1 A bill to be entitled
2 An act relating to personal injury protection insurance;
3 amending s. 26.012, F.S.; providing that circuit courts
4 have exclusive original jurisdiction of unresolved
5 arbitration actions involving the Florida Motor Vehicle
6 No-Fault Law; amending s. 627.4137, F.S.; requiring
7 requests made to a self-insured corporation for disclosure
8 of certain information to be by certified mail; creating
9 s. 627.7311, F.S., providing the effect of statutory
10 provisions on insurance policies; amending s. 627.736,
11 F.S.; revising a reference to Medicare Part B payments as
12 the schedule for an insurer's discretionary use when
13 limiting reimbursement of certain medical services,
14 supplies, and care; requiring notification to provider of
15 improperly completed form with an opportunity to re-
16 submit; specifying the Medicare fee schedule or payment
17 limitation that is to be used by an insurer to limit
18 reimbursements for certain medical services, supplies, and
19 care; requiring both the insured and any assignee of
20 benefits or payments to cooperate under the terms of the
21 policy; requiring a provider who is assigned the benefits
22 of an insured to submit to examination under oath under
23 certain circumstances; requiring a provider to produce
24 certain knowledgeable individuals for examination under
25 oath under certain circumstances; requiring certain
26 records be provided by claimants for inspection if
27 requested by an insurer; authorizing methods for recording
28 examinations under oath; providing that certain actions by

29 an insurer constitute an unfair and deceptive trade
30 practice; subjecting insurers to penalties for an unfair
31 and deceptive trade practice; creating a presumption
32 relating to failing to appear for an examination;
33 specifying that submitting to an examination is a
34 condition precedent to recovering benefits; providing for
35 application relating to attorney's fees; limiting the
36 amount of recoverable attorney's fees; prohibiting the use
37 of a contingency risk multiplier when calculating
38 attorney's fees; authorizing binding arbitration as a
39 policy provision for dispute resolution; providing
40 requirements and procedures relating to arbitration;
41 providing for the recovery of specified attorney's fees
42 and costs in arbitration; providing for judicial challenge
43 of an arbitration award; providing for the scope of review
44 regarding the challenge, limiting the application of s.
45 627.428, F.S., under specified circumstances in
46 arbitration; providing an effective date.
47
48 Be It Enacted by the Legislature of the State of Florida:
49
50 Section 1. Subsection (2) of section 26.012, Florida
51 Statutes, is amended to read:
52 26.012 Jurisdiction of circuit court.—
53 (2) The circuit court ~~They~~ shall have exclusive original
54 jurisdiction:
55 (a) In all actions at law not cognizable by the county
56 courts.~~;~~

57 (b) Of proceedings relating to the settlement of the
58 estates of decedents and minors, the granting of letters
59 testamentary, guardianship, involuntary hospitalization, the
60 determination of incompetency, and other jurisdiction usually
61 pertaining to courts of probate.~~;~~
62 (c) In all cases in equity including all cases relating to
63 juveniles except traffic offenses as provided in chapters 316
64 and 985.~~;~~
65 (d) Of all felonies and of all misdemeanors arising out of
66 the same circumstances as a felony which is also charged.~~;~~
67 (e) In all cases involving legality of any tax assessment
68 or toll or denial of refund, except as provided in s. 72.011.~~;~~
69 (f) In actions of ejectment.~~; and~~
70 (g) In all actions involving the title and boundaries of
71 real property.
72 (h) In all actions involving the Florida Motor Vehicle No-
73 Fault Law, ss. 627.730-627.7405, where arbitration is initiated
74 pursuant to s. 627.736(18) and the arbitration decision is
75 challenged.
76 Section 2. Subsection (3) is added to section 627.4137,
77 Florida Statutes, to read:
78 627.4137 Disclosure of certain information required.—
79 (3) Any request made to a self-insured corporation pursuant
80 to this section shall be sent by certified mail to the
81 registered agent of the disclosing entity.
82 Section 3. Section 627.7311, Florida Statutes, is created
83 to read:
84 627.7311 Effect of law on policies-

