s. 817.234.

1467 (b) Solicitation of a person injured in a motor vehicle  
1468 crash for purposes of filing emergency care coverage or tort  
1469 claims could be a violation of s. 817.234, s. 817.505, or the  
1470 rules regulating The Florida Bar and should be immediately  
1471 reported to the Division of Insurance Fraud if such conduct has  
1472 taken place.

1473 (13) ALL CLAIMS BROUGHT IN A SINGLE ACTION.—In any civil  
1474 action to recover emergency care coverage benefits brought by a  
1475 claimant pursuant to this section against an insurer, all claims  
1476 related to the same health care provider for the same injured  
1477 person shall be brought in one action, unless good cause is  
1478 shown why such claims should be brought separately. If the court  
1479 determines that a civil action is filed for a claim that should  
1480 have been brought in a prior civil action, the court may not  
1481 award attorney's fees to the claimant.

1482           (14) SECURE ELECTRONIC DATA TRANSFER.—If all parties  
 1483 mutually and expressly agree, a notice, documentation,  
 1484 transmission, or communication of any kind required or  
 1485 authorized under ss. 627.74830-627.749105 may be transmitted  
 1486 electronically if it is transmitted by secure electronic data  
 1487 transfer that is consistent with state and federal privacy and  
 1488 security laws.

1489           Section 9. Section 627.7486, Florida Statutes, is created  
 1490 to read:

1491           627.7486 Tort exemption; limitation on right to damages;  
 1492 punitive damages.—

1493           (1) Every owner, registrant, operator, or occupant of a  
 1494 motor vehicle with respect to which security has been provided  
 1495 as required by ss. 627.748-627.7491, and every person or  
 1496 organization legally responsible for her or his acts or  
 1497 omissions, is hereby exempted from tort liability for damages  
 1498 because of bodily injury, sickness, or disease arising out of  
 1499 the ownership, operation, maintenance, or use of such motor  
 1500 vehicle in this state to the extent that the benefits described  
 1501 in s. 627.7485(1) are payable for such injury, or would be  
 1502 payable but for any exclusion authorized by ss. 627.748-  
 1503 627.7491, under any insurance policy or other method of security  
 1504 complying with the requirements of s. 627.7483, or by an owner  
 1505 personally liable under s. 627.7483 for the payment of such  
 1506 benefits, unless a person is entitled to maintain an action for  
 1507 pain, suffering, mental anguish, and inconvenience for such  
 1508 injury under the provisions of subsection (2).

1509           (2) In any action of tort brought against the owner,

1510 registrant, operator, or occupant of a motor vehicle with  
1511 respect to which security has been provided as required by ss.  
1512 627.748-627.7491, or against any person or organization legally  
1513 responsible for her or his acts or omissions, a plaintiff may  
1514 recover damages in tort for pain, suffering, mental anguish, and  
1515 inconvenience because of bodily injury, sickness, or disease  
1516 arising out of the ownership, maintenance, operation, or use of  
1517 such motor vehicle only in the event that the injury or disease  
1518 consists in whole or in part of:

1519 (a) Significant and permanent loss of an important bodily  
1520 function.

1521 (b) Permanent injury within a reasonable degree of medical  
1522 probability, other than scarring or disfigurement.

1523 (c) Significant and permanent scarring or disfigurement.

1524 (d) Death.

1525 (3) When a defendant, in a proceeding brought pursuant to  
1526 ss. 627.748-627.7491, questions whether the plaintiff has met  
1527 the requirements of subsection (2), then the defendant may file  
1528 an appropriate motion with the court, and the court shall, on a  
1529 one-time basis only, 30 days before the date set for the trial  
1530 or the pretrial hearing, whichever is first, by examining the  
1531 pleadings and the evidence before it, ascertain whether the  
1532 plaintiff will be able to submit some evidence that the  
1533 plaintiff will meet the requirements of subsection (2). If the  
1534 court finds that the plaintiff will not be able to submit such  
1535 evidence, then the court shall dismiss the plaintiff's claim  
1536 without prejudice.

PCS for HB 119

ORIGINAL

2012

1537       (4) In any action brought against an automobile liability  
1538 insurer for damages in excess of its policy limits, no claim for  
1539 punitive damages shall be allowed.

1540       Section 10. Section 627.7487, Florida Statutes, is created  
1541 to read:

1542       627.7487 Emergency care coverage; optional limitations;  
1543 deductibles.-

1544       (1) The named insured may elect a deductible or modified  
1545 coverage or combination thereof to apply to the named insured  
1546 alone or to the named insured and dependent relatives residing  
1547 in the same household, but may not elect a deductible or  
1548 modified coverage to apply to any other person covered under the  
1549 policy.

1550       (2) Insurers shall offer to each applicant and to each  
1551 policyholder, upon the renewal of an existing policy,  
1552 deductibles, in amounts of \$250, \$500, and \$1,000. The  
1553 deductible amount must be applied to 100 percent of the expenses  
1554 and losses described in s. 627.7485. After the deductible is  
1555 met, each insured is eligible to receive up to \$10,000 in total  
1556 benefits described in s. 627.7485(1). However, this subsection  
1557 shall not be applied to reduce the amount of any benefits  
1558 received in accordance with s. 627.7485(1)(c).

1559       (3) Insurers shall offer coverage wherein, at the election  
1560 of the named insured, the benefits for loss of gross income and  
1561 loss of earning capacity described in s. 627.7485(1)(b) shall be  
1562 excluded.

1563       (4) The named insured shall not be prevented from electing  
1564 a deductible under subsection (2) and modified coverage under



1565 subsection (3). Each election made by the named insured under  
 1566 this section shall result in an appropriate reduction of premium  
 1567 associated with that election.

1568 (5) All such offers shall be made in clear and unambiguous  
 1569 language at the time the initial application is taken and prior  
 1570 to each annual renewal and shall indicate that a premium  
 1571 reduction will result from each election. At the option of the  
 1572 insurer, the requirements of the preceding sentence are met by  
 1573 using forms of notice approved by the office, or by providing  
 1574 the following notice in 10-point type in the insurer's  
 1575 application for initial issuance of a policy of motor vehicle  
 1576 insurance and the insurer's annual notice of renewal premium:  
 1577 For emergency care coverage insurance, the named insured may  
 1578 elect a deductible and to exclude coverage for loss of gross  
 1579 income and loss of earning capacity ("lost wages"). These  
 1580 elections apply to the named insured alone, or to the named  
 1581 insured and all dependent resident relatives. A premium  
 1582 reduction will result from these elections. The named insured is  
 1583 hereby advised not to elect the lost wage exclusion if the named  
 1584 insured or dependent resident relatives are employed, since lost  
 1585 wages will not be payable in the event of an accident.

1586 Section 11. Section 627.7488, Florida Statutes, is created  
 1587 to read:

1588 627.7488 Notification of insured's rights.-

1589 (1) The commission, by rule, shall adopt a form for the  
 1590 notification of insureds of their right to receive emergency  
 1591 care coverage under the Florida Motor Vehicle No-Fault Emergency  
 1592 Care Coverage Law. Such notice shall include:

1593        (a) A description of the benefits provided by emergency  
 1594 care coverage insurance, including, but not limited to, the  
 1595 specific types of services for which medical benefits are paid,  
 1596 disability benefits, death benefits, significant exclusions from  
 1597 and limitations on emergency care coverage benefits, when  
 1598 payments are due, how benefits are coordinated with other  
 1599 insurance benefits that the insured may have, penalties and  
 1600 interest that may be imposed on insurers for failure to make  
 1601 timely payments of benefits, and rights of parties regarding  
 1602 disputes as to benefits.

1603        (b) An advisory informing insureds that:

1604        1. Pursuant to s. 626.9892, the Department of Financial  
 1605 Services may pay rewards of up to \$25,000 to persons providing  
 1606 information leading to the arrest and conviction of persons  
 1607 committing crimes investigated by the Division of Insurance  
 1608 Fraud arising from violations of s. 440.105, s. 624.15, s.  
 1609 626.9541, s. 626.989, or s. 817.234.

1610        2. Pursuant to s. 627.7485(5)(e)1., if the insured  
 1611 notifies the insurer of a billing error, the insured may be  
 1612 entitled to a certain percentage of a reduction in the amount  
 1613 paid by the insured's motor vehicle insurer.

1614        (c) A notice that solicitation of a person injured in a  
 1615 motor vehicle crash for purposes of filing emergency care  
 1616 coverage or tort claims could be a violation of s. 817.234, s  
 1617 817.505, or the rules regulating The Florida Bar and should be  
 1618 immediately reported to the Division of Insurance Fraud if such  
 1619 conduct has taken place.

1620        (2) Each insurer issuing a policy in this state providing

1621 emergency care coverage benefits must mail or deliver the notice  
 1622 as specified in subsection (1) to an insured within 21 days  
 1623 after receiving from the insured notice of an automobile  
 1624 accident or claim involving personal injury to an insured who is  
 1625 covered under the policy. The office may allow an insurer  
 1626 additional time to provide the notice specified in subsection  
 1627 (1) not to exceed 30 days, upon a showing by the insurer that an  
 1628 emergency justifies an extension of time.

1629 (3) The notice required by this section does not alter or  
 1630 modify the terms of the insurance contract or other requirements  
 1631 of this act.

1632 Section 12. Section 627.7489, Florida Statutes, is created  
 1633 to read:

1634 627.7489 Mandatory joinder of derivative claim.—In any  
 1635 action brought pursuant to the provisions of s. 627.7486  
 1636 claiming personal injuries, all claims arising out of the  
 1637 plaintiff's injuries, including all derivative claims, shall be  
 1638 brought together, unless good cause is shown why such claims  
 1639 should be brought separately.

1640 Section 13. Section 627.749, Florida Statutes, is created  
 1641 to read:

1642 627.749 Insurers' right of reimbursement.—Notwithstanding  
 1643 any other provisions of ss. 627.748-627.7491, any insurer  
 1644 providing emergency care coverage benefits on a private  
 1645 passenger motor vehicle shall have, to the extent of any  
 1646 emergency care coverage benefits paid to any person as a benefit  
 1647 arising out of such private passenger motor vehicle insurance, a  
 1648 right of reimbursement against the owner or the insurer of the

1649 owner of a commercial motor vehicle, if the benefits paid result  
 1650 from such person having been an occupant of the commercial motor  
 1651 vehicle or having been struck by the commercial motor vehicle  
 1652 while not an occupant of any self-propelled vehicle.

1653 Section 14. Section 627.7491, Florida Statutes, is created  
 1654 to read:

1655 627.7491 Application of the Florida Motor Vehicle No-Fault  
 1656 Emergency Care Coverage Law.—

1657 (1) Any person subject to the requirements of ss. 627.748-  
 1658 627.7491 must maintain security for emergency care coverage on  
 1659 and after the effective date of this act.

1660 (2) All forms and rates for policies issued or renewed on  
 1661 or after October 1, 2012, must reflect the provisions of this  
 1662 act and must be approved by the office prior to their use.

