

**SB 1844 by Latvala;** (Compare to H 0409) Alien Insurers

425232	D	S	L	RCS	BI, Hays	Delete everything after	02/02 06:06 PM
256156	AA	S		RCS	BI, Hays	Delete L.209:	02/02 06:06 PM

**SB 1860 by Negron;** (Compare to CS/H 0119) Motor Vehicle Personal Injury Protection Insurance

791184	A	S		WD	BI, Richter	Delete L.299 - 1509:	02/02 06:06 PM
224150	AA	S		WD	BI, Gaetz	Delete L.2222:	02/02 06:06 PM
578696	AA	S	L	WD	BI, Margolis	Delete L.1342:	02/02 06:06 PM
527256	A	S		RCS	BI, Richter	Delete L.518 - 541.	02/02 06:06 PM
104666	SA	S		WD	BI, Gaetz	Delete L.1265 - 1270:	02/02 06:06 PM
220258	A	S		WD	BI, Richter	Delete L.1270:	02/02 06:06 PM
760588	A	S	L	WD	BI, Gaetz	Delete L.1265 - 1270:	02/02 06:06 PM

**SB 1862 by Negron;** Public Records/Donor Identifying Information/Division of Insurance Fraud

**SB 1620 by Richter;** (Compare to CS/H 1101) Insurance

160704	A	S		RCS	BI, Richter	Delete L.211 - 245:	02/02 06:06 PM
929464	A	S		RCS	BI, Richter	btw L.245 - 246:	02/02 06:06 PM
604062	A	S		RCS	BI, Richter	Delete L.804 - 913.	02/02 06:06 PM
377322	A	S		WD	BI, Richter	Delete L.919:	02/02 06:06 PM
467786	A	S		RCS	BI, Richter	Delete L.994:	02/02 06:06 PM
464972	A	S		RCS	BI, Richter	Delete L.1006:	02/02 06:06 PM
227828	A	S	L	RCS	BI, Sobel	Delete L.951:	02/02 06:06 PM

**SB 910 by Hays (CO-INTRODUCERS) Bennett;** (Compare to CS/H 0365) Public Employees

708624	D	S		RCS	BI, Hays	Delete everything after	02/02 06:06 PM
935180	AA	S		RCS	BI, Hays	Delete L.22 - 23:	02/02 06:06 PM

**SB 1428 by Smith;** (Compare to CS/H 0941) Renewal of a Commercial Lines Insurance Policy

144930	A	S		RCS	BI, Smith	Delete L.15 - 20:	02/02 06:06 PM
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**SB 1814 by Smith;** (Identical to H 4061) Uniform Home Grading Scale

**SB 1626 by Gaetz;** (Identical to H 1409) State Contracting

725782	D	S		RCS	BI, Gaetz	Delete everything after	02/02 06:18 PM
946392	AA	S		RCS	BI, Bennett	btw L.897 - 898:	02/02 06:18 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Richter, Chair**  
**Senator Smith, Vice Chair**

**MEETING DATE:** Thursday, February 2, 2012  
**TIME:** 3:15 —5:15 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Fasano, Gaetz, Hays, Margolis, Negron, Oelrich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1844</b> Latvala (Compare H 409)	Alien Insurers; Revising a provision exempting alien insurers from the requirement to obtain a certificate of authority; specifying that an alien insurer is exempt from having to obtain a certificate of authority if such insurer engages only in specified activities relating to the delivery of insurance policies or annuity contracts to nonresident policyowners; providing that a life insurance policy and annuity contract may be issued by an insurer domiciled outside the United States under certain conditions; providing that an alien insurer issuing policies or contracts in this state is subject to part IX of ch. 626, F.S., relating to unfair insurance trade practices, etc.  BI      02/02/2012 Fav/CS BC	Fav/CS Yeas 9 Nays 0
2	<b>SB 1860</b> Negron (Compare CS/H 119, H 523, S 254, Link S 1862)	Motor Vehicle Personal Injury Protection Insurance; Providing that certain entities exempt from licensure as a health care clinic must nonetheless be licensed in order to receive reimbursement for the provision of personal injury protection benefits; providing that knowingly submitting false, misleading, or fraudulent documents relating to licensure as a health care clinic, or submitting a claim for personal injury protection relating to clinic licensure documents, is a fraudulent insurance act under certain conditions; authorizing the Division of Insurance Fraud of the Department of Financial Services to establish a direct-support organization for the purpose of prosecuting, investigating, and preventing motor vehicle insurance fraud, etc.  BI      02/02/2012 Fav/CS BC	Fav/CS Yeas 9 Nays 0
3	<b>SB 1862</b> Negron (Link S 1860)	Public Records/Donor Identifying Information/Division of Insurance Fraud; Amending provisions as created by SB 1860; exempting from public record requirements all identifying information of a donor or prospective donor to the motor vehicle insurance fraud direct-support organization of the Division of Insurance Fraud, etc.  BI      02/02/2012 Favorable GO	Favorable Yeas 9 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Thursday, February 2, 2012, 3:15 —5:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1620</b> Richter (Compare CS/H 1101, CS/H 1223, CS/S 1122)	Insurance; Providing that a salvage motor vehicle dealer is not required to carry certain insurance on vehicles that have been issued a certificate of destruction; revising provisions specifying which insurers are not subject to certain filing requirements relating to reinsurance; providing that provisions relating to insurance adjusters do not apply to individuals who conduct data entry into an automated claims adjustment system for portable electronics insurance claims; revising provisions relating to the notice that an insurer must provide to an insured regarding the nonrenewal, cancellation, or termination of a commercial residential property insurance policy, etc.  BI 02/02/2012 Fav/CS BC	Fav/CS Yeas 8 Nays 0
5	<b>SB 910</b> Hays (Similar H 365)	Public Employees; Revising conditions under which certain firefighters, law enforcement officers, correctional officers, or correctional probations officers who suffer or have died from any of specified medical conditions are presumed to have been injured or killed accidentally and in the line of duty; revising the conditions under which the presumption with respect to disability due to any of specified diseases is against occurrence in the line of duty for purposes of workers' compensation claims; providing medical conditions or behaviors that are appropriate for consideration in denying or overcoming the presumption of accidental disabilities or death suffered in the line of duty for firefighters and police officers, etc.  BI 02/02/2012 Fav/CS GO BC	Fav/CS Yeas 7 Nays 1
6	<b>SB 1428</b> Smith (Compare CS/H 941)	Renewal of a Commercial Lines Insurance Policy; Providing that the transfer of a policy to certain other insurers is considered a renewal of the policy rather than a cancellation or nonrenewal, etc.  BI 02/02/2012 Fav/CS BC	Fav/CS Yeas 8 Nays 0
7	<b>SB 1814</b> Smith (Identical H 4061, Compare S 1692)	Uniform Home Grading Scale; Repealing provisions relating to the required adoption by the Financial Services Commission of a uniform home grading scale to grade the ability of a home to withstand the wind load from certain tropical storms or hurricanes, etc.  BI 02/02/2012 Favorable BC	Favorable Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Thursday, February 2, 2012, 3:15 —5:15 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 1626</b> Gaetz (Identical H 1409, Compare CS/H 5203)	State Contracting; Requiring agreements funded with state or federal financial assistance to include a performance measure for each deliverable, to be reviewed and approved in accordance with rules adopted by the Department of Financial Services, and to have the contracting entity assign a grants manager who is responsible for enforcing performance of the agreement; revising provisions relating to the Chief Financial Officer's intergovernmental contract tracking system under the Transparency Florida Act; dividing the responsibilities of the Department of Management Services under ch. 287, F.S., with the Department of Financial Services, etc.  BI 02/02/2012 Fav/CS GO BC	Fav/CS Yeas 9 Nays 0
Other related meeting documents			