85 The provisions, schedules, and procedures authorized in ss.
86 627.730-627.7405 shall be implemented by the insurers offering
87 policies pursuant to the Florida Motor Vehicle No-Fault Law.
88 These provisions, schedules, and procedures have full force and
89 effect regardless of their express inclusion in an insurance
90 policy, and an insurer is not required to amend its policy to
91 implement and apply such provisions, schedules, or procedures.
92 Section 4. Paragraphs (a) and (d) of subsection (5),
93 paragraph (b) of subsection (6), paragraph (b) of subsection
94 (7), and subsection (8) of section 627.736, Florida Statutes,
95 are amended and paragraph (i) to subsection (4), subsections
96 (17) and (18) are added to that section, to read:
97 627.736 Required personal injury protection benefits;
98 exclusions; priority; claims.—
99 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under
100 ss. 627.730-627.7405 shall be primary, except that benefits
101 received under any workers' compensation law shall be credited
102 against the benefits provided by subsection (1) and shall be due
103 and payable as loss accrues, upon receipt of reasonable proof of
104 such loss and the amount of expenses and loss incurred which are
105 covered by the policy issued under ss. 627.730-627.7405. When
106 the Agency for Health Care Administration provides, pays, or
107 becomes liable for medical assistance under the Medicaid program
108 related to injury, sickness, disease, or death arising out of
109 the ownership, maintenance, or use of a motor vehicle, benefits
110 under ss. 627.730-627.7405 shall be subject to the provisions of
111 the Medicaid program.

(i) In all circumstances an insured seeking benefits under ss. 627.730-627.7405 must comply with the terms of the policy, which includes, but is not limited to, submitting to examinations under oath. Compliance with this paragraph is a condition precedent to benefits.

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a)~~1.~~ Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment, if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. ~~In no event,~~ However, ~~may~~ such ~~a~~ charge may not exceed ~~be in excess of~~ the amount the person or institution customarily charges for like services or supplies. When determining ~~With respect to a determination of~~ whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, ~~and~~ reimbursement levels in the community and various federal and state medical fee schedules applicable to automobile and other insurance coverages, and other information relevant to

140 the reasonableness of the reimbursement for the service,
141 treatment, or supply.
142 12. The insurer may limit reimbursement to 80 percent of
143 the following schedule of maximum charges:
144 a. For emergency transport and treatment by providers
145 licensed under chapter 401, 200 percent of Medicare.
146 b. For emergency services and care provided by a hospital
147 licensed under chapter 395, 75 percent of the hospital's usual
148 and customary charges.
149 c. For emergency services and care as defined by s.
150 395.002(9) provided in a facility licensed under chapter 395
151 rendered by a physician or dentist, and related hospital
152 inpatient services rendered by a physician or dentist, the usual
153 and customary charges in the community.
154 d. For hospital inpatient services, other than emergency
155 services and care, 200 percent of the Medicare Part A
156 prospective payment applicable to the specific hospital
157 providing the inpatient services.
158 e. For hospital outpatient services, other than emergency
159 services and care, 200 percent of the Medicare Part A Ambulatory
160 Payment Classification for the specific hospital providing the
161 outpatient services.
162 f. For all other medical services, supplies, and care,
163 including durable medical equipment, care, and services rendered
164 by a clinical laboratory, 200 percent of the allowable amount
165 under the participating physicians schedule of Medicare Part B.
166 However, if such services, supplies, or care is not reimbursable
167 under Medicare Part B, or if the care and services are rendered