1663 (3) After the effective date of this act, insurers must  
 1664 provide existing policyholders, at least 30 days before the  
 1665 policy expiration date, and applicants for no-fault coverage,  
 1666 upon receipt of the application, with notice of the provisions  
 1667 of the Florida Motor Vehicle No-Fault Emergency Care Coverage  
 1668 Act. The notice is not subject to approval by the office and  
 1669 must clearly inform the person of the following:

1670 (a) That no-fault motor vehicle insurance requirements are  
 1671 governed by the Florida Motor Vehicle No-Fault Emergency Care  
 1672 Coverage Law and an explanation of emergency care coverage.  
 1673 Current policyholders, with respect to the initial renewal after  
 1674 the effective date of this act, must also be provided with an  
 1675 explanation of differences between their current policy and the  
 1676 coverage provided under emergency care coverage policies.

1677           (b) That failure to maintain required emergency care  
 1678 coverage, and \$10,000 in property damage liability coverage, may  
 1679 result in suspension of the policyholder's driver's license and  
 1680 vehicle registration by the State of Florida.

1681           (c) The name and phone number of a person to contact with  
 1682 any questions they may have.

1683           Section 15. Paragraphs (a), (b), and (c) of subsection (8)  
 1684 and subsection (9) of section 817.234, Florida Statutes, are  
 1685 amended to read:

1686           817.234 False and fraudulent insurance claims.—

1687           (8) (a) It is unlawful for any person intending to defraud  
 1688 any other person to solicit or cause to be solicited any  
 1689 business from a person involved in a motor vehicle accident for  
 1690 the purpose of making, adjusting, or settling motor vehicle tort  
 1691 claims or claims for emergency care coverage ~~personal injury~~  
 1692 ~~protection~~ benefits required by s. 627.7485 ~~627.736~~. Any person  
 1693 who violates the provisions of this paragraph commits a felony  
 1694 of the second degree, punishable as provided in s. 775.082, s.  
 1695 775.083, or s. 775.084. A person who is convicted of a violation  
 1696 of this subsection shall be sentenced to a minimum term of  
 1697 imprisonment of 2 years.

1698           (b) A person may not solicit or cause to be solicited any  
 1699 business from a person involved in a motor vehicle accident by  
 1700 any means of communication other than advertising directed to  
 1701 the public for the purpose of making motor vehicle tort claims  
 1702 or claims for emergency care coverage ~~personal injury protection~~  
 1703 benefits required by s. 627.7485 ~~627.736~~, within 60 days after  
 1704 the occurrence of the motor vehicle accident. Any person who

1705 violates this paragraph commits a felony of the third degree,  
 1706 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1707 (c) A lawyer, health care practitioner as defined in s.  
 1708 456.001, or owner or medical director of a clinic required to be  
 1709 licensed pursuant to s. 400.9905 may not, at any time after 60  
 1710 days have elapsed from the occurrence of a motor vehicle  
 1711 accident, solicit or cause to be solicited any business from a  
 1712 person involved in a motor vehicle accident by means of in  
 1713 person or telephone contact at the person's residence, for the  
 1714 purpose of making motor vehicle tort claims or claims for  
 1715 emergency care coverage ~~personal injury protection~~ benefits  
 1716 required by s. 627.7485 ~~627.736~~. Any person who violates this  
 1717 paragraph commits a felony of the third degree, punishable as  
 1718 provided in s. 775.082, s. 775.083, or s. 775.084.

1719 (9) A person may not organize, plan, or knowingly  
 1720 participate in an intentional motor vehicle crash or a scheme to  
 1721 create documentation of a motor vehicle crash that did not occur  
 1722 for the purpose of making motor vehicle tort claims or claims  
 1723 for emergency care coverage ~~personal injury protection~~ benefits  
 1724 as required by s. 627.7485 ~~627.736~~. Any person who violates this  
 1725 subsection commits a felony of the second degree, punishable as  
 1726 provided in s. 775.082, s. 775.083, or s. 775.084. A person who  
 1727 is convicted of a violation of this subsection shall be  
 1728 sentenced to a minimum term of imprisonment of 2 years.

1729 Section 16. Subsection (1) of section 316.646, Florida  
 1730 Statutes, is amended to read:

1731 316.646 Security required; proof of security and display  
 1732 thereof; dismissal of cases.—

1733 (1) Any person required by s. 324.022 to maintain property  
 1734 damage liability security, required by s. 324.023 to maintain  
 1735 liability security for bodily injury or death, or required by s.  
 1736 627.7483 ~~627.733~~ to maintain emergency care coverage ~~personal~~  
 1737 ~~injury protection~~ security on a motor vehicle shall have in his  
 1738 or her immediate possession at all times while operating such  
 1739 motor vehicle proper proof of maintenance of the required  
 1740 security. Such proof shall be a uniform proof-of-insurance card  
 1741 in a form prescribed by the department, a valid insurance  
 1742 policy, an insurance policy binder, a certificate of insurance,  
 1743 or such other proof as may be prescribed by the department.

1744 Section 17. Paragraph (b) of subsection (2) of section  
 1745 318.18, Florida Statutes, is amended to read:

1746 318.18 Amount of penalties.—The penalties required for a  
 1747 noncriminal disposition pursuant to s. 318.14 or a criminal  
 1748 offense listed in s. 318.17 are as follows:

1749 (2) Thirty dollars for all nonmoving traffic violations  
 1750 and:

1751 (b) For all violations of ss. 320.0605, 320.07(1),  
 1752 322.065, and 322.15(1). Any person who is cited for a violation  
 1753 of s. 320.07(1) shall be charged a delinquent fee pursuant to s.  
 1754 320.07(4).

1755 1. If a person who is cited for a violation of s. 320.0605  
 1756 or s. 320.07 can show proof of having a valid registration at  
 1757 the time of arrest, the clerk of the court may dismiss the case  
 1758 and may assess a dismissal fee of up to \$10. A person who finds  
 1759 it impossible or impractical to obtain a valid registration  
 1760 certificate must submit an affidavit detailing the reasons for

1761 the impossibility or impracticality. The reasons may include,  
 1762 but are not limited to, the fact that the vehicle was sold,  
 1763 stolen, or destroyed; that the state in which the vehicle is  
 1764 registered does not issue a certificate of registration; or that  
 1765 the vehicle is owned by another person.

1766 2. If a person who is cited for a violation of s. 322.03,  
 1767 s. 322.065, or s. 322.15 can show a driver's license issued to  
 1768 him or her and valid at the time of arrest, the clerk of the  
 1769 court may dismiss the case and may assess a dismissal fee of up  
 1770 to \$10.

1771 3. If a person who is cited for a violation of s. 316.646  
 1772 can show proof of security as required by s. 627.7483 ~~627.733~~,  
 1773 issued to the person and valid at the time of arrest, the clerk  
 1774 of the court may dismiss the case and may assess a dismissal fee  
 1775 of up to \$10. A person who finds it impossible or impractical to  
 1776 obtain proof of security must submit an affidavit detailing the  
 1777 reasons for the impracticality. The reasons may include, but are  
 1778 not limited to, the fact that the vehicle has since been sold,  
 1779 stolen, or destroyed; that the owner or registrant of the  
 1780 vehicle is not required by s. 627.7483 ~~627.733~~ to maintain  
 1781 emergency care coverage ~~personal injury protection~~ insurance; or  
 1782 that the vehicle is owned by another person.

1783 Section 18. Paragraphs (a) and (d) of subsection (5) of  
 1784 section 320.02, Florida Statutes, are amended to read:

1785 320.02 Registration required; application for  
 1786 registration; forms.—

1787 (5) (a) Proof that emergency care coverage ~~personal injury~~  
 1788 ~~protection~~ benefits have been purchased when required under s.



1789 627.7483 ~~627.733~~, that property damage liability coverage has  
 1790 been purchased as required under s. 324.022, that bodily injury  
 1791 or death coverage has been purchased if required under s.  
 1792 324.023, and that combined bodily liability insurance and  
 1793 property damage liability insurance have been purchased when  
 1794 required under s. 627.7415 shall be provided in the manner  
 1795 prescribed by law by the applicant at the time of application  
 1796 for registration of any motor vehicle that is subject to such  
 1797 requirements. The issuing agent shall refuse to issue  
 1798 registration if such proof of purchase is not provided. Insurers  
 1799 shall furnish uniform proof-of-purchase cards in a form  
 1800 prescribed by the department and shall include the name of the  
 1801 insured's insurance company, the coverage identification number,  
 1802 and the make, year, and vehicle identification number of the  
 1803 vehicle insured. The card shall contain a statement notifying  
 1804 the applicant of the penalty specified in s. 316.646(4). The  
 1805 card or insurance policy, insurance policy binder, or  
 1806 certificate of insurance or a photocopy of any of these; an  
 1807 affidavit containing the name of the insured's insurance  
 1808 company, the insured's policy number, and the make and year of  
 1809 the vehicle insured; or such other proof as may be prescribed by  
 1810 the department shall constitute sufficient proof of purchase. If  
 1811 an affidavit is provided as proof, it shall be in substantially  
 1812 the following form:

1813 Under penalty of perjury, I ... (Name of insured)... do hereby  
 1814 certify that I have ... (Emergency Care Coverage ~~Personal Injury~~  
 1815 ~~Protection~~, Property Damage Liability, and, when required,

PCS for HB 119

ORIGINAL

2012

1816 Bodily Injury Liability)... Insurance currently in effect with  
 1817 ... (Name of insurance company)... under ... (policy number)...  
 1818 covering ... (make, year, and vehicle identification number of  
 1819 vehicle).... ... (Signature of Insured)...

1820 Such affidavit shall include the following warning:

1821 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE  
 1822 REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA  
 1823 LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS  
 1824 SUBJECT TO PROSECUTION.

1825 When an application is made through a licensed motor vehicle  
 1826 dealer as required in s. 319.23, the original or a photostatic  
 1827 copy of such card, insurance policy, insurance policy binder, or  
 1828 certificate of insurance or the original affidavit from the  
 1829 insured shall be forwarded by the dealer to the tax collector of  
 1830 the county or the Department of Highway Safety and Motor  
 1831 Vehicles for processing. By executing the aforesaid affidavit,  
 1832 no licensed motor vehicle dealer will be liable in damages for  
 1833 any inadequacy, insufficiency, or falsification of any statement  
 1834 contained therein. A card shall also indicate the existence of  
 1835 any bodily injury liability insurance voluntarily purchased.

1836 (d) The verifying of proof of emergency care coverage  
 1837 ~~personal injury protection~~ insurance, proof of property damage  
 1838 liability insurance, proof of combined bodily liability  
 1839 insurance and property damage liability insurance, or proof of  
 1840 financial responsibility insurance and the issuance or failure  
 1841 to issue the motor vehicle registration under the provisions of

1842 | this chapter may not be construed in any court as a warranty of  
 1843 | the reliability or accuracy of the evidence of such proof.  
 1844 | Neither the department nor any tax collector is liable in  
 1845 | damages for any inadequacy, insufficiency, falsification, or  
 1846 | unauthorized modification of any item of the proof of emergency  
 1847 | care coverage ~~personal injury protection~~ insurance, proof of  
 1848 | property damage liability insurance, proof of combined bodily  
 1849 | liability insurance and property damage liability insurance, or  
 1850 | proof of financial responsibility insurance prior to, during, or  
 1851 | subsequent to the verification of the proof. The issuance of a  
 1852 | motor vehicle registration does not constitute prima facie  
 1853 | evidence or a presumption of insurance coverage.