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425232

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (8) of section 624.402, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

624.402 Exceptions, certificate of authority required.—A certificate of authority shall not be required of an insurer with respect to:

(8) (a) An insurer domiciled outside the United States covering only persons who, at the time of issuance or renewal,



425232

13 are nonresidents of the United States if:  
14       1. ~~The insurer or any affiliated person as defined in s.~~  
15 ~~624.04 under common ownership or control with the insurer does~~  
16 not solicit, sell, or accept application for any insurance  
17 policy or contract to be delivered or issued for delivery to any  
18 person in any state;  
19       2. The insurer registers with the office via a letter of  
20 notification upon commencing business from this state;  
21       3. The insurer provides the following information, in  
22 English, to the office annually by March 1:  
23       a. The name of the insurer; the country of domicile; the  
24 address of the insurer's principal office and office in this  
25 state; the names of the owners of the insurer and their  
26 percentage of ownership; the names of the officers and directors  
27 of the insurer; the name, e-mail, and telephone number of a  
28 contact person for the insurer; and the number of individuals  
29 who are employed by the insurer or its affiliates in this state;  
30       b. The lines of insurance and types of products offered by  
31 the insurer;  
32       c. A statement from the applicable regulatory body of the  
33 insurer's domicile certifying that the insurer is licensed or  
34 registered for those lines of insurance and types of products in  
35 that domicile; and  
36       d. A copy of the filings required by the applicable  
37 regulatory body of the insurer's country of domicile in that  
38 country's official language or in English, if available;  
39       4. All certificates, policies, or contracts issued in this  
40 state showing coverage under the insurer's policy include the  
41 following statement in a contrasting color and at least 10-point



425232

42 type: "The policy providing your coverage and the insurer  
43 providing this policy have not been approved by the Florida  
44 Office of Insurance Regulation"; and

45 5. ~~If In the event~~ the insurer ceases to do business from  
46 this state, the insurer will provide written notification to the  
47 office within 30 days after cessation.

48 (b) For purposes of this subsection, "nonresident" means a  
49 trust or other entity organized and domiciled under the laws of  
50 a country other than the United States or a person who resides  
51 in and maintains a physical place of domicile in a country other  
52 than the United States, which he or she recognizes as and  
53 intends to maintain as his or her permanent home. A nonresident  
54 does not include an unauthorized immigrant present in the United  
55 States. Notwithstanding any other ~~provision of~~ law, it is  
56 conclusively presumed, for purposes of this subsection, that a  
57 person is a resident of the United States if the ~~such~~ person  
58 has:

59 1. Had his or her principal place of domicile in the United  
60 States for 180 days or more in the 365 days before ~~prior to~~  
61 issuance or renewal of the policy;

62 2. Registered to vote in any state;

63 3. Made a statement of domicile in any state; or

64 4. Filed for homestead tax exemption on property in any  
65 state.

66 (c) Subject to the limitations provided in this subsection,  
67 services, including those listed in s. 624.10, may be provided  
68 by the insurer or an affiliated person as defined in s. 624.04  
69 under common ownership or control with the insurer.

70 (d) An alien insurer transacting insurance in this state



425232

71 without complying with this subsection is shall be in violation  
72 of this chapter and subject to the penalties provided in s.  
73 624.15.

74 (9)(a) Life insurance policies or annuity contracts may be  
75 solicited, sold, or issued in this state by an insurer domiciled  
76 outside the United States, covering only persons who, at the  
77 time of issuance are nonresidents of the United States, provided  
78 that:

79 1. The insurer is currently an authorized insurer in his or  
80 her country of domicile as to the kind or kinds of insurance  
81 proposed to be offered and must have been such an insurer for  
82 not fewer than the immediately preceding 3 years, or must be the  
83 wholly owned subsidiary of such authorized insurer or must be  
84 the wholly owned subsidiary of an already eligible authorized  
85 insurer as to the kind or kinds of insurance proposed for a  
86 period of not fewer than the immediately preceding 3 years.  
87 However, the office may waive the 3-year requirement if the  
88 insurer has operated successfully for a period of at least the  
89 immediately preceding year and has capital and surplus of not  
90 less than \$25 million.

91 2. Before the office may grant eligibility, the requesting  
92 insurer furnishes the office with a duly authenticated copy of  
93 its current annual financial statement, in English, and with all  
94 monetary values therein expressed in United States dollars, at  
95 an exchange rate then-current and shown in the statement, in the  
96 case of statements originally made in the currencies of other  
97 countries, and with such additional information relative to the  
98 insurer as the office may request.

99 3. The insurer has and maintains surplus as to



425232

100 policyholders of not less than \$15 million. Any such surplus as  
101 to policyholders shall be represented by investments consisting  
102 of eligible investments for like funds of like domestic insurers  
103 under part II of chapter 625; however, any such surplus as to  
104 policyholders may be represented by investments permitted by the  
105 domestic regulator of such alien insurance company if such  
106 investments are substantially similar in terms of quality,  
107 liquidity, and security to eligible investments for like funds  
108 of like domestic insurers under part II of chapter 625.

109 4. The insurer has of good reputation as to providing  
110 service to its policyholders and the payment of losses and  
111 claims.