168 in an ambulatory surgical center, the insurer may limit
169 reimbursement to 80 percent of the maximum reimbursable
170 allowance under workers' compensation, as determined under s.
171 440.13 and rules adopted thereunder which are in effect at the
172 time such services, supplies, or care is provided. Services,
173 supplies, or care that is not reimbursable under Medicare or
174 workers' compensation is not required to be reimbursed by the
175 insurer.
176 2~~3~~. For purposes of subparagraph 1~~2~~., the applicable fee
177 schedule or payment limitation under Medicare is the fee
178 schedule or payment limitation in effect on January 1 of the
179 year in which ~~at the time~~ the services, supplies, or care was
180 rendered and for the area in which such services were rendered,
181 and shall apply throughout the remainder of the year,
182 notwithstanding any subsequent changes made to such fee schedule
183 or payment limitation, except that it may not be less than the
184 allowable amount under the participating physicians schedule of
185 Medicare Part B for 2007 for medical services, supplies, and
186 care subject to Medicare Part B.
187 3~~4~~. Subparagraph 1~~2~~. does not allow the insurer to apply
188 any limitation on the number of treatments or other utilization
189 limits that apply under Medicare or workers' compensation. An
190 insurer that applies the allowable payment limitations of
191 subparagraph 1~~2~~. must reimburse a provider who lawfully provided
192 care or treatment under the scope of his or her license,
193 regardless of whether such provider is ~~would be~~ entitled to
194 reimbursement under Medicare due to restrictions or limitations
195 on the types or discipline of health care providers who may be

196 reimbursed for particular procedures or procedure codes.
197 4~~5~~. If an insurer limits payment as authorized by
198 subparagraph 1~~2~~., the person providing such services, supplies,
199 or care may not bill or attempt to collect from the insured any
200 amount in excess of such limits, except for amounts that are not
201 covered by the insured's personal injury protection coverage due
202 to the coinsurance amount or maximum policy limits.
203 (d) All statements and bills for medical services rendered
204 by any physician, hospital, clinic, or other person or
205 institution shall be submitted to the insurer on a properly
206 completed Centers for Medicare and Medicaid Services (CMS) 1500
207 form, UB 92 forms, or any other standard form approved by the
208 office or adopted by the commission for purposes of this
209 paragraph. All billings for such services rendered by providers
210 shall, to the extent applicable, follow the Physicians' Current
211 Procedural Terminology (CPT) or Healthcare Correct Procedural
212 Coding System (HCPCS), or ICD-9 in effect for the year in which
213 services are rendered and comply with the Centers for Medicare
214 and Medicaid Services (CMS) 1500 form instructions and the
215 American Medical Association Current Procedural Terminology
216 (CPT) Editorial Panel and Healthcare Correct Procedural Coding
217 System (HCPCS). All providers other than hospitals shall include
218 on the applicable claim form the professional license number of
219 the provider in the line or space provided for "Signature of
220 Physician or Supplier, Including Degrees or Credentials." In
221 determining compliance with applicable CPT and HCPCS coding,
222 guidance shall be provided by the Physicians' Current Procedural
223 Terminology (CPT) or the Healthcare Correct Procedural Coding

224 System (HCPCS) in effect for the year in which services were
225 rendered, the Office of the Inspector General (OIG), Physicians
226 Compliance Guidelines, and other authoritative treatises
227 designated by rule by the Agency for Health Care Administration.
228 No statement of medical services may include charges for medical
229 services of a person or entity that performed such services
230 without possessing the valid licenses required to perform such
231 services. For purposes of paragraph (4)(b), an insurer shall not
232 be considered to have been furnished with notice of the amount
233 of covered loss or medical bills due unless the statements or
234 bills comply with this paragraph, and unless the statements or
235 bills are properly completed in their entirety as to all
236 material provisions, with all relevant information being
237 provided therein. If an insurer denies a claim under this
238 section due to the failure to provide a properly completed form
239 required by this paragraph, the insurer shall notify the
240 provider as to the provisions that were improperly completed and
241 shall give the provider 15 days to submit a completed form.
242 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—
243 (b) Every physician, hospital, clinic, or other medical
244 institution providing, before or after bodily injury upon which
245 a claim for personal injury protection insurance benefits is
246 based, any products, services, or accommodations in relation to
247 that or any other injury, or in relation to a condition claimed
248 to be connected with that or any other injury, shall, if
249 requested to do so by the insurer against whom the claim has
250 been made, furnish ~~forthwith~~ a written report of the history,
251 condition, treatment, dates, and costs of such treatment of the