1854 |       Section 19. Paragraph (b) of subsection (1) of section  
 1855 | 320.0609, Florida Statutes, is amended to read:

1856 |           320.0609 Transfer and exchange of registration license  
 1857 | plates; transfer fee.—

1858 |           (1)

1859 |           (b) The transfer of a license plate from a vehicle  
 1860 | disposed of to a newly acquired vehicle does not constitute a  
 1861 | new registration. The application for transfer shall be accepted  
 1862 | without requiring proof of emergency care coverage ~~personal~~  
 1863 | ~~injury protection~~ or liability insurance.

1864 |       Section 20. Subsection (3) of section 320.27, Florida  
 1865 | Statutes, is amended to read:

1866 |           320.27 Motor vehicle dealers.—

1867 |           (3) APPLICATION AND FEE.—The application for the license  
 1868 | shall be in such form as may be prescribed by the department and  
 1869 | shall be subject to such rules with respect thereto as may be so

1870 prescribed by it. Such application shall be verified by oath or  
 1871 affirmation and shall contain a full statement of the name and  
 1872 birth date of the person or persons applying therefor; the name  
 1873 of the firm or copartnership, with the names and places of  
 1874 residence of all members thereof, if such applicant is a firm or  
 1875 copartnership; the names and places of residence of the  
 1876 principal officers, if the applicant is a body corporate or  
 1877 other artificial body; the name of the state under whose laws  
 1878 the corporation is organized; the present and former place or  
 1879 places of residence of the applicant; and prior business in  
 1880 which the applicant has been engaged and the location thereof.  
 1881 Such application shall describe the exact location of the place  
 1882 of business and shall state whether the place of business is  
 1883 owned by the applicant and when acquired, or, if leased, a true  
 1884 copy of the lease shall be attached to the application. The  
 1885 applicant shall certify that the location provides an adequately  
 1886 equipped office and is not a residence; that the location  
 1887 affords sufficient unoccupied space upon and within which  
 1888 adequately to store all motor vehicles offered and displayed for  
 1889 sale; and that the location is a suitable place where the  
 1890 applicant can in good faith carry on such business and keep and  
 1891 maintain books, records, and files necessary to conduct such  
 1892 business, which will be available at all reasonable hours to  
 1893 inspection by the department or any of its inspectors or other  
 1894 employees. The applicant shall certify that the business of a  
 1895 motor vehicle dealer is the principal business which shall be  
 1896 conducted at that location. Such application shall contain a  
 1897 statement that the applicant is either franchised by a

PCS for HB 119

ORIGINAL

2012

1898 manufacturer of motor vehicles, in which case the name of each  
 1899 motor vehicle that the applicant is franchised to sell shall be  
 1900 included, or an independent (nonfranchised) motor vehicle  
 1901 dealer. Such application shall contain such other relevant  
 1902 information as may be required by the department, including  
 1903 evidence that the applicant is insured under a garage liability  
 1904 insurance policy or a general liability insurance policy coupled  
 1905 with a business automobile policy, which shall include, at a  
 1906 minimum, \$25,000 combined single-limit liability coverage  
 1907 including bodily injury and property damage protection and  
 1908 \$10,000 emergency care coverage ~~personal injury protection~~.  
 1909 Franchise dealers must submit a garage liability insurance  
 1910 policy, and all other dealers must submit a garage liability  
 1911 insurance policy or a general liability insurance policy coupled  
 1912 with a business automobile policy. Such policy shall be for the  
 1913 license period, and evidence of a new or continued policy shall  
 1914 be delivered to the department at the beginning of each license  
 1915 period. Upon making initial application, the applicant shall pay  
 1916 to the department a fee of \$300 in addition to any other fees  
 1917 now required by law; upon making a subsequent renewal  
 1918 application, the applicant shall pay to the department a fee of  
 1919 \$75 in addition to any other fees now required by law. Upon  
 1920 making an application for a change of location, the person shall  
 1921 pay a fee of \$50 in addition to any other fees now required by  
 1922 law. The department shall, in the case of every application for  
 1923 initial licensure, verify whether certain facts set forth in the  
 1924 application are true. Each applicant, general partner in the  
 1925 case of a partnership, or corporate officer and director in the

1926 case of a corporate applicant, must file a set of fingerprints  
 1927 with the department for the purpose of determining any prior  
 1928 criminal record or any outstanding warrants. The department  
 1929 shall submit the fingerprints to the Department of Law  
 1930 Enforcement for state processing and forwarding to the Federal  
 1931 Bureau of Investigation for federal processing. The actual cost  
 1932 of state and federal processing shall be borne by the applicant  
 1933 and is in addition to the fee for licensure. The department may  
 1934 issue a license to an applicant pending the results of the  
 1935 fingerprint investigation, which license is fully revocable if  
 1936 the department subsequently determines that any facts set forth  
 1937 in the application are not true or correctly represented.

1938 Section 21. Paragraph (j) of subsection (3) of section  
 1939 320.771, Florida Statutes, is amended to read:

1940 320.771 License required of recreational vehicle dealers.-

1941 (3) APPLICATION.-The application for such license shall be  
 1942 in the form prescribed by the department and subject to such  
 1943 rules as may be prescribed by it. The application shall be  
 1944 verified by oath or affirmation and shall contain:

1945 (j) A statement that the applicant is insured under a  
 1946 garage liability insurance policy, which shall include, at a  
 1947 minimum, \$25,000 combined single-limit liability coverage,  
 1948 including bodily injury and property damage protection, and  
 1949 \$10,000 emergency care coverage ~~personal injury protection~~, if  
 1950 the applicant is to be licensed as a dealer in, or intends to  
 1951 sell, recreational vehicles.

1952

1953 The department shall, if it deems necessary, cause an  
 1954 investigation to be made to ascertain if the facts set forth in  
 1955 the application are true and shall not issue a license to the  
 1956 applicant until it is satisfied that the facts set forth in the  
 1957 application are true.

1958 Section 22. Paragraph (a) of subsection (8) of section  
 1959 322.34, Florida Statutes, is amended to read:

1960 322.34 Driving while license suspended, revoked, canceled,  
 1961 or disqualified.—

1962 (8) (a) Upon the arrest of a person for the offense of  
 1963 driving while the person's driver's license or driving privilege  
 1964 is suspended or revoked, the arresting officer shall determine:

1965 1. Whether the person's driver's license is suspended or  
 1966 revoked.

1967 2. Whether the person's driver's license has remained  
 1968 suspended or revoked since a conviction for the offense of  
 1969 driving with a suspended or revoked license.

1970 3. Whether the suspension or revocation was made under s.  
 1971 316.646 or s. 627.7483 ~~627.733~~, relating to failure to maintain  
 1972 required security, or under s. 322.264, relating to habitual  
 1973 traffic offenders.

1974 4. Whether the driver is the registered owner or coowner  
 1975 of the vehicle.

1976 Section 23. Subsection (1) and paragraph (c) of subsection  
 1977 (9) of section 324.021, Florida Statutes, is amended to read:

1978 324.021 Definitions; minimum insurance required.—The  
 1979 following words and phrases when used in this chapter shall, for  
 1980 the purpose of this chapter, have the meanings respectively

1981 ascribed to them in this section, except in those instances  
 1982 where the context clearly indicates a different meaning:  
 1983 (1) MOTOR VEHICLE.—Every self-propelled vehicle which is  
 1984 designed and required to be licensed for use upon a highway,  
 1985 including trailers and semitrailers designed for use with such  
 1986 vehicles, except traction engines, road rollers, farm tractors,  
 1987 power shovels, and well drillers, and every vehicle which is  
 1988 propelled by electric power obtained from overhead wires but not  
 1989 operated upon rails, but not including any bicycle or moped.  
 1990 However, the term "motor vehicle" shall not include any motor  
 1991 vehicle as defined in s. 627.7482(4) ~~627.732(3)~~ when the owner  
 1992 of such vehicle has complied with the requirements of ss.  
 1993 627.748-627.7491 ~~627.730-627.7405~~, inclusive, unless the  
 1994 provisions of s. 324.051 apply; and, in such case, the  
 1995 applicable proof of insurance provisions of s. 320.02 apply.  
 1996 (9) OWNER; OWNER/LESSOR.—  
 1997 (c) Application.—  
 1998 1. The limits on liability in subparagraphs (b)2. and 3.  
 1999 do not apply to an owner of motor vehicles that are used for  
 2000 commercial activity in the owner's ordinary course of business,  
 2001 other than a rental company that rents or leases motor vehicles.  
 2002 For purposes of this paragraph, the term "rental company"  
 2003 includes only an entity that is engaged in the business of  
 2004 renting or leasing motor vehicles to the general public and that  
 2005 rents or leases a majority of its motor vehicles to persons with  
 2006 no direct or indirect affiliation with the rental company. The  
 2007 term also includes a motor vehicle dealer that provides  
 2008 temporary replacement vehicles to its customers for up to 10



2009 days. The term "rental company" also includes:

2010 a. A related rental or leasing company that is a  
 2011 subsidiary of the same parent company as that of the renting or  
 2012 leasing company that rented or leased the vehicle.

2013 b. The holder of a motor vehicle title or an equity  
 2014 interest in a motor vehicle title if the title or equity  
 2015 interest is held pursuant to or to facilitate an asset-backed  
 2016 securitization of a fleet of motor vehicles used solely in the  
 2017 business of renting or leasing motor vehicles to the general  
 2018 public and under the dominion and control of a rental company,  
 2019 as described in this subparagraph, in the operation of such  
 2020 rental company's business.

2021 2. Furthermore, with respect to commercial motor vehicles  
 2022 as defined in s. 627.7482 ~~627.732~~, the limits on liability in  
 2023 subparagraphs (b)2. and 3. do not apply if, at the time of the  
 2024 incident, the commercial motor vehicle is being used in the  
 2025 transportation of materials found to be hazardous for the  
 2026 purposes of the Hazardous Materials Transportation Authorization  
 2027 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is  
 2028 required pursuant to such act to carry placards warning others  
 2029 of the hazardous cargo, unless at the time of lease or rental  
 2030 either:

2031 a. The lessee indicates in writing that the vehicle will  
 2032 not be used to transport materials found to be hazardous for the  
 2033 purposes of the Hazardous Materials Transportation Authorization  
 2034 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

2035 b. The lessee or other operator of the commercial motor  
 2036 vehicle has in effect insurance with limits of at least

PCS for HB 119

ORIGINAL

2012

2037 \$5,000,000 combined property damage and bodily injury liability.  
 2038 Section 24. Subsection (1) and paragraph (a) of subsection  
 2039 (2) of section 324.0221, Florida Statutes, is amended to read:  
 2040 324.0221 Reports by insurers to the department; suspension  
 2041 of driver's license and vehicle registrations; reinstatement.—  
 2042 (1) (a) Each insurer that has issued a policy providing  
 2043 emergency care ~~personal injury protection~~ coverage or property  
 2044 damage liability coverage shall report the renewal,  
 2045 cancellation, or nonrenewal thereof to the department within 45  
 2046 days after the effective date of each renewal, cancellation, or  
 2047 nonrenewal. Upon the issuance of a policy providing emergency  
 2048 care coverage ~~personal injury protection coverage~~ or property  
 2049 damage liability coverage to a named insured not previously  
 2050 insured by the insurer during that calendar year, the insurer  
 2051 shall report the issuance of the new policy to the department  
 2052 within 30 days. The report shall be in the form and format and  
 2053 contain any information required by the department and must be  
 2054 provided in a format that is compatible with the data processing  
 2055 capabilities of the department. The department may adopt rules  
 2056 regarding the form and documentation required. Failure by an  
 2057 insurer to file proper reports with the department as required  
 2058 by this subsection or rules adopted with respect to the  
 2059 requirements of this subsection constitutes a violation of the  
 2060 Florida Insurance Code. These records shall be used by the  
 2061 department only for enforcement and regulatory purposes,  
 2062 including the generation by the department of data regarding  
 2063 compliance by owners of motor vehicles with the requirements for  
 2064 financial responsibility coverage.