112 5. To maintain eligibility, the insurer furnishes the  
113 office within the time period specified in s. 624.424(1), a duly  
114 authenticated copy of its current annual and quarterly financial  
115 statements, in English, and with all monetary values therein  
116 expressed in United States dollars, at an exchange rate then-  
117 current and shown in the statement, in the case of statements  
118 originally made in the currencies of other countries, and with  
119 such additional information relative to the insurer as the  
120 office may request.

121 6. An insurer receiving eligibility under this subsection  
122 agrees to make its books and records pertaining to its  
123 operations in this state available for inspection during normal  
124 business hours upon request of the office.

125 7. The insurer notifies the applicant in clear and  
126 conspicuous language:

127 a. The date of organization of the insurer.

128 b. The identity of and rating assigned by each recognized



425232

129 insurance company rating organization that has rated the insurer  
130 or, if applicable, that the insurer is unrated.

131 c. That the insurer does not hold a certificate of  
132 authority issued in this state and that the office does not  
133 exercise regulatory oversight over the insurer.

134 d. The identity and address of the regulatory authority  
135 exercising oversight of the insurer. This paragraph does not  
136 impose upon the office any duty or responsibility to determine  
137 the actual financial condition or claims practices of any  
138 unauthorized insurer, and the status of eligibility, if granted  
139 by the office, indicates only that the insurer appears to be  
140 financially sound and to have satisfactory claims practices and  
141 that the office has no credible evidence to the contrary.

142 (b) If the office has reason to believe that an insurer  
143 issuing policies or contracts pursuant to this subsection is  
144 insolvent or is in unsound financial condition, does not make  
145 reasonable prompt payment of benefits, or is no longer eligible  
146 under the conditions specified in this subsection, the office  
147 may conduct an examination or investigation in accordance with  
148 s. 624.316, s. 624.3161, or s. 624.320 and, if the findings of  
149 the examination or investigation warrant, may withdraw the  
150 eligibility of the insurer to issue policies or contracts  
151 pursuant to this subsection without having a certificate of  
152 authority issued by the office.

153 (c) This subsection does not provide an exception to the  
154 agent licensure requirements of chapter 626. A insurer issuing  
155 policies or contracts pursuant to this subsection shall appoint  
156 the agents that the insurer uses to sell such policies or  
157 contracts as provided in chapter 626.



425232

158        (d) An insurer issuing policies or contracts pursuant to  
159 this subsection is subject to part IX of chapter 626, Unfair  
160 Insurance Trade Practices Act, and the office may take such  
161 actions against the insurer for a violation as are provided in  
162 that part.

163        (e) Policies and contracts issued pursuant to this  
164 subsection are not subject to the premium tax specified in s.  
165 624.509.

166        (f) Applications for life insurance coverage offered under  
167 this subsection must contain, in contrasting color and not less  
168 than 12-point type, the following statement on the same page as  
169 the applicant's signature:

170  
171        This policy is primarily governed by the laws of a  
172 foreign country. As a result, all of the rating and  
173 underwriting laws applicable to policies filed in this  
174 state do not apply to this coverage, which may result  
175 in your premiums being higher than would be  
176 permissible under a Florida-approved policy. A  
177 purchase of individual life insurance should be  
178 considered carefully, as future medical conditions may  
179 make it impossible to qualify for another individual  
180 life policy. If the insurer issuing your policy  
181 becomes insolvent, this policy is not covered by the  
182 Florida Life and Health Insurance Guaranty  
183 Association. For information concerning individual  
184 life coverage under a Florida-approved policy, consult  
185 your agent or the Florida Department of Financial  
186 Services.



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(g) All life insurance policies and annuity contracts issued pursuant to this subsection must contain on the first page of the policy or contract, in contrasting color and not less than 10-point type, the following statement:

The benefits of the policy providing your coverage are governed primarily by the law of a country other than the United States.

(h) All single-premium life insurance policies and single-premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States pursuant to this subsection are subject to chapter 896.

(i) For purposes of this subsection, the term "nonresident" means a trust or other entity or person as defined in subsection 624.402 (8).

(j) An alien insurer transacting insurance in this state without complying with this subsection is in violation of this chapter and subject to the penalties provided in s. 624.15, and must also pay the fine required for each violation as prescribed by s. 626.10.

Section 2. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause and insert:



425232

216                   A bill to be entitled  
217           An act relating to alien insurers; amending s.  
218           624.402, F.S.; revising a provision exempting alien  
219           insurers from the requirement to obtain a certificate  
220           of authority; revising the definition of the term  
221           "nonresident"; providing that a life insurance policy  
222           and annuity contract may be issued by an insurer  
223           domiciled outside the United States under certain  
224           conditions; specifying the terms and conditions that  
225           must be satisfied before an alien insured may issue a  
226           policy or contract; authorizing the Office of  
227           Insurance Regulation to conduct an examination of an  
228           alien insurer if the office has reason to believe that  
229           the insurer is insolvent or is in unsound financial  
230           condition; providing that an alien insurer issuing  
231           policies or contracts in this state is subject to part  
232           IX of ch. 626, F.S., relating to unfair insurance  
233           trade practices; authorizing the office to enforce  
234           part IX of ch. 626, F.S.; providing that policies and  
235           contracts issued pursuant to the act are not subject  
236           to the premium tax; requiring that an application for  
237           a life insurance policy or an annuity contract contain  
238           certain specified statements to protect consumers;  
239           providing an effective date.



256156

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment to Amendment (425232)**

Delete line 209  
and insert:  
by s. 626.910.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic \_\_\_\_\_ Bill Number 1844  
*(if applicable)*

Name Robert Reyes Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 108 S. Monroe St Phone 850 681 0024  
*Street*

TALL FL 32301 E-mail \_\_\_\_\_  
*City State Zip*

Speaking:  For  Against  Information

Representing Trans America Life

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic \_\_\_\_\_

Bill Number SB1844  
*(if applicable)*

Name Paul Sanford

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 106 S. Monroe St

Phone 850-222-7200

Tallahassee FL 32301  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FIC, ACLI

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic ALIENS

Bill Number 1844  
*(if applicable)*

Name Monte STEVENS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title DIR. GOVT AFFAIRS

Address 200 E. GAINES ST

Phone 413-2571

Street

TALLAHASSEE

FL 32301

E-mail monte.stevens@flsen.com

City

State

Zip

Speaking:  For  Against  Information

Representing OIR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)



- Deletes the reference to affiliated persons from the prohibition on insurers soliciting or selling policies, or accepting applications for any person in the United States. Thus, an insurer who has an affiliate would not be disqualified from obtaining an exemption.
- Expands the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States.