252 injured person and why the items identified by the insurer were
253 reasonable in amount and medically necessary, together with a
254 sworn statement that the treatment or services rendered were
255 reasonable and necessary with respect to the bodily injury
256 sustained and identifying which portion of the expenses for such
257 treatment or services was incurred as a result of such bodily
258 injury, and produce forthwith, and permit the inspection and
259 copying of, his or her or its records regarding such history,
260 condition, treatment, dates, and costs of treatment if; provided
261 that this does shall not limit the introduction of evidence at
262 trial. Such sworn statement must shall read as follows: "Under
263 penalty of perjury, I declare that I have read the foregoing,
264 and the facts alleged are true, to the best of my knowledge and
265 belief." A No cause of action for violation of the physician-
266 patient privilege or invasion of the right of privacy may not be
267 brought shall be permitted against any physician, hospital,
268 clinic, or other medical institution complying with the
269 provisions of this section. The person requesting such records
270 and such sworn statement shall pay all reasonable costs
271 connected therewith. If an insurer makes a written request for
272 documentation or information under this paragraph within 30 days
273 after having received notice of the amount of a covered loss
274 under paragraph (4)(a), the amount or the partial amount that
275 which is the subject of the insurer's inquiry is shall become
276 overdue if the insurer does not pay in accordance with paragraph
277 (4)(b) or within 10 days after the insurer's receipt of the
278 requested documentation or information, whichever occurs later.
279 For purposes of this paragraph, the term "receipt" includes, but

280 is not limited to, inspection and copying pursuant to this
281 paragraph. An ~~Any~~ insurer that requests documentation or
282 information pertaining to reasonableness of charges or medical
283 necessity under this paragraph without a reasonable basis for
284 such requests as a general business practice is engaging in an
285 unfair trade practice under the insurance code.
286 1. If an insured seeking to recover benefits under ss.
287 627.730-627.7405 assigns the contractual right to those benefits
288 or the payment of those benefits to any person or entity, the
289 assignee shall comply with the terms of the policy. In all
290 circumstances, the assignee shall be obligated to cooperate
291 under the policy, which includes, but is not limited to,
292 participation in an examination under oath. For time spent in an
293 examination under oath, the assignee is entitled to reasonable
294 compensation from the insurer. Compliance with this paragraph is
295 a condition precedent to the recovery of benefits under ss.
296 627.730-627.7405. If an insurer requests an examination under
297 oath of a medical provider, the provider must produce those
298 individuals with the most knowledge of the issues identified by
299 the insurer in the request for examination under oath. All
300 claimants must produce and provide for inspection all documents
301 requested by the insurer that are reasonably obtainable by the
302 claimant. Examinations under oath may be recorded by audio,
303 video, court reporter, or any combination thereof.
304 2. Prior to requesting that an assignee participate in an
305 examination under oath, the insurer must provide a written
306 request of the assignee for all information that the insurer
307 believes is necessary to the processing of the claim, including

308 the information contemplated in subparagraph 1. An assignee is
309 not relieved from the provisions of subparagraph 2. simply by
310 providing the information contemplated in subparagraph 1.
311 3. Any insurer that, as a general practice, requests
312 examinations under oath without a reasonable basis is engaging
313 in an unfair and deceptive trade practice.
314 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;
315 REPORTS.—
316 (b) If requested by the person examined, a party causing
317 an examination to be made shall deliver to him or her a copy of
318 every written report concerning the examination rendered by an
319 examining physician, at least one of which reports must set out
320 the examining physician's findings and conclusions in detail.
321 After such request and delivery, the party causing the
322 examination to be made is entitled, upon request, to receive
323 from the person examined every written report available to him
324 or her or his or her representative concerning any examination,
325 previously or thereafter made, of the same mental or physical
326 condition. By requesting and obtaining a report of the
327 examination so ordered, or by taking the deposition of the
328 examiner, the person examined waives any privilege he or she may
329 have, in relation to the claim for benefits, regarding the
330 testimony of every other person who has examined, or may
331 thereafter examine, him or her in respect to the same mental or
332 physical condition. If a person unreasonably refuses to submit
333 to an examination, the personal injury protection carrier is no
334 longer liable for ~~subsequent~~ personal injury protection benefits
335 incurred after the date of the requested examination. Failure to