2065 (b) With respect to an insurance policy providing  
 2066 emergency care ~~personal injury protection~~ coverage or property  
 2067 damage liability coverage, each insurer shall notify the named  
 2068 insured, or the first-named insured in the case of a commercial  
 2069 fleet policy, in writing that any cancellation or nonrenewal of  
 2070 the policy will be reported by the insurer to the department.  
 2071 The notice must also inform the named insured that failure to  
 2072 maintain emergency care ~~personal injury protection~~ coverage and  
 2073 property damage liability coverage on a motor vehicle when  
 2074 required by law may result in the loss of registration and  
 2075 driving privileges in this state and inform the named insured of  
 2076 the amount of the reinstatement fees required by this section.  
 2077 This notice is for informational purposes only, and an insurer  
 2078 is not civilly liable for failing to provide this notice.

2079 (2) The department shall suspend, after due notice and an  
 2080 opportunity to be heard, the registration and driver's license  
 2081 of any owner or registrant of a motor vehicle with respect to  
 2082 which security is required under ss. 324.022 and 627.7483  
 2083 ~~627.733~~ upon:

2084 (a) The department's records showing that the owner or  
 2085 registrant of such motor vehicle did not have in full force and  
 2086 effect when required security that complies with the  
 2087 requirements of ss. 324.022 and 627.7483 ~~627.733~~; or

2088 Section 25. Paragraph (a) of subsection (1) of section  
 2089 324.032, Florida Statutes, is amended to read:

2090 324.032 Manner of proving financial responsibility; for-  
 2091 hire passenger transportation vehicles.—Notwithstanding the  
 2092 provisions of s. 324.031:

2093 (1) (a) A person who is either the owner or a lessee  
 2094 required to maintain insurance under s. 627.7483(1)(b)  
 2095 ~~627.733(1)(b)~~ and who operates one or more taxicabs, limousines,  
 2096 jitneys, or any other for-hire passenger transportation vehicles  
 2097 may prove financial responsibility by furnishing satisfactory  
 2098 evidence of holding a motor vehicle liability policy, but with  
 2099 minimum limits of \$125,000/250,000/50,000.

2100  
 2101 Upon request by the department, the applicant must provide the  
 2102 department at the applicant's principal place of business in  
 2103 this state access to the applicant's underlying financial  
 2104 information and financial statements that provide the basis of  
 2105 the certified public accountant's certification. The applicant  
 2106 shall reimburse the requesting department for all reasonable  
 2107 costs incurred by it in reviewing the supporting information.  
 2108 The maximum amount of self-insurance permissible under this  
 2109 subsection is \$300,000 and must be stated on a per-occurrence  
 2110 basis, and the applicant shall maintain adequate excess  
 2111 insurance issued by an authorized or eligible insurer licensed  
 2112 or approved by the Office of Insurance Regulation. All risks  
 2113 self-insured shall remain with the owner or lessee providing it,  
 2114 and the risks are not transferable to any other person, unless a  
 2115 policy complying with subsection (1) is obtained.

2116 Section 26. Subsection (2) of section 324.171, Florida  
 2117 Statutes, is amended to read:

2118 324.171 Self-insurer.—

2119 (2) The self-insurance certificate shall provide limits of  
 2120 liability insurance in the amounts specified under s. 324.021(7)

2121 or s. 627.7415 and shall provide emergency care ~~personal injury~~  
 2122 ~~protection~~ coverage under s. 627.7483(3)(b) ~~627.733(3)(b)~~.

2123 Section 27. Paragraph (g) of subsection (1) of section  
 2124 400.9935, Florida Statutes, is amended to read:

2125 400.9935 Clinic responsibilities.—

2126 (1) Each clinic shall appoint a medical director or clinic  
 2127 director who shall agree in writing to accept legal  
 2128 responsibility for the following activities on behalf of the  
 2129 clinic. The medical director or the clinic director shall:

2130 (g) Conduct systematic reviews of clinic billings to  
 2131 ensure that the billings are not fraudulent or unlawful. Upon  
 2132 discovery of an unlawful charge, the medical director or clinic  
 2133 director shall take immediate corrective action. If the clinic  
 2134 performs only the technical component of magnetic resonance  
 2135 imaging, static radiographs, computed tomography, or positron  
 2136 emission tomography, and provides the professional  
 2137 interpretation of such services, in a fixed facility that is  
 2138 accredited by the Joint Commission on Accreditation of  
 2139 Healthcare Organizations or the Accreditation Association for  
 2140 Ambulatory Health Care, and the American College of Radiology;  
 2141 and if, in the preceding quarter, the percentage of scans  
 2142 performed by that clinic which was billed to all emergency care  
 2143 coverage ~~personal injury protection~~ insurance carriers was less  
 2144 than 15 percent, the chief financial officer of the clinic may,  
 2145 in a written acknowledgment provided to the agency, assume the  
 2146 responsibility for the conduct of the systematic reviews of  
 2147 clinic billings to ensure that the billings are not fraudulent  
 2148 or unlawful.

2149 Section 28. Subsection (28) of section 409.901, Florida  
 2150 Statutes, is amended to read:

2151 409.901 Definitions; ss. 409.901-409.920.—As used in ss.  
 2152 409.901-409.920, except as otherwise specifically provided, the  
 2153 term:

2154 (28) "Third-party benefit" means any benefit that is or  
 2155 may be available at any time through contract, court award,  
 2156 judgment, settlement, agreement, or any arrangement between a  
 2157 third party and any person or entity, including, without  
 2158 limitation, a Medicaid recipient, a provider, another third  
 2159 party, an insurer, or the agency, for any Medicaid-covered  
 2160 injury, illness, goods, or services, including costs of medical  
 2161 services related thereto, for personal injury or for death of  
 2162 the recipient, but specifically excluding policies of life  
 2163 insurance on the recipient, unless available under terms of the  
 2164 policy to pay medical expenses prior to death. The term  
 2165 includes, without limitation, collateral, as defined in this  
 2166 section, health insurance, any benefit under a health  
 2167 maintenance organization, a preferred provider arrangement, a  
 2168 prepaid health clinic, liability insurance, uninsured motorist  
 2169 insurance or emergency care ~~personal injury protection~~ coverage,  
 2170 medical benefits under workers' compensation, and any obligation  
 2171 under law or equity to provide medical support.

2172 Section 29. Paragraph (f) of subsection (11) of section  
 2173 409.910, Florida Statutes, is amended to read:

2174 409.910 Responsibility for payments on behalf of Medicaid-  
 2175 eligible persons when other parties are liable.—

2176 (11) The agency may, as a matter of right, in order to

2177 enforce its rights under this section, institute, intervene in,  
 2178 or join any legal or administrative proceeding in its own name  
 2179 in one or more of the following capacities: individually, as  
 2180 subrogee of the recipient, as assignee of the recipient, or as  
 2181 lienholder of the collateral.

2182 (f) Notwithstanding any provision in this section to the  
 2183 contrary, in the event of an action in tort against a third  
 2184 party in which the recipient or his or her legal representative  
 2185 is a party which results in a judgment, award, or settlement  
 2186 from a third party, the amount recovered shall be distributed as  
 2187 follows:

2188 1. After attorney's fees and taxable costs as defined by  
 2189 the Florida Rules of Civil Procedure, one-half of the remaining  
 2190 recovery shall be paid to the agency up to the total amount of  
 2191 medical assistance provided by Medicaid.

2192 2. The remaining amount of the recovery shall be paid to  
 2193 the recipient.

2194 3. For purposes of calculating the agency's recovery of  
 2195 medical assistance benefits paid, the fee for services of an  
 2196 attorney retained by the recipient or his or her legal  
 2197 representative shall be calculated at 25 percent of the  
 2198 judgment, award, or settlement.

2199 4. Notwithstanding any provision of this section to the  
 2200 contrary, the agency shall be entitled to all medical coverage  
 2201 benefits up to the total amount of medical assistance provided  
 2202 by Medicaid. For purposes of this paragraph, "medical coverage"  
 2203 means any benefits under health insurance, a health maintenance  
 2204 organization, a preferred provider arrangement, or a prepaid

2205 health clinic, and the portion of benefits designated for  
 2206 medical payments under coverage for workers' compensation,  
 2207 emergency care ~~personal injury protection~~, and casualty.

2208 Section 30. Paragraph (k) of subsection (2) of section  
 2209 456.057, Florida Statutes, is amended to read:

2210 456.057 Ownership and control of patient records; report  
 2211 or copies of records to be furnished.—

2212 (2) As used in this section, the terms "records owner,"  
 2213 "health care practitioner," and "health care practitioner's  
 2214 employer" do not include any of the following persons or  
 2215 entities; furthermore, the following persons or entities are not  
 2216 authorized to acquire or own medical records, but are authorized  
 2217 under the confidentiality and disclosure requirements of this  
 2218 section to maintain those documents required by the part or  
 2219 chapter under which they are licensed or regulated:

2220 (k) Persons or entities practicing under s.627.7485  
 2221 ~~627.736(7)~~.

2222 Section 31. Paragraphs (ee) and (ff) of subsection (1) of  
 2223 section 456.072, Florida Statutes, are amended to read:

2224 456.072 Grounds for discipline; penalties; enforcement.—

2225 (1) The following acts shall constitute grounds for which  
 2226 the disciplinary actions specified in subsection (2) may be  
 2227 taken:

2228 (ee) With respect to making an emergency care coverage a  
 2229 ~~personal injury protection~~ claim as required by s. 627.7485  
 2230 ~~627.736~~, intentionally submitting a claim, statement, or bill  
 2231 that has been "upcoded" as defined in s. 627.7482 ~~627.732~~.

2232 (ff) With respect to making an emergency care coverage a



2233 ~~personal injury protection~~ claim as required by s. 627.7485  
 2234 ~~627.736~~, intentionally submitting a claim, statement, or bill  
 2235 for payment of services that were not rendered.

2236 Section 32. Paragraph (o) of subsection (1) of section  
 2237 626.9541, Florida Statutes, is amended to read:

2238 626.9541 Unfair methods of competition and unfair or  
 2239 deceptive acts or practices defined.—

2240 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
 2241 ACTS.—The following are defined as unfair methods of competition  
 2242 and unfair or deceptive acts or practices:

2243 (o) Illegal dealings in premiums; excess or reduced  
 2244 charges for insurance.—

2245 1. Knowingly collecting any sum as a premium or charge for  
 2246 insurance, which is not then provided, or is not in due course  
 2247 to be provided, subject to acceptance of the risk by the  
 2248 insurer, by an insurance policy issued by an insurer as  
 2249 permitted by this code.