The bill also creates an exemption from the COA requirements for an alien insurer issuing life insurance or annuity contracts covering only persons who are not residents of the U.S., if the insurer meets the following requirements:

- The insurer is an authorized insurer in its domiciliary country in the kinds of insurance proposed to be offered in this state; and:
  - Has been an insurer for at least the last 3 consecutive years; or
  - Is the wholly owned subsidiary of an authorized insurer; or is the wholly owned subsidiary of an already eligible authorized insurer as to the kind of insurance proposed to be issued in this state for a period of not less than the immediately preceding 3 years.
- Prior to the OIR granting eligibility to an alien insurer to issue policies and contracts in Florida, the insurer is required to meet the following requirements:
  - Submit a copy of its annual financial statement to the OIR in English and with all monetary values expressed in U.S. dollars.
  - Maintain a surplus of at least \$15 million in eligible investments for like funds of like domestic insurers or by investments permitted by the domiciliary regulator, if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of domestic insurers under part II of ch. 625, F.S.
  - Have a good reputation for providing service and paying claims.
  - Furnish to the OIR with annual and quarterly financial statements.
  - Provide certain disclosures to policy or contract applicants, such as the date the insurer was organized; the identity and rating assigned by each rating organization that has rated the insurer; the insurer does not hold a COA; the OIR does not exercise regulatory oversight over the insurer; the policy or contract is not covered by a guaranty association, and the identity and address of the regulatory authority exercising oversight of the insurer.

This bill substantially amends the following section of the Florida Statutes: 624.402.

## II. Present Situation:

### Regulation of Insurance in Florida

The Florida Insurance Code contains many provisions designed to prevent insurers from becoming insolvent and to protect and provide recovery for policyholders in the event of insolvency. These provisions include minimum capital and surplus requirements<sup>4</sup> and financial reporting requirements.<sup>5</sup> In addition, five guaranty funds are established under ch. 631, F.S., to

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<sup>4</sup> Section 624.4095, F.S.

<sup>5</sup> Section 624.424, F.S.

ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding covered claims, up to limits provided by law. Generally, entities subject to regulation under the insurance code are subject to assessments of the applicable guaranty association.

Section 624.401, F.S., requires insurers and other risk-bearing entities to obtain a certificate of authority from the OIR prior to engaging in insurance transactions unless specifically exempted. Section 624.402(8), F.S., provides an exemption from the requirement to obtain a COA for any insurer domiciled outside the U.S. and insuring only persons who, at the time of issuance or renewal, are nonresidents of the U.S.<sup>6</sup> A “nonresident” is defined as a person who resides in and maintains a physical place of domicile in a country other than the U.S., and intends to maintain such place of domicile as her or his permanent residence. For purposes of this subsection, a U.S. resident is a person who has:

- Had her or his principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;
- Registered to vote in any state;
- Made a statement of domicile in any state; or,
- Filed for homestead tax exemption on property in any state.

To be eligible for the exemption from the COA requirements, the insurer must:

- Not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to U.S. residents. The prohibition also applies to any affiliated person of the insurer. Under current law, if a holding company wants to establish a Florida office for their alien affiliate, they are prohibited if the holding company owns another entity already licensed in Florida.
- Register with the OIR.
- Provide a disclosure on all certificates, contracts, and policies issued in Florida stating that the policy has not been approved by the OIR.
- Provide the following information to the OIR on an annual basis:
  - Name of the insurer and the country of domicile;
  - Names of the owners, officers, and directors and the number of employees;
  - Lines of insurance and types of products offered;
  - A statement from the applicable regulatory body of the insurer’s domicile certifying that the insurer is licensed or registered in that domicile; and
  - A copy of filings required by the insurer’s domicile.

### III. Effect of Proposed Changes:

**Section 1** revises the current exemption from the COA requirements for an insurer domiciled outside the U.S. covering nonresidents of the U.S. at the time of issuance or renewal. Under current law, the alien insurer, or any affiliated person, may not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued to any person in the U.S. The bill makes the following changes:

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<sup>6</sup> Ch. 2011-174, L.O.F.

- Only the alien insurer is prohibited from soliciting, selling, or accepting application for any policy or contract to be delivered or issued for delivery in the U.S. The affiliated person is removed from this restriction.
- The definition of nonresident is revised to include a trust or other entity organized and domiciled under the laws of a country other than the U.S.

### **New Exemption from the COA Requirements**

The bill creates s. 624.402(9), F.S., which provides an exemption from the COA requirements for insurers domiciled outside the U.S. selling life and annuity coverage to persons in Florida who, at the time of issuance, are not U.S. residents if the following conditions are met:

- The insurer is an authorized insurer in its domiciliary country in the kinds of insurance proposed to be offered in this state; and:
  - Has been an insurer for at least the last 3 consecutive years; or
  - Is the wholly owned subsidiary of an authorized insurer; or is the wholly owned subsidiary of an already eligible authorized insurer as to the kind of insurance proposed to be issued in this state for a period of not less than the immediately preceding 3 years.
- Prior to the OIR granting an alien eligibility to issue policies and contracts in Florida, the insurer is required to meet the following requirements:
  - Submit a copy of its annual financial statement to the OIR in English and with all monetary values expressed in U.S. dollars.
  - Maintain a surplus of at least \$15 million in eligible investments for like funds of like domestic insurers or by investments permitted by the domiciliary regulator, if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of domestic insurers under part II of ch. 625, F.S.
  - Have a good reputation for providing service and paying claims.
  - Furnish the OIR with annual and quarterly financial statements.
  - Allow access to the insurer's books and records pertaining to its operations in Florida, at the request of the OIR.
  - Provide certain disclosures to policy or contract applicants, such as the identity and rating assigned by each rating organization that has rated the insurer. Also the insurer must disclose that the OIR does not exercise regulatory oversight over the insurer; the policy or contract is not covered by a guaranty association, and the identity and address of the regulatory authority exercising oversight of the insurer.

The OIR may waive the 3-year operating requirement if the insurer has “operated successfully” for at least one year prior and has a surplus of at least \$25 million. The bill also provides that these provisions do not impose upon the OIR any duty or responsibility to determine the actual financial condition or claims practices of an unauthorized insurer, and the status of eligibility, if granted, indicates only that the insurer appears to be financially sound and that the OIR has no credible evidence to the contrary. The bill provides that if the OIR has reason to believe that such an insurer is insolvent or is in unsound financial condition, or is no longer eligible to issue

policies or contracts subject to the conditions of this subsection, the OIR may conduct an investigation or examination and may withdraw eligibility of the insurer.