336 appear for an examination raises a rebuttable presumption that
337 such failure was unreasonable. Submission to an examination is a
338 condition precedent to benefits.
339 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S
340 FEES.—With respect to any dispute under the provisions of ss.
341 627.730-627.7405 between the insured and the insurer, or between
342 an assignee of an insured's rights and the insurer, the
343 provisions of s. 627.428 ~~shall~~ apply, except as provided in
344 subsections (10) and (15), and except that any attorney’s fees
345 recovered are limited to the lesser of $10,000 or three times
346 any disputed amount recovered by the attorney under ss. 627.730-
347 627.7405. Attorney’s fees in a class action under ss. 627.730-
348 627.7405 are limited to the lesser of $50,000 or three times the
349 total of any disputed amount recovered in the class action
350 proceeding.
351 (17) ATTORNEY’S FEES.-Notwithstanding s. 627.428, the
352 attorney’s fees recovered under ss. 627.730-627.7405, shall be
353 calculated without regard to a contingency risk multiplier.
354 (18) ARBITRATION. - In order to provide for an expedited,
355 cost-effective and fair resolution of disputes arising from
356 contracts for personal injury protection benefits, an insurer
357 may offer a policy that requires or allows the insurer or
358 claimant to demand arbitration of any claims dispute involving
359 personal injury protection benefits prior to filing a lawsuit
360 and in lieu of litigation. Arbitration is subject to the Florida
361 Arbitration Code, except as otherwise provided in this section.
362 In addition:

363 (a) A demand for arbitration must be made in writing by
364 certified mail, and the arbitration must be held within 60 days
365 of the receipt of a request for arbitration. The 60 day period
366 shall not be tolled for discovery of documents pursuant to
367 paragraph (d).
368 (b) Arbitration shall take place in the county in which the
369 treatment was rendered. If treatment was rendered outside the
370 state, arbitration shall take place in the county in which the
371 insured resides unless the parties agree to another location.
372 (c) The arbitration shall be conducted by a single
373 arbitrator selected by the chief judge of the judicial circuit
374 in which the arbitration is being held.
375 (d)1. The claimant shall make available for inspection or
376 copying the medical and other records on which the claimant
377 intends to rely at arbitration upon written request by the
378 insurer or his or her attorney within 15 days of receipt of such
379 request.
380 2. The insurer shall make available for inspection or
381 copying all documents, records or information upon which it is
382 relying in adjusting or rejecting the claim upon written request
383 by the claimant or his or her attorney within 10 days of receipt
384 of such request.
385 3. Discovery of insurer documents, records or information
386 shall be limited to those relating to insurance coverage. The
387 insurer is not required to produce claims privileged items,
388 underwriting files, or documents that it does not intend to rely
389 on at arbitration.

390 4. There shall be no discovery relating to general claims
391 handling practices.
392 (e) The decision of the arbitrator shall be in set forth in
393 writing and furnished to each party within 30 days of the
394 arbitration. The decision shall be binding on each party unless
395 challenged pursuant to paragraph (g). An arbitration award may
396 not exceed the applicable limits of coverage remaining on the
397 policy.
398 (f) The claimant is entitled to reimbursement of attorneys'
399 fees directly associated with the arbitration, subject to
400 subsection (8). The award of fees must be set forth in the
401 arbitration decision. The insurer shall bear all reasonable
402 costs directly associated with the arbitration process.
403 (g)1. A party may challenge the arbitration decision by
404 filing a complaint in circuit court within 20 days of the
405 receipt of the arbitration decision.
406 2. Review of the arbitration shall be de novo.
407 3. Section 627.428 does not apply, and no interest on the
408 amount in dispute shall accrue during the course of litigation,
409 if the insurer has tendered payment of the amount of the
410 arbitration award to the claimant.
411 Section 5. This act shall take effect July 1, 2011.