2250 2. Knowingly collecting as a premium or charge for  
 2251 insurance any sum in excess of or less than the premium or  
 2252 charge applicable to such insurance, in accordance with the  
 2253 applicable classifications and rates as filed with and approved  
 2254 by the office, and as specified in the policy; or, in cases when  
 2255 classifications, premiums, or rates are not required by this  
 2256 code to be so filed and approved, premiums and charges collected  
 2257 from a Florida resident in excess of or less than those  
 2258 specified in the policy and as fixed by the insurer. This  
 2259 provision shall not be deemed to prohibit the charging and  
 2260 collection, by surplus lines agents licensed under part VIII of

2261 this chapter, of the amount of applicable state and federal  
 2262 taxes, or fees as authorized by s. 626.916(4), in addition to  
 2263 the premium required by the insurer or the charging and  
 2264 collection, by licensed agents, of the exact amount of any  
 2265 discount or other such fee charged by a credit card facility in  
 2266 connection with the use of a credit card, as authorized by  
 2267 subparagraph (q)3., in addition to the premium required by the  
 2268 insurer. This subparagraph shall not be construed to prohibit  
 2269 collection of a premium for a universal life or a variable or  
 2270 indeterminate value insurance policy made in accordance with the  
 2271 terms of the contract.

2272 3.a. Imposing or requesting an additional premium for a  
 2273 policy of motor vehicle liability, emergency care coverage  
 2274 ~~personal injury protection~~, medical payment, or collision  
 2275 insurance or any combination thereof or refusing to renew the  
 2276 policy solely because the insured was involved in a motor  
 2277 vehicle accident unless the insurer's file contains information  
 2278 from which the insurer in good faith determines that the insured  
 2279 was substantially at fault in the accident.

2280 b. An insurer which imposes and collects such a surcharge  
 2281 or which refuses to renew such policy shall, in conjunction with  
 2282 the notice of premium due or notice of nonrenewal, notify the  
 2283 named insured that he or she is entitled to reimbursement of  
 2284 such amount or renewal of the policy under the conditions listed  
 2285 below and will subsequently reimburse him or her or renew the  
 2286 policy, if the named insured demonstrates that the operator  
 2287 involved in the accident was:

2288 (I) Lawfully parked;

2289 (II) Reimbursed by, or on behalf of, a person responsible  
 2290 for the accident or has a judgment against such person;

2291 (III) Struck in the rear by another vehicle headed in the  
 2292 same direction and was not convicted of a moving traffic  
 2293 violation in connection with the accident;

2294 (IV) Hit by a "hit-and-run" driver, if the accident was  
 2295 reported to the proper authorities within 24 hours after  
 2296 discovering the accident;

2297 (V) Not convicted of a moving traffic violation in  
 2298 connection with the accident, but the operator of the other  
 2299 automobile involved in such accident was convicted of a moving  
 2300 traffic violation;

2301 (VI) Finally adjudicated not to be liable by a court of  
 2302 competent jurisdiction;

2303 (VII) In receipt of a traffic citation which was dismissed  
 2304 or nolle prossed; or

2305 (VIII) Not at fault as evidenced by a written statement  
 2306 from the insured establishing facts demonstrating lack of fault  
 2307 which are not rebutted by information in the insurer's file from  
 2308 which the insurer in good faith determines that the insured was  
 2309 substantially at fault.

2310 c. In addition to the other provisions of this  
 2311 subparagraph, an insurer may not fail to renew a policy if the  
 2312 insured has had only one accident in which he or she was at  
 2313 fault within the current 3-year period. However, an insurer may  
 2314 nonrenew a policy for reasons other than accidents in accordance  
 2315 with s. 627.728. This subparagraph does not prohibit nonrenewal  
 2316 of a policy under which the insured has had three or more

2317 accidents, regardless of fault, during the most recent 3-year  
 2318 period.

2319 4. Imposing or requesting an additional premium for, or  
 2320 refusing to renew, a policy for motor vehicle insurance solely  
 2321 because the insured committed a noncriminal traffic infraction  
 2322 as described in s. 318.14 unless the infraction is:

2323 a. A second infraction committed within an 18-month  
 2324 period, or a third or subsequent infraction committed within a  
 2325 36-month period.

2326 b. A violation of s. 316.183, when such violation is a  
 2327 result of exceeding the lawful speed limit by more than 15 miles  
 2328 per hour.

2329 5. Upon the request of the insured, the insurer and  
 2330 licensed agent shall supply to the insured the complete proof of  
 2331 fault or other criteria which justifies the additional charge or  
 2332 cancellation.

2333 6. No insurer shall impose or request an additional  
 2334 premium for motor vehicle insurance, cancel or refuse to issue a  
 2335 policy, or refuse to renew a policy because the insured or the  
 2336 applicant is a handicapped or physically disabled person, so  
 2337 long as such handicap or physical disability does not  
 2338 substantially impair such person's mechanically assisted driving  
 2339 ability.

2340 7. No insurer may cancel or otherwise terminate any  
 2341 insurance contract or coverage, or require execution of a  
 2342 consent to rate endorsement, during the stated policy term for  
 2343 the purpose of offering to issue, or issuing, a similar or  
 2344 identical contract or coverage to the same insured with the same

2345 exposure at a higher premium rate or continuing an existing  
 2346 contract or coverage with the same exposure at an increased  
 2347 premium.

2348 8. No insurer may issue a nonrenewal notice on any  
 2349 insurance contract or coverage, or require execution of a  
 2350 consent to rate endorsement, for the purpose of offering to  
 2351 issue, or issuing, a similar or identical contract or coverage  
 2352 to the same insured at a higher premium rate or continuing an  
 2353 existing contract or coverage at an increased premium without  
 2354 meeting any applicable notice requirements.

2355 9. No insurer shall, with respect to premiums charged for  
 2356 motor vehicle insurance, unfairly discriminate solely on the  
 2357 basis of age, sex, marital status, or scholastic achievement.

2358 10. Imposing or requesting an additional premium for motor  
 2359 vehicle comprehensive or uninsured motorist coverage solely  
 2360 because the insured was involved in a motor vehicle accident or  
 2361 was convicted of a moving traffic violation.

2362 11. No insurer shall cancel or issue a nonrenewal notice  
 2363 on any insurance policy or contract without complying with any  
 2364 applicable cancellation or nonrenewal provision required under  
 2365 the Florida Insurance Code.

2366 12. No insurer shall impose or request an additional  
 2367 premium, cancel a policy, or issue a nonrenewal notice on any  
 2368 insurance policy or contract because of any traffic infraction  
 2369 when adjudication has been withheld and no points have been  
 2370 assessed pursuant to s. 318.14(9) and (10). However, this  
 2371 subparagraph does not apply to traffic infractions involving  
 2372 accidents in which the insurer has incurred a loss due to the

2373 | fault of the insured.

2374 |       Section 33. Subsection (1) of section 627.06501, Florida  
2375 | Statutes, is amended to read:

2376 |       627.06501 Insurance discounts for certain persons  
2377 | completing driver improvement course.—

2378 |       (1) Any rate, rating schedule, or rating manual for the  
2379 | liability, emergency care ~~personal injury protection~~, and  
2380 | collision coverages of a motor vehicle insurance policy filed  
2381 | with the office may provide for an appropriate reduction in  
2382 | premium charges as to such coverages when the principal operator  
2383 | on the covered vehicle has successfully completed a driver  
2384 | improvement course approved and certified by the Department of  
2385 | Highway Safety and Motor Vehicles which is effective in reducing  
2386 | crash or violation rates, or both, as determined pursuant to s.  
2387 | 318.1451(5). Any discount, not to exceed 10 percent, used by an  
2388 | insurer is presumed to be appropriate unless credible data  
2389 | demonstrates otherwise.

2390 |       Section 34. Subsection (1) of section 627.0652, Florida  
2391 | Statutes, is amended to read:

2392 |       627.0652 Insurance discounts for certain persons  
2393 | completing safety course.—

2394 |       (1) Any rates, rating schedules, or rating manuals for the  
2395 | liability, emergency care ~~personal injury protection~~, and  
2396 | collision coverages of a motor vehicle insurance policy filed  
2397 | with the office shall provide for an appropriate reduction in  
2398 | premium charges as to such coverages when the principal operator  
2399 | on the covered vehicle is an insured 55 years of age or older  
2400 | who has successfully completed a motor vehicle accident

2401 prevention course approved by the Department of Highway Safety  
 2402 and Motor Vehicles. Any discount used by an insurer is presumed  
 2403 to be appropriate unless credible data demonstrates otherwise.

2404 Section 35. Subsections (1) and (3) of section 627.0653,  
 2405 Florida Statutes, are amended to read:

2406 627.0653 Insurance discounts for specified motor vehicle  
 2407 equipment.—

2408 (1) Any rates, rating schedules, or rating manuals for the  
 2409 liability, emergency care ~~personal injury protection~~, and  
 2410 collision coverages of a motor vehicle insurance policy filed  
 2411 with the office shall provide a premium discount if the insured  
 2412 vehicle is equipped with factory-installed, four-wheel antilock  
 2413 brakes.

2414 (3) Any rates, rating schedules, or rating manuals for  
 2415 emergency care ~~personal injury protection~~ coverage and medical  
 2416 payments coverage, if offered, of a motor vehicle insurance  
 2417 policy filed with the office shall provide a premium discount if  
 2418 the insured vehicle is equipped with one or more air bags which  
 2419 are factory installed.

2420 Section 36. Section 627.4132, Florida Statutes, is amended  
 2421 to read:

2422 627.4132 Stacking of coverages prohibited.—If an insured  
 2423 or named insured is protected by any type of motor vehicle  
 2424 insurance policy for liability, emergency care ~~personal injury~~  
 2425 protection, or other coverage, the policy shall provide that the  
 2426 insured or named insured is protected only to the extent of the  
 2427 coverage she or he has on the vehicle involved in the accident.  
 2428 However, if none of the insured's or named insured's vehicles is

PCS for HB 119

ORIGINAL

2012

2429 involved in the accident, coverage is available only to the  
 2430 extent of coverage on any one of the vehicles with applicable  
 2431 coverage. Coverage on any other vehicles shall not be added to  
 2432 or stacked upon that coverage. This section does not apply:

2433 (1) To uninsured motorist coverage which is separately  
 2434 governed by s. 627.727.

2435 (2) To reduce the coverage available by reason of  
 2436 insurance policies insuring different named insureds.

2437 Section 37. Subsection (6) of section 627.6482, Florida  
 2438 Statutes, is amended to read:

2439 627.6482 Definitions.—As used in ss. 627.648–627.6498, the  
 2440 term:

2441 (6) "Health insurance" means any hospital and medical  
 2442 expense incurred policy, minimum premium plan, stop-loss  
 2443 coverage, health maintenance organization contract, prepaid  
 2444 health clinic contract, multiple-employer welfare arrangement  
 2445 contract, or fraternal benefit society health benefits contract,  
 2446 whether sold as an individual or group policy or contract. The  
 2447 term does not include any policy covering medical payment  
 2448 coverage or emergency care ~~personal injury protection~~ coverage  
 2449 in a motor vehicle policy, coverage issued as a supplement to  
 2450 liability insurance, or workers' compensation.