The definition of nonresident is provided by a cross-reference to s. 624.402(8), F.S.

Eligible insurers issuing policies or contracts pursuant to this subsection are subject to part IX of ch. 626, F.S., and the OIR may take action against such insurers for violations of the Unfair Trade Practices Act. Insurers violating provisions of this new subsection are also subject to the penalties provided in ss. 624.15 and 626.910, F.S.

All single-premium life insurance policies and single-premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States are subject to ch. 896, F.S., Offenses Related to Financial Transactions.

This subsection does not create an exception to the agent licensure requirements of ch. 626, F.S. An insurer issuing policies or contracts are required to appoint the agents the insurer uses to sell such policies or contracts as provided in ch. 626, F.S.

Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509, F.S.

**Section 2** provides that this act takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By expanding the exemptions from the COA requirements to insurers domiciled outside of the U.S., and selling life insurance policies and annuity contracts to nonresidents of the U.S., the bill will allow for an increase in the lines and types of insurance offerings. The

bill will reduce the regulatory burden for these insurers while preserving regulatory oversight on insurers selling policies and contracts to U.S. residents. Nonresidents could benefit from such coverage.

The definition of “nonresident” is expanded under s. 624.402(8), F.S., to include a trust or other entity organized and domiciled under the laws of a country other than the United States. This will allow life insurance trusts and other entities to obtain coverage under these non-regulated policies.

**C. Government Sector Impact:**

Prior to the repeal of the existing exemption from the COA requirements for alien insurers selling life insurance and annuity contracts to nonresidents in 2011,<sup>7</sup> the OIR reported that there were three insurers that had met the eligibility requirements for an exemption. This number had not changed in recent years.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 2, 2012:**

The CS provides the following changes:

- Provides that an alien insurer issuing life insurance policies or annuity contracts in Florida is subject to the fines prescribed in s. 626.910, F.S., if the insurer fails to comply with the provisions of s. 624.402(9), F.S.
- Reinstates the prohibition on renewing policies to residents as a requirement for alien insurers subject to the provisions of s. 624.402(8), F.S.
- Revises the effective date of the bill.
- Provides technical and conforming changes.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>7</sup> Ch. 2011-174, L.O.F.

By Senator Latvala

16-00583A-12

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1 A bill to be entitled  
 2 An act relating to alien insurers; amending s.  
 3 624.402, F.S.; revising a provision exempting alien  
 4 insurers from the requirement to obtain a certificate  
 5 of authority; providing an exception for the issuance  
 6 of life insurance policies and annuity contracts;  
 7 specifying that an alien insurer is exempt from having  
 8 to obtain a certificate of authority if such insurer  
 9 engages only in specified activities relating to the  
 10 delivery of insurance policies or annuity contracts to  
 11 nonresident policyowners; revising the definition of  
 12 the term "nonresident"; providing that a life  
 13 insurance policy and annuity contract may be issued by  
 14 an insurer domiciled outside the United States under  
 15 certain conditions; specifying the terms and  
 16 conditions that must be satisfied before an alien  
 17 insured may issue a policy or contract; authorizing  
 18 the Office of Insurance Regulation to conduct an  
 19 examination of an alien insurer if the office has  
 20 reason to believe that the insurer is insolvent or is  
 21 in unsound financial condition; providing that an  
 22 alien insurer issuing policies or contracts in this  
 23 state is subject to part IX of ch. 626, F.S., relating  
 24 to unfair insurance trade practices; authorizing the  
 25 office to enforce part IX of ch. 626, F.S.; providing  
 26 that policies and contracts issued pursuant to the act  
 27 are not subject to the premium tax; requiring that an  
 28 application for a life insurance policy or an annuity  
 29 contract contain certain specified statements to

Page 1 of 9

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16-00583A-12

20121844\_\_

30 protect consumers; providing an effective date.

31

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

33

34 Section 1. Subsection (8) of section 624.402, Florida  
 35 Statutes, is amended, and subsection (9) is added to that  
 36 section, to read:

37 624.402 Exceptions, certificate of authority required.—A  
 38 certificate of authority shall not be required of an insurer  
 39 with respect to:

40 (8) (a) Except as otherwise provided in subsection (9) with  
 41 respect to life insurance policies or annuity contracts,  
 42 issuance of other policies or contracts by an insurer domiciled  
 43 outside the United States covering only persons who, at the time  
 44 of issuance ~~or renewal~~, are nonresidents of the United States  
 45 if:

46 1. The insurer does not solicit, sell, or accept  
 47 application for such insurance policy or annuity contract ~~or any~~  
 48 affiliated person as defined in s. 624.04 under common ownership  
 49 or control with the insurer does not solicit, sell, or accept  
 50 application for any insurance policy or contract to be delivered  
 51 or issued for delivery to any person in any state;

52 2. The insurer registers with the Office of Insurance  
 53 Regulation via a letter of notification upon commencing business  
 54 from this state;

55 3. The insurer provides the following information, in  
 56 English, to the Office of Insurance Regulation annually by March  
 57 1:

58 a. The name of the insurer; the country of domicile; the

Page 2 of 9

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16-00583A-12 20121844  
 59 address of the insurer's principal office and office in this  
 60 state; the names of the owners of the insurer and their  
 61 percentage of ownership; the names of the officers and directors  
 62 of the insurer; the name, e-mail, and telephone number of a  
 63 contact person for the insurer; and the number of individuals  
 64 who are employed by the insurer or its affiliates in this state;

65 b. The lines of insurance and types of products offered by  
 66 the insurer other than life insurance policies or annuity  
 67 contracts;

68 c. A statement from the applicable regulatory body of the  
 69 insurer's domicile certifying that the insurer is licensed or  
 70 registered for those lines of insurance and types of products in  
 71 that domicile; and

72 d. A copy of the filings required by the applicable  
 73 regulatory body of the insurer's country of domicile in that  
 74 country's official language or in English, if available;

75 4. All certificates, policies, or contracts issued in this  
 76 state showing coverage under the insurer's policy include the  
 77 following statement in a contrasting color and at least 10-point  
 78 type: "The policy providing your coverage and the insurer  
 79 providing this policy have not been approved by the Florida  
 80 Office of Insurance Regulation"; and

81 5. In the event the insurer ceases to do business from this  
 82 state, the insurer will provide written notification to the  
 83 office within 30 days after cessation.