2451 Section 38. Section 627.7263, Florida Statutes, is amended  
 2452 to read:

2453 627.7263 Rental and leasing driver's insurance to be  
 2454 primary; exception.—

2455 (1) The valid and collectible liability insurance or  
 2456 emergency care coverage ~~personal injury protection~~ insurance



2457 providing coverage for the lessor of a motor vehicle for rent or  
 2458 lease is primary unless otherwise stated in at least 10-point  
 2459 type on the face of the rental or lease agreement. Such  
 2460 insurance is primary for the limits of liability and emergency  
 2461 care ~~personal injury protection~~ coverage as required by ss.  
 2462 324.021(7) and 627.7485 ~~627.736~~.

2463 (2) If the lessee's coverage is to be primary, the rental  
 2464 or lease agreement must contain the following language, in at  
 2465 least 10-point type:

2466 "The valid and collectible liability insurance and emergency  
 2467 care coverage ~~personal injury protection~~ insurance of any  
 2468 authorized rental or leasing driver is primary for the limits of  
 2469 liability and emergency care ~~personal injury protection~~ coverage  
 2470 required by ss. 324.021(7) and 627.7485 ~~627.736~~, Florida  
 2471 Statutes."

2472 Section 39. Subsection (1) of section 627.727, Florida  
 2473 Statutes, is amended to read:

2474 627.727 Motor vehicle insurance; uninsured and  
 2475 underinsured vehicle coverage; insolvent insurer protection.—

2476 (1) No motor vehicle liability insurance policy which  
 2477 provides bodily injury liability coverage shall be delivered or  
 2478 issued for delivery in this state with respect to any  
 2479 specifically insured or identified motor vehicle registered or  
 2480 principally garaged in this state unless uninsured motor vehicle  
 2481 coverage is provided therein or supplemental thereto for the  
 2482 protection of persons insured thereunder who are legally  
 2483 entitled to recover damages from owners or operators of

PCS for HB 119

ORIGINAL

2012

2484 | uninsured motor vehicles because of bodily injury, sickness, or  
 2485 | disease, including death, resulting therefrom. However, the  
 2486 | coverage required under this section is not applicable when, or  
 2487 | to the extent that, an insured named in the policy makes a  
 2488 | written rejection of the coverage on behalf of all insureds  
 2489 | under the policy. When a motor vehicle is leased for a period of  
 2490 | 1 year or longer and the lessor of such vehicle, by the terms of  
 2491 | the lease contract, provides liability coverage on the leased  
 2492 | vehicle, the lessee of such vehicle shall have the sole  
 2493 | privilege to reject uninsured motorist coverage or to select  
 2494 | lower limits than the bodily injury liability limits, regardless  
 2495 | of whether the lessor is qualified as a self-insurer pursuant to  
 2496 | s. 324.171. Unless an insured, or lessee having the privilege of  
 2497 | rejecting uninsured motorist coverage, requests such coverage or  
 2498 | requests higher uninsured motorist limits in writing, the  
 2499 | coverage or such higher uninsured motorist limits need not be  
 2500 | provided in or supplemental to any other policy which renews,  
 2501 | extends, changes, supersedes, or replaces an existing policy  
 2502 | with the same bodily injury liability limits when an insured or  
 2503 | lessee had rejected the coverage. When an insured or lessee has  
 2504 | initially selected limits of uninsured motorist coverage lower  
 2505 | than her or his bodily injury liability limits, higher limits of  
 2506 | uninsured motorist coverage need not be provided in or  
 2507 | supplemental to any other policy which renews, extends, changes,  
 2508 | supersedes, or replaces an existing policy with the same bodily  
 2509 | injury liability limits unless an insured requests higher  
 2510 | uninsured motorist coverage in writing. The rejection or  
 2511 | selection of lower limits shall be made on a form approved by

2512 the office. The form shall fully advise the applicant of the  
 2513 nature of the coverage and shall state that the coverage is  
 2514 equal to bodily injury liability limits unless lower limits are  
 2515 requested or the coverage is rejected. The heading of the form  
 2516 shall be in 12-point bold type and shall state: "You are  
 2517 electing not to purchase certain valuable coverage which  
 2518 protects you and your family or you are purchasing uninsured  
 2519 motorist limits less than your bodily injury liability limits  
 2520 when you sign this form. Please read carefully." If this form is  
 2521 signed by a named insured, it will be conclusively presumed that  
 2522 there was an informed, knowing rejection of coverage or election  
 2523 of lower limits on behalf of all insureds. The insurer shall  
 2524 notify the named insured at least annually of her or his options  
 2525 as to the coverage required by this section. Such notice shall  
 2526 be part of, and attached to, the notice of premium, shall  
 2527 provide for a means to allow the insured to request such  
 2528 coverage, and shall be given in a manner approved by the office.  
 2529 Receipt of this notice does not constitute an affirmative waiver  
 2530 of the insured's right to uninsured motorist coverage where the  
 2531 insured has not signed a selection or rejection form. The  
 2532 coverage described under this section shall be over and above,  
 2533 but shall not duplicate, the benefits available to an insured  
 2534 under any workers' compensation law, emergency care coverage  
 2535 ~~personal injury protection~~ benefits, disability benefits law, or  
 2536 similar law; under any automobile medical expense coverage;  
 2537 under any motor vehicle liability insurance coverage; or from  
 2538 the owner or operator of the uninsured motor vehicle or any  
 2539 other person or organization jointly or severally liable

PCS for HB 119

ORIGINAL

2012

2540 together with such owner or operator for the accident; and such  
 2541 coverage shall cover the difference, if any, between the sum of  
 2542 such benefits and the damages sustained, up to the maximum  
 2543 amount of such coverage provided under this section. The amount  
 2544 of coverage available under this section shall not be reduced by  
 2545 a setoff against any coverage, including liability insurance.  
 2546 Such coverage shall not inure directly or indirectly to the  
 2547 benefit of any workers' compensation or disability benefits  
 2548 carrier or any person or organization qualifying as a self-  
 2549 insurer under any workers' compensation or disability benefits  
 2550 law or similar law.

2551 ~~(7) The legal liability of an uninsured motorist coverage~~  
 2552 ~~insurer does not include damages in tort for pain, suffering,~~  
 2553 ~~mental anguish, and inconvenience unless the injury or disease~~  
 2554 ~~is described in one or more of paragraphs (a) (d) of s.~~  
 2555 ~~627.737(2).~~

2556 Section 40. Paragraph (a) of subsection (1) of section  
 2557 627.728, Florida Statutes, is amended to read:

2558 627.728 Cancellations; nonrenewals.—

2559 (1) As used in this section, the term:

2560 (a) "Policy" means the bodily injury and property damage  
 2561 liability, emergency care ~~personal injury protection~~, medical  
 2562 payments, comprehensive, collision, and uninsured motorist  
 2563 coverage portions of a policy of motor vehicle insurance  
 2564 delivered or issued for delivery in this state:

- 2565 1. Insuring a natural person as named insured or one or
- 2566 more related individuals resident of the same household; and
- 2567 2. Insuring only a motor vehicle of the private passenger

2568 type or station wagon type which is not used as a public or  
 2569 livery conveyance for passengers or rented to others; or  
 2570 insuring any other four-wheel motor vehicle having a load  
 2571 capacity of 1,500 pounds or less which is not used in the  
 2572 occupation, profession, or business of the insured other than  
 2573 farming; other than any policy issued under an automobile  
 2574 insurance assigned risk plan; insuring more than four  
 2575 automobiles; or covering garage, automobile sales agency, repair  
 2576 shop, service station, or public parking place operation  
 2577 hazards.

2578  
 2579 The term "policy" does not include a binder as defined in s.  
 2580 627.420 unless the duration of the binder period exceeds 60  
 2581 days.

2582 Section 41. Subsection (1), paragraph (a) of subsection  
 2583 (5), and subsections (6) and (7) of section 627.7295, Florida  
 2584 Statutes, are amended to read:

2585 627.7295 Motor vehicle insurance contracts.—

2586 (1) As used in this section, the term:

2587 (a) "Policy" means a motor vehicle insurance policy that  
 2588 provides emergency care ~~personal injury protection~~ coverage,  
 2589 property damage liability coverage, or both.

2590 (b) "Binder" means a binder that provides motor vehicle  
 2591 emergency care ~~personal injury protection~~ and property damage  
 2592 liability coverage.

2593 (5) (a) A licensed general lines agent may charge a per-  
 2594 policy fee not to exceed \$10 to cover the administrative costs  
 2595 of the agent associated with selling the motor vehicle insurance

2596 | policy if the policy covers only emergency care ~~personal injury~~  
 2597 | ~~protection~~ coverage as provided by s. 627.7485 ~~627.736~~ and  
 2598 | property damage liability coverage as provided by s. 627.7275  
 2599 | and if no other insurance is sold or issued in conjunction with  
 2600 | or collateral to the policy. The fee is not considered part of  
 2601 | the premium.

2602 |         (6) If a motor vehicle owner's driver license, license  
 2603 | plate, and registration have previously been suspended pursuant  
 2604 | to s. 316.646 or s 627.733, or s.627.7483, as applicable, an  
 2605 | insurer may cancel a new policy only as provided in s. 627.7275.

2606 |         (7) A policy of private passenger motor vehicle insurance  
 2607 | or a binder for such a policy may be initially issued in this  
 2608 | state only if, before the effective date of such binder or  
 2609 | policy, the insurer or agent has collected from the insured an  
 2610 | amount equal to 2 months' premium. An insurer, agent, or premium  
 2611 | finance company may not, directly or indirectly, take any action  
 2612 | resulting in the insured having paid from the insured's own  
 2613 | funds an amount less than the 2 months' premium required by this  
 2614 | subsection. This subsection applies without regard to whether  
 2615 | the premium is financed by a premium finance company or is paid  
 2616 | pursuant to a periodic payment plan of an insurer or an  
 2617 | insurance agent. This subsection does not apply if an insured or  
 2618 | member of the insured's family is renewing or replacing a policy  
 2619 | or a binder for such policy written by the same insurer or a  
 2620 | member of the same insurer group. This subsection does not apply  
 2621 | to an insurer that issues private passenger motor vehicle  
 2622 | coverage primarily to active duty or former military personnel  
 2623 | or their dependents. This subsection does not apply if all

PCS for HB 119

ORIGINAL

2012

2624 policy payments are paid pursuant to a payroll deduction plan or  
 2625 an automatic electronic funds transfer payment plan from the  
 2626 policyholder. This subsection and subsection (4) do not apply if  
 2627 all policy payments to an insurer are paid pursuant to an  
 2628 automatic electronic funds transfer payment plan from an agent,  
 2629 a managing general agent, or a premium finance company and if  
 2630 the policy includes, at a minimum, personal injury protection or  
 2631 emergency care coverage, as applicable, pursuant to ss. 627.730-  
 2632 627.7405 or 627.748-627.7491, as applicable; motor vehicle  
 2633 property damage liability pursuant to s. 627.7275; and bodily  
 2634 injury liability in at least the amount of \$10,000 because of  
 2635 bodily injury to, or death of, one person in any one accident  
 2636 and in the amount of \$20,000 because of bodily injury to, or  
 2637 death of, two or more persons in any one accident. This  
 2638 subsection and subsection (4) do not apply if an insured has had  
 2639 a policy in effect for at least 6 months, the insured's agent is  
 2640 terminated by the insurer that issued the policy, and the  
 2641 insured obtains coverage on the policy's renewal date with a new  
 2642 company through the terminated agent.

2643 Section 42. Section 627.8405, Florida Statutes, is amended  
 2644 to read:

2645 627.8405 Prohibited acts; financing companies.—No premium  
 2646 finance company shall, in a premium finance agreement or other  
 2647 agreement, finance the cost of or otherwise provide for the  
 2648 collection or remittance of dues, assessments, fees, or other  
 2649 periodic payments of money for the cost of:

2650 (1) A membership in an automobile club. The term  
 2651 "automobile club" means a legal entity which, in consideration

2652 of dues, assessments, or periodic payments of money, promises  
 2653 its members or subscribers to assist them in matters relating to  
 2654 the ownership, operation, use, or maintenance of a motor  
 2655 vehicle; however, this definition of "automobile club" does not  
 2656 include persons, associations, or corporations which are  
 2657 organized and operated solely for the purpose of conducting,  
 2658 sponsoring, or sanctioning motor vehicle races, exhibitions, or  
 2659 contests upon racetracks, or upon racecourses established and  
 2660 marked as such for the duration of such particular events. The  
 2661 words "motor vehicle" used herein have the same meaning as  
 2662 defined in chapter 320.

2663 (2) An accidental death and dismemberment policy sold in  
 2664 combination with an emergency care ~~a personal injury protection~~  
 2665 and property damage only policy.

2666 (3) Any product not regulated under the provisions of this  
 2667 insurance code.

2668  
 2669 This section also applies to premium financing by any insurance  
 2670 agent or insurance company under part XVI. The commission shall  
 2671 adopt rules to assure disclosure, at the time of sale, of  
 2672 coverages financed with emergency care coverage ~~personal injury~~  
 2673 ~~protection~~ and shall prescribe the form of such disclosure.

2674 Section 43. Paragraph (d) of subsection (2) and paragraph  
 2675 (d) of subsection (3) of section 628.909, Florida Statutes, is  
 2676 amended to read:

2677 628.909 Applicability of other laws.—

2678 (2) The following provisions of the Florida Insurance Code  
 2679 shall apply to captive insurers who are not industrial insured



2680 captive insurers to the extent that such provisions are not  
 2681 inconsistent with this part:

2682 (d) Sections 627.730-627.7405~~7~~ or 627.748-627.7491, as  
 2683 applicable, when no-fault coverage is provided.

2684 (3) The following provisions of the Florida Insurance Code  
 2685 shall apply to industrial insured captive insurers to the extent  
 2686 that such provisions are not inconsistent with this part:

2687 (d) Sections 627.730-627.7405 or 627.748-627.7491, as  
 2688 applicable, when no-fault coverage is provided.

2689 Section 44. Subsections (2) and (6) and paragraphs (a),  
 2690 (c), and (d) of subsection (7) of section 705.184, Florida  
 2691 Statutes, are amended to read:

2692 705.184 Derelict or abandoned motor vehicles on the  
 2693 premises of public-use airports.—

2694 (2) The airport director or the director's designee shall  
 2695 contact the Department of Highway Safety and Motor Vehicles to  
 2696 notify that department that the airport has possession of the  
 2697 abandoned or derelict motor vehicle and to determine the name  
 2698 and address of the owner of the motor vehicle, the insurance  
 2699 company insuring the motor vehicle, notwithstanding the  
 2700 provisions of s. 627.736, or s. 627.7485, as applicable, and any  
 2701 person who has filed a lien on the motor vehicle. Within 7  
 2702 business days after receipt of the information, the director or  
 2703 the director's designee shall send notice by certified mail,  
 2704 return receipt requested, to the owner of the motor vehicle, the  
 2705 insurance company insuring the motor vehicle, notwithstanding  
 2706 the provisions of s. 627.736~~7~~ or s. 627.7485, as applicable, and  
 2707 all persons of record claiming a lien against the motor vehicle.

PCS for HB 119

ORIGINAL

2012

2708 The notice shall state the fact of possession of the motor  
 2709 vehicle, that charges for reasonable towing, storage, and  
 2710 parking fees, if any, have accrued and the amount thereof, that  
 2711 a lien as provided in subsection (6) will be claimed, that the  
 2712 lien is subject to enforcement pursuant to law, that the owner  
 2713 or lienholder, if any, has the right to a hearing as set forth  
 2714 in subsection (4), and that any motor vehicle which, at the end  
 2715 of 30 calendar days after receipt of the notice, has not been  
 2716 removed from the airport upon payment in full of all accrued  
 2717 charges for reasonable towing, storage, and parking fees, if  
 2718 any, may be disposed of as provided in s. 705.182(2)(a), (b),  
 2719 (d), or (e), including, but not limited to, the motor vehicle  
 2720 being sold free of all prior liens after 35 calendar days after  
 2721 the time the motor vehicle is stored if any prior liens on the  
 2722 motor vehicle are more than 5 years of age or after 50 calendar  
 2723 days after the time the motor vehicle is stored if any prior  
 2724 liens on the motor vehicle are 5 years of age or less.

2725 (6) The airport pursuant to this section or, if used, a  
 2726 licensed independent wrecker company pursuant to s. 713.78 shall  
 2727 have a lien on an abandoned or derelict motor vehicle for all  
 2728 reasonable towing, storage, and accrued parking fees, if any,  
 2729 except that no storage fee shall be charged if the motor vehicle  
 2730 is stored less than 6 hours. As a prerequisite to perfecting a  
 2731 lien under this section, the airport director or the director's  
 2732 designee must serve a notice in accordance with subsection (2)  
 2733 on the owner of the motor vehicle, the insurance company  
 2734 insuring the motor vehicle, notwithstanding the provisions of s.  
 2735 ~~627.7367~~ or s. 627.7485, as applicable, and all persons of

2736 record claiming a lien against the motor vehicle. If attempts to  
 2737 notify the owner, the insurance company insuring the motor  
 2738 vehicle, notwithstanding the provisions of s. 627.736~~7~~ or s.  
 2739 627.7485, as applicable, or lienholders are not successful, the  
 2740 requirement of notice by mail shall be considered met. Serving  
 2741 of the notice does not dispense with recording the claim of  
 2742 lien.

2743 (7) (a) For the purpose of perfecting its lien under this  
 2744 section, the airport shall record a claim of lien which shall  
 2745 state:

2746 1. The name and address of the airport.

2747 2. The name of the owner of the motor vehicle, the  
 2748 insurance company insuring the motor vehicle, notwithstanding  
 2749 the provisions of s. 627.736~~7~~ or s. 627.7485, as applicable, and  
 2750 all persons of record claiming a lien against the motor vehicle.

2751 3. The costs incurred from reasonable towing, storage, and  
 2752 parking fees, if any.

2753 4. A description of the motor vehicle sufficient for  
 2754 identification.

2755 (c) The claim of lien shall be sufficient if it is in  
 2756 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

2763 following described motor vehicle:  
 2764 ... (Description of motor vehicle) ...  
 2765 owned by ....., whose address is ....., has accrued  
 2766 \$..... in fees for a reasonable tow, for storage, and for  
 2767 parking, if applicable; that the lienor served its notice to the  
 2768 owner, the insurance company insuring the motor vehicle  
 2769 notwithstanding the provisions of s. 627.736, Florida Statutes,  
 2770 and all persons of record claiming a lien against the motor  
 2771 vehicle on ....., ... (year) ..., by.....  
 2772 ... (Signature) ...  
 2773 Sworn to (or affirmed) and subscribed before me this .... day of  
 2774 ....., ... (year) ..., by ... (name of person making statement) ....  
 2775 ... (Signature of Notary Public) ..... (Print, Type, or Stamp  
 2776 Commissioned name of Notary Public) ...  
 2777 Personally Known....OR Produced....as identification.

2778 However, the negligent inclusion or omission of any information  
 2779 in this claim of lien which does not prejudice the owner does  
 2780 not constitute a default that operates to defeat an otherwise  
 2781 valid lien.

2782 (d) The claim of lien shall be served on the owner of the  
 2783 motor vehicle, the insurance company insuring the motor vehicle,  
 2784 notwithstanding the provisions of s. 627.736, and all persons of  
 2785 record claiming a lien against the motor vehicle. If attempts to  
 2786 notify the owner, the insurance company insuring the motor  
 2787 vehicle notwithstanding the provisions of s. 627.736, or  
 2788 lienholders are not successful, the requirement of notice by  
 2789 mail shall be considered met. The claim of lien shall be so

2790 served before recordation.

2791 Section 45. Subsection (1) of section 627.915, Florida  
 2792 Statutes, is amended to read:

2793 627.915 Insurer experience reporting.—

2794 (1) Each insurer transacting private passenger automobile  
 2795 insurance in this state shall report certain information  
 2796 annually to the office. The information will be due on or before  
 2797 July 1 of each year. The information shall be divided into the  
 2798 following categories: bodily injury liability; property damage  
 2799 liability; uninsured motorist; emergency care coverage ~~personal~~  
 2800 ~~injury protection~~ benefits; medical payments; comprehensive and  
 2801 collision. The information given shall be on direct insurance  
 2802 writings in the state alone and shall represent total limits  
 2803 data. The information set forth in paragraphs (a)-(f) is  
 2804 applicable to voluntary private passenger and Joint Underwriting  
 2805 Association private passenger writings and shall be reported for  
 2806 each of the latest 3 calendar-accident years, with an evaluation  
 2807 date of March 31 of the current year. The information set forth  
 2808 in paragraphs (g)-(j) is applicable to voluntary private  
 2809 passenger writings and shall be reported on a calendar-accident  
 2810 year basis ultimately seven times at seven different stages of  
 2811 development.

2812 (a) Premiums earned for the latest 3 calendar-accident  
 2813 years.

2814 (b) Loss development factors and the historic development  
 2815 of those factors.

2816 (c) Policyholder dividends incurred.

2817 (d) Expenses for other acquisition and general expense.

2818 (e) Expenses for agents' commissions and taxes, licenses,  
2819 and fees.

2820 (f) Profit and contingency factors as utilized in the  
2821 insurer's automobile rate filings for the applicable years.

2822 (g) Losses paid.

2823 (h) Losses unpaid.

2824 (i) Loss adjustment expenses paid.

2825 (j) Loss adjustment expenses unpaid.

2826 Section 46. Paragraph (d) of subsection (2) and paragraph  
2827 (d) of subsection (3) of section 628.909, Florida Statutes, is  
2828 amended to read:

2829 628.909 Applicability of other laws.—

2830 (2) The following provisions of the Florida Insurance Code  
2831 shall apply to captive insurers who are not industrial insured  
2832 captive insurers to the extent that such provisions are not  
2833 inconsistent with this part:

2834 (d) Sections 627.748-627.7491 ~~627.730-627.7405~~, when no-  
2835 fault coverage is provided.

2836 (3) The following provisions of the Florida Insurance Code  
2837 shall apply to industrial insured captive insurers to the extent  
2838 that such provisions are not inconsistent with this part:

2839 (d) Sections 627.748-627.7491 ~~627.730-627.7405~~ when no-  
2840 fault coverage is provided.