84 (b) For purposes of this subsection and subsection (9), the  
 85 term "nonresident" means a trust or other entity organized and  
 86 domiciled under the laws of a country other than the United  
 87 States or a person who resides in and maintains a physical place

16-00583A-12 20121844  
 88 of domicile in a country other than the United States, which he  
 89 or she recognizes as and intends to maintain as his or her  
 90 permanent home. A nonresident does not include an unauthorized  
 91 immigrant present in the United States. Notwithstanding any  
 92 other ~~provision of~~ law, it is conclusively presumed, for  
 93 purposes of this subsection, that a person is a resident of the  
 94 United States if the ~~such~~ person has:

95 1. Had his or her principal place of domicile in the United  
 96 States for 180 days or more in the 365 days before ~~prior to~~  
 97 issuance or renewal of the policy;

98 2. Registered to vote in any state;

99 3. Made a statement of domicile in any state; or

100 4. Filed for homestead tax exemption on property in any  
 101 state.

102 (c) Subject to the limitations provided in this subsection,  
 103 services, including those listed in s. 624.10, may be provided  
 104 by the insurer or an affiliated person as defined in s. 624.04  
 105 under common ownership or control with the insurer.

106 (d) An alien insurer transacting insurance in this state  
 107 without complying with this subsection or subsection (9) is  
 108 ~~shall be~~ in violation of this chapter and subject to the  
 109 penalties provided in s. 624.15.

110 (9) (a) A life insurance policy or annuity contract issued  
 111 by an insurer domiciled outside the United States covering only  
 112 persons who, at the time of issuance, are not residents of the  
 113 United States, if:

114 1. The insurer is currently an authorized insurer in its  
 115 country of domicile as to the kind of insurance proposed to be  
 116 offered here and:

16-00583A-12 20121844

- 117 a. Has been an insurer for not less than the immediately  
 118 preceding 3 years;  
 119 b. Is the wholly owned subsidiary of an authorized insurer;  
 120 or  
 121 c. Is the wholly owned subsidiary of an already eligible  
 122 authorized insurer as to the kind of insurance proposed to be  
 123 issued in this state for a period of not less than the  
 124 immediately preceding 3 years.

125  
 126 The Office of Insurance Regulation may waive the 3-year  
 127 requirement if the insurer has operated successfully for a  
 128 period of at least the immediately preceding year and has  
 129 capital and surplus of not less than \$25 million.

130 2. Before the Office of Insurance Regulation grants the  
 131 insurer eligibility to issue policies or contracts in this  
 132 state, the requesting insurer furnishes the office with a duly  
 133 authenticated copy of its current annual financial statement, in  
 134 English, and with all monetary values therein expressed in  
 135 United States dollars, at an exchange rate then-current and  
 136 shown in the statement, in the case of statements originally  
 137 made in the currencies of other countries, and with such  
 138 additional information as the office may request.

139 3. The insurer has and maintains surplus as to its  
 140 policyholders of not less than \$15 million. Any surplus in favor  
 141 of policyholders shall be represented by investments consisting  
 142 of eligible investments for like funds of like domestic insurers  
 143 under part II of chapter 625. However, any surplus in favor to  
 144 policyholders may be represented by investments permitted by the  
 145 domestic regulator of such alien insurance company if the

16-00583A-12 20121844

146 investments are substantially similar in terms of quality,  
 147 liquidity, and security to eligible investments for like funds  
 148 of like domestic insurers under part II of chapter 625.

149 4. The insurer has a good reputation for providing service  
 150 to its policyholders and the payment of losses and claims.

151 5. The insurer furnishes the Office of Insurance Regulation  
 152 within the time period specified in s. 624.424(1) a duly  
 153 authenticated copy of its current annual and quarterly financial  
 154 statements, in English, and with all monetary values therein  
 155 expressed in United States dollars, at an exchange rate then-  
 156 current and shown in the statement, in the case of statements  
 157 originally made in the currencies of other countries, and with  
 158 such additional information relative to the insurer as the  
 159 office may request.

160 6. The insurer agrees to make its books and records  
 161 pertaining to its operations in this state available for  
 162 inspection during normal business hours at the request of the  
 163 office.

164 7. The insurer agrees to notify the applicant for a policy  
 165 or contract in clear and conspicuous language:

166 a. The date the insurer was organized.

167 b. The identity of and rating assigned by each recognized  
 168 insurance company rating organization that has rated the insurer  
 169 or, if applicable, whether the insurer is unrated.

170 c. That the insurer does not hold a certificate of  
 171 authority issued in this state and that the Office of Insurance  
 172 Regulation does not exercise regulatory oversight over the  
 173 insurer.

174 d. The identity and address of the regulatory authority

16-00583A-12 20121844

175 exercising oversight of the insurer.

176

177 This paragraph does not impose upon the Office of Insurance  
 178 Regulation any duty or responsibility to determine the actual  
 179 financial condition or claims practices of an unauthorized  
 180 insurer, and the status of eligibility, if granted by the  
 181 office, indicates only that the insurer appears to be  
 182 financially sound and to have satisfactory claims practices and  
 183 that the office has no credible evidence to the contrary.

184 (b) If at any time the Office of Insurance Regulation has  
 185 reason to believe that an insurer issuing policies or contracts  
 186 pursuant to this subsection is insolvent or is in unsound  
 187 financial condition, does not make reasonable prompt payment of  
 188 benefits, or is no longer eligible to issue policies or  
 189 contracts under the conditions specified in this subsection, the  
 190 office may conduct an examination or investigation in accordance  
 191 with s. 624.316, s. 624.3161, or s. 624.320 and, if the findings  
 192 of the examination or investigation warrant, may withdraw the  
 193 eligibility of the insurer to issue policies or contracts  
 194 pursuant to this subsection without having a certificate of  
 195 authority issued by the office.

196 (c) This subsection does not provide an exception to the  
 197 agent licensure requirements of chapter 626. An insurer issuing  
 198 policies or contracts pursuant to this subsection shall appoint  
 199 the agents that the insurer uses to sell such policies or  
 200 contracts as provided in chapter 626.

201 (d) An insurer issuing policies or contracts pursuant to  
 202 this subsection is subject to part IX of chapter 626, relating  
 203 to unfair insurance trade practices, and the office may take

16-00583A-12 20121844

204 such action against the insurer for a violation as are provided  
 205 in that part.

206 (e) Policies and contracts issued pursuant to this  
 207 subsection are not subject to the premium tax specified in s.  
 208 624.509.