2841 Section 47. Subsections (2) and (6) and paragraphs (a),  
2842 (c), and (d) of subsection (7) of section 705.184, Florida  
2843 Statutes, are amended to read:

2844 705.184 Derelict or abandoned motor vehicles on the  
2845 premises of public-use airports.—

2846 (2) The airport director or the director's designee shall  
 2847 contact the Department of Highway Safety and Motor Vehicles to  
 2848 notify that department that the airport has possession of the  
 2849 abandoned or derelict motor vehicle and to determine the name  
 2850 and address of the owner of the motor vehicle, the insurance  
 2851 company insuring the motor vehicle, notwithstanding the  
 2852 provisions of s. 627.7485 ~~627.736~~, and any person who has filed  
 2853 a lien on the motor vehicle. Within 7 business days after  
 2854 receipt of the information, the director or the director's  
 2855 designee shall send notice by certified mail, return receipt  
 2856 requested, to the owner of the motor vehicle, the insurance  
 2857 company insuring the motor vehicle, notwithstanding the  
 2858 provisions of s. 627.7485 ~~627.736~~, and all persons of record  
 2859 claiming a lien against the motor vehicle. The notice shall  
 2860 state the fact of possession of the motor vehicle, that charges  
 2861 for reasonable towing, storage, and parking fees, if any, have  
 2862 accrued and the amount thereof, that a lien as provided in  
 2863 subsection (6) will be claimed, that the lien is subject to  
 2864 enforcement pursuant to law, that the owner or lienholder, if  
 2865 any, has the right to a hearing as set forth in subsection (4),  
 2866 and that any motor vehicle which, at the end of 30 calendar days  
 2867 after receipt of the notice, has not been removed from the  
 2868 airport upon payment in full of all accrued charges for  
 2869 reasonable towing, storage, and parking fees, if any, may be  
 2870 disposed of as provided in s. 705.182(2)(a), (b), (d), or (e),  
 2871 including, but not limited to, the motor vehicle being sold free  
 2872 of all prior liens after 35 calendar days after the time the  
 2873 motor vehicle is stored if any prior liens on the motor vehicle

2874 are more than 5 years of age or after 50 calendar days after the  
 2875 time the motor vehicle is stored if any prior liens on the motor  
 2876 vehicle are 5 years of age or less.

2877 (6) The airport pursuant to this section or, if used, a  
 2878 licensed independent wrecker company pursuant to s. 713.78 shall  
 2879 have a lien on an abandoned or derelict motor vehicle for all  
 2880 reasonable towing, storage, and accrued parking fees, if any,  
 2881 except that no storage fee shall be charged if the motor vehicle  
 2882 is stored less than 6 hours. As a prerequisite to perfecting a  
 2883 lien under this section, the airport director or the director's  
 2884 designee must serve a notice in accordance with subsection (2)  
 2885 on the owner of the motor vehicle, the insurance company  
 2886 insuring the motor vehicle, notwithstanding the provisions of s.  
 2887 627.7485 ~~627.736~~, and all persons of record claiming a lien  
 2888 against the motor vehicle. If attempts to notify the owner, the  
 2889 insurance company insuring the motor vehicle, notwithstanding  
 2890 the provisions of s. 627.7485 ~~627.736~~, or lienholders are not  
 2891 successful, the requirement of notice by mail shall be  
 2892 considered met. Serving of the notice does not dispense with  
 2893 recording the claim of lien.

2894 (7) (a) For the purpose of perfecting its lien under this  
 2895 section, the airport shall record a claim of lien which shall  
 2896 state:

- 2897 1. The name and address of the airport.
- 2898 2. The name of the owner of the motor vehicle, the  
 2899 insurance company insuring the motor vehicle, notwithstanding  
 2900 the provisions of s. 627.7485 ~~627.736~~, and all persons of record  
 2901 claiming a lien against the motor vehicle.



2902 3. The costs incurred from reasonable towing, storage, and  
2903 parking fees, if any.

2904 4. A description of the motor vehicle sufficient for  
2905 identification.

2906 (c) The claim of lien shall be sufficient if it is in  
2907 substantially the following form:

2908 CLAIM OF LIEN

2909 State of .....

2910 County of .....

2911 Before me, the undersigned notary public, personally appeared  
2912 ....., who was duly sworn and says that he/she is the  
2913 ..... of ....., whose address is.....; and that the  
2914 following described motor vehicle:

2915 ...(Description of motor vehicle)...

2916 owned by ....., whose address is ....., has accrued  
2917 \$..... in fees for a reasonable tow, for storage, and for  
2918 parking, if applicable; that the lienor served its notice to the  
2919 owner, the insurance company insuring the motor vehicle  
2920 notwithstanding the provisions of s. 627.7485 ~~627.736~~, Florida  
2921 Statutes, and all persons of record claiming a lien against the  
2922 motor vehicle on ....., ...(year)...., by.....

2923 ...(Signature)...

2924 Sworn to (or affirmed) and subscribed before me this .... day of  
2925 ....., ...(year)...., by ...(name of person making statement)....

2926 ...(Signature of Notary Public).....(Print, Type, or Stamp  
2927 Commissioned name of Notary Public)...

2928 Personally Known....OR Produced....as identification.

2929 | However, the negligent inclusion or omission of any information  
 2930 | in this claim of lien which does not prejudice the owner does  
 2931 | not constitute a default that operates to defeat an otherwise  
 2932 | valid lien.

2933 |         (d) The claim of lien shall be served on the owner of the  
 2934 | motor vehicle, the insurance company insuring the motor vehicle,  
 2935 | notwithstanding the provisions of s. 627.7485 ~~627.736~~, and all  
 2936 | persons of record claiming a lien against the motor vehicle. If  
 2937 | attempts to notify the owner, the insurance company insuring the  
 2938 | motor vehicle notwithstanding the provisions of s. 627.7485  
 2939 | ~~627.736~~, or lienholders are not successful, the requirement of  
 2940 | notice by mail shall be considered met. The claim of lien shall  
 2941 | be so served before recordation.

2942 |         Section 48. Paragraphs (a), (b), and (c) of subsection (4)  
 2943 | of section 713.78, Florida Statutes, are amended to read:

2944 |         713.78 Liens for recovering, towing, or storing vehicles  
 2945 | and vessels.—

2946 |         (4) (a) Any person regularly engaged in the business of  
 2947 | recovering, towing, or storing vehicles or vessels who comes  
 2948 | into possession of a vehicle or vessel pursuant to subsection  
 2949 | (2), and who claims a lien for recovery, towing, or storage  
 2950 | services, shall give notice to the registered owner, the  
 2951 | insurance company insuring the vehicle notwithstanding the  
 2952 | provisions of s. 627.7485 ~~627.736~~, and to all persons claiming a  
 2953 | lien thereon, as disclosed by the records in the Department of  
 2954 | Highway Safety and Motor Vehicles or of a corresponding agency  
 2955 | in any other state.

2956 |         (b) Whenever any law enforcement agency authorizes the

2957 removal of a vehicle or vessel or whenever any towing service,  
 2958 garage, repair shop, or automotive service, storage, or parking  
 2959 place notifies the law enforcement agency of possession of a  
 2960 vehicle or vessel pursuant to s. 715.07(2)(a)2., the law  
 2961 enforcement agency of the jurisdiction where the vehicle or  
 2962 vessel is stored shall contact the Department of Highway Safety  
 2963 and Motor Vehicles, or the appropriate agency of the state of  
 2964 registration, if known, within 24 hours through the medium of  
 2965 electronic communications, giving the full description of the  
 2966 vehicle or vessel. Upon receipt of the full description of the  
 2967 vehicle or vessel, the department shall search its files to  
 2968 determine the owner's name, the insurance company insuring the  
 2969 vehicle or vessel, and whether any person has filed a lien upon  
 2970 the vehicle or vessel as provided in s. 319.27(2) and (3) and  
 2971 notify the applicable law enforcement agency within 72 hours.  
 2972 The person in charge of the towing service, garage, repair shop,  
 2973 or automotive service, storage, or parking place shall obtain  
 2974 such information from the applicable law enforcement agency  
 2975 within 5 days after the date of storage and shall give notice  
 2976 pursuant to paragraph (a). The department may release the  
 2977 insurance company information to the requestor notwithstanding  
 2978 the provisions of s. 627.7485 ~~627.736~~.

2979 (c) Notice by certified mail shall be sent within 7  
 2980 business days after the date of storage of the vehicle or vessel  
 2981 to the registered owner, the insurance company insuring the  
 2982 vehicle notwithstanding the provisions of s. 627.7485 ~~627.736~~,  
 2983 and all persons of record claiming a lien against the vehicle or  
 2984 vessel. It shall state the fact of possession of the vehicle or

2985 vessel, that a lien as provided in subsection (2) is claimed,  
 2986 that charges have accrued and the amount thereof, that the lien  
 2987 is subject to enforcement pursuant to law, and that the owner or  
 2988 lienholder, if any, has the right to a hearing as set forth in  
 2989 subsection (5), and that any vehicle or vessel which remains  
 2990 unclaimed, or for which the charges for recovery, towing, or  
 2991 storage services remain unpaid, may be sold free of all prior  
 2992 liens after 35 days if the vehicle or vessel is more than 3  
 2993 years of age or after 50 days if the vehicle or vessel is 3  
 2994 years of age or less.

2995 Section 49. Effective upon this act becoming a law,  
 2996 subsection (8) of section 627.736, Florida Statutes, is amended  
 2997 to read:

2998 627.736 Required personal injury protection benefits;  
 2999 exclusions; priority; claims.—

3000 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S  
 3001 FEES.—

3002 (a) For legal actions commenced on or after the effective  
 3003 date of this act, with respect to any dispute under the  
 3004 provisions of ss. 627.730-627.7405 between the insured and the  
 3005 insurer, or between an assignee of an insured's rights and the  
 3006 insurer, ~~the provisions of s. 627.428 applies shall apply,~~  
 3007 except as provided in paragraphs (b) and (c) and subsections (10)  
 3008 and (15) and except that any attorney fees recovered are limited  
 3009 to the lesser of the actual fee incurred based upon a rate for  
 3010 attorney services not to exceed \$200 per billable hour or:

3011 1. For any disputed amount of less than \$500, 15 times any  
 3012 disputed amount recovered by the attorney under ss. 627.730-

3013 627.7405, limited to a total of \$5,000.

3014 2. For any disputed amount of \$500 or more and less than

3015 \$5,000, 10 times any disputed amount recovered by the attorney

3016 under ss. 627.730-627.7405, limited to a total of \$10,000.

3017 3. For any disputed amount of \$5,000 or more and up to

3018 \$10,000, 5 times any disputed amount recovered by the attorney

3019 under ss. 627.730-627.7405, limited to a total of \$15,000.

3020

3021 Fees incurred in litigating or quantifying the amount of fees

3022 due to the prevailing party under ss. 627.730-627.7405 are not

3023 recoverable.

3024 (b) Notwithstanding s. 627.428, the attorney fees recovered

3025 under ss. 627.730-627.7405 shall be calculated without regard to

3026 any contingency risk multiplier.

3027 (c) Attorney fees in a class action under ss. 627.730-

3028 627.7405 are limited to the lesser of \$50,000 or 3 times the

3029 total of any disputed amount recovered in the class action

3030 proceeding.

3031 Section 50. Except as otherwise expressly provided in this

3032 act and except for this section, which shall take effect upon

3033 this act becoming a law, this act shall take effect October 1,

3034 2012, and shall apply to policies issued or renewed on or after

3035 this date.