209 (f) An application for life insurance coverage or an  
 210 annuity contract offered under this subsection must contain, in  
 211 contrasting color and not less than 12-point type, the following  
 212 statement on the same page as the applicant's signature:

213

214 This policy is primarily governed by the laws of a  
 215 foreign country. As a result, all of the rating and  
 216 underwriting laws applicable to policies filed in this  
 217 state do not apply to this coverage, which may result  
 218 in your premiums being higher than would be  
 219 permissible under a Florida-approved policy. Any  
 220 purchase of individual life insurance should be  
 221 considered carefully, as future medical conditions may  
 222 make it impossible to qualify for another individual  
 223 life policy. If the insurer issuing your policy  
 224 becomes insolvent, this policy is not covered by the  
 225 Florida Life and Health Insurance Guaranty  
 226 Association. For information concerning individual  
 227 life coverage under a Florida-approved policy, consult  
 228 your agent or the Florida Department of Financial  
 229 Services.

230

231 (g) All life insurance policies and annuity contracts  
 232 issued pursuant to this subsection must contain on the first

16-00583A-12

20121844

233 page of the policy or contract, in contrasting color and not  
234 less than 10-point type, the following statement:

235

236 The benefits of the policy providing your coverage are  
237 governed primarily by the law of a country other than  
238 the United States.

239

240 (h) All single-premium life insurance policies and single-  
241 premium annuity contracts issued to persons who are not  
242 residents of the United States and are not nonresidents  
243 illegally residing in the United States pursuant to this  
244 subsection are subject to chapter 896.

245

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/02/2012	.	
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	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 299 - 1509  
and insert:  
Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, unless exempted under s. 627.736(5)(h), or under the Florida Motor Vehicle No-Fault Emergency Care Coverage Law, unless exempted under s. 627.7485(1)(a)2.

Section 3. Subsection (6) is added to section 400.991, Florida Statutes, to read:



791184

13 400.991 License requirements; background screenings;  
14 prohibitions.—

15 (6) All agency forms for licensure application or exemption  
16 from licensure under this part must contain the following  
17 statement:

18  
19 INSURANCE FRAUD NOTICE.—A person who knowingly submits  
20 a false, misleading, or fraudulent application or  
21 other document when applying for licensure as a health  
22 care clinic, seeking an exemption from licensure as a  
23 health care clinic, or demonstrating compliance with  
24 part X of chapter 400, Florida Statutes, with the  
25 intent to use the license, exemption from licensure,  
26 or demonstration of compliance to provide services or  
27 seek reimbursement under the Florida Motor Vehicle No-  
28 Fault Law or the Florida Motor Vehicle No-Fault  
29 Emergency Care Coverage Law, commits a fraudulent  
30 insurance act, as defined in s. 626.989, Florida  
31 Statutes. A person who presents a claim for personal  
32 injury protection or emergency care coverage benefits  
33 knowing that the payee knowingly submitted such health  
34 care clinic application or document, commits insurance  
35 fraud, as defined in s. 817.234, Florida Statutes.

36  
37 Section 4. Subsection (1) of section 626.989, Florida  
38 Statutes, is amended to read:

39 626.989 Investigation by department or Division of  
40 Insurance Fraud; compliance; immunity; confidential information;  
41 reports to division; division investigator's power of arrest.—



791184

42 (1) For the purposes of this section:7

43 (a) A person commits a "fraudulent insurance act" if the  
44 person:

45 1. Knowingly and with intent to defraud presents, causes to  
46 be presented, or prepares with knowledge or belief that it will  
47 be presented, to or by an insurer, self-insurer, self-insurance  
48 fund, servicing corporation, purported insurer, broker, or any  
49 agent thereof, any written statement as part of, or in support  
50 of, an application for the issuance of, or the rating of, any  
51 insurance policy, or a claim for payment or other benefit  
52 pursuant to any insurance policy, which the person knows to  
53 contain materially false information concerning any fact  
54 material thereto or if the person conceals, for the purpose of  
55 misleading another, information concerning any fact material  
56 thereto.

57 2. Knowingly submits:

58 a. A false, misleading, or fraudulent application or other  
59 document when applying for licensure as a health care clinic,  
60 seeking an exemption from licensure as a health care clinic, or  
61 demonstrating compliance with part X of chapter 400 with an  
62 intent to use the license, exemption from licensure, or  
63 demonstration of compliance to provide services or seek  
64 reimbursement under the Florida Motor Vehicle No-Fault Law or  
65 the Florida Motor Vehicle No-Fault Emergency Care Coverage Law.

66 b. A claim for payment or other benefit pursuant to an  
67 insurance policy under the Florida Motor Vehicle No-Fault Law or  
68 the Florida Motor Vehicle No-Fault Emergency Care Coverage Law  
69 if the person knows that the payee knowingly submitted a false,  
70 misleading, or fraudulent application or other document when



791184

71 applying for licensure as a health care clinic, seeking an  
72 exemption from licensure as a health care clinic, or  
73 demonstrating compliance with part X of chapter 400. For the  
74 purposes of this section,

75 (b) The term "insurer" also includes a any health  
76 maintenance organization, and the term "insurance policy" also  
77 includes a health maintenance organization subscriber contract.

78 Section 5. Section 626.9895, Florida Statutes, is created  
79 to read:

80 626.9895 Motor vehicle insurance fraud direct-support  
81 organization.-

82 (1) DEFINITIONS.-As used in this section, the term:

83 (a) "Division" means the Division of Insurance Fraud of the  
84 Department of Financial Services.

85 (b) "Motor vehicle insurance fraud" means any act defined  
86 as a "fraudulent insurance act" under s. 626.989, which relates  
87 to the coverage of motor vehicle insurance as described in part  
88 XI of chapter 627.

89 (c) "Organization" means the direct-support organization  
90 established under this section.

91 (2) ORGANIZATION ESTABLISHED.-The division may establish a  
92 direct-support organization, to be known as the "Automobile  
93 Insurance Fraud Strike Force," whose sole purpose is to support  
94 the prosecution, investigation, and prevention of motor vehicle  
95 insurance fraud. The organization shall:

96 (a) Be a not-for-profit corporation incorporated under  
97 chapter 617 and approved by the Department of State.

98 (b) Be organized and operated to conduct programs and  
99 activities; raise funds; request and receive grants, gifts, and



791184

100 bequests of money; acquire, receive, hold, invest, and  
101 administer, in its own name, securities, funds, objects of  
102 value, or other property, real or personal; and make grants and  
103 expenditures to or for the direct or indirect benefit of the  
104 division, state attorneys' offices, the statewide prosecutor,  
105 the Agency for Health Care Administration, and the Department of  
106 Health to the extent that such grants and expenditures are used  
107 exclusively to advance the prosecution, investigation, or  
108 prevention of motor vehicle insurance fraud. Grants and  
109 expenditures may include the cost of salaries or benefits of  
110 motor vehicle insurance fraud investigators, prosecutors, or  
111 support personnel if such grants and expenditures do not  
112 interfere with prosecutorial independence or otherwise create  
113 conflicts of interest which threaten the success of  
114 prosecutions.

115 (c) Be determined by the division to operate in a manner  
116 that promotes the goals of laws relating to motor vehicle  
117 insurance fraud, that is in the best interest of the state, and  
118 that is in accordance with the adopted goals and mission of the  
119 division.

120 (d) Use all of its grants and expenditures solely for the  
121 purpose of preventing and decreasing motor vehicle insurance  
122 fraud, and not for the purpose of lobbying as defined in s.  
123 11.045.

124 (e) Be subject to an annual financial audit in accordance  
125 with s. 215.981.

126 (3) CONTRACT.—The organization shall operate under written  
127 contract with the division. The contract must provide for:

128 (a) Approval of the articles of incorporation and bylaws of



791184

129 the organization by the division.

130 (b) Submission of an annual budget for approval of the  
131 division. The budget must require the organization to minimize  
132 costs to the division and its members at all times by using  
133 existing personnel and property and allowing for telephonic  
134 meetings, if appropriate.

135 (c) Certification by the division that the organization is  
136 complying with the terms of the contract and in a manner  
137 consistent with the goals and purposes of the department and in  
138 the best interest of the state. Such certification must be made  
139 annually and reported in the official minutes of a meeting of  
140 the organization.

141 (d) Allocation of funds to address motor vehicle insurance  
142 fraud.

143 (e) Reversion of moneys and property held in trust by the  
144 organization for motor vehicle insurance fraud prosecution,  
145 investigation, and prevention to the division if the  
146 organization is no longer approved to operate for the department  
147 or if the organization ceases to exist, or to the state if the  
148 division ceases to exist.

149 (f) Specific criteria to be used by the organization's  
150 board of directors to evaluate the effectiveness of funding used  
151 to combat motor vehicle insurance fraud.

152 (g) The fiscal year of the organization, which begins July  
153 1 of each year and ends June 30 of the following year.

154 (h) Disclosure of the material provisions of the contract,  
155 and distinguishing between the department and the organization  
156 to donors of gifts, contributions, or bequests, including  
157 providing such disclosure on all promotional and fundraising



791184

158 publications.

159 (4) BOARD OF DIRECTORS.—

160 (a) The board of directors of the organization shall  
161 consist of the following eleven members:

162 1. The Chief Financial Officer, or designee, who shall  
163 serve as chair.

164 2. Two state attorneys, one of whom shall be appointed by  
165 the Chief Financial Officer and one of whom shall be appointed  
166 by the Attorney General.

167 3. Two representatives of motor vehicle insurers appointed  
168 by the Chief Financial Officer.

169 4. Two representatives of local law enforcement agencies,  
170 one of whom shall be appointed by the Chief Financial Officer  
171 and one of whom shall be appointed by the Attorney General.

172 5. Two representatives of the types of health care  
173 providers who regularly make claims for benefits under the  
174 Florida Motor Vehicle No-Fault Law or the Florida Motor Vehicle  
175 No-Fault Emergency Care Coverage Law, one of whom shall be  
176 appointed by the President of the Senate and one of whom shall  
177 be appointed by the Speaker of the House of Representatives. The  
178 appointees may not represent the same type of health care  
179 provider.

180 6. A private attorney who has experience in representing  
181 claimants in actions for benefits under the Florida Motor  
182 Vehicle No-Fault Law, who shall be appointed by the President of  
183 the Senate.

184 7. A private attorney who has experience in representing  
185 insurers in actions for benefits under the Florida Motor Vehicle  
186 No-Fault Law, who shall be appointed by the Speaker of the House



791184

187 of Representatives.

188 (b) The officer who appointed a member of the board may  
189 remove that member for cause. The term of office of an appointed  
190 member expires at the same time as the term of the officer who  
191 appointed him or her or at such earlier time as the person  
192 ceases to be qualified.

193 (5) USE OF PROPERTY.—The department may authorize, without  
194 charge, appropriate use of fixed property and facilities of the  
195 division by the organization, subject to this subsection.

196 (a) The department may prescribe any condition with which  
197 the organization must comply in order to use the division's  
198 property or facilities.

199 (b) The department may not authorize the use of the  
200 division's property or facilities if the organization does not  
201 provide equal membership and employment opportunities to all  
202 persons regardless of race, religion, sex, age, or national  
203 origin.

204 (c) The department shall adopt rules prescribing the  
205 procedures by which the organization is governed and any  
206 conditions with which the organization must comply to use the  
207 division's property or facilities.

208 (6) CONTRIBUTIONS FROM INSURERS.—Contributions from an  
209 insurer to the organization shall be allowed as an appropriate  
210 business expense of the insurer for all regulatory purposes.

211 (7) DEPOSITORY ACCOUNT.—Any moneys received by the  
212 organization may be held in a separate depository account in the  
213 name of the organization and subject to the contract with the  
214 division.

215 (8) DIVISION'S RECEIPT OF PROCEEDS.—Proceeds received by



791184

216 the division from the organization shall be deposited into the  
217 Insurance Regulatory Trust Fund.

218 Section 6. Subsection (12) of section 627.0651, Florida  
219 Statutes, is amended to read:

220 627.0651 Making and use of rates for motor vehicle  
221 insurance.—

222 (12) (a) Any portion of a judgment entered as a result of a  
223 statutory or common-law bad faith action and any portion of a  
224 judgment entered which awards punitive damages against an  
225 insurer may ~~shall~~ not be included in the insurer's rate base,  
226 and ~~shall not be~~ used to justify a rate or rate change. Any  
227 portion of a settlement entered as a result of a statutory or  
228 common-law bad faith action identified as such and any portion  
229 of a settlement wherein an insurer agrees to pay specific  
230 punitive damages may ~~shall~~ not be used to justify a rate or rate  
231 change. The portion of the taxable costs and attorney ~~attorney's~~  
232 fees which is identified as being related to the bad faith and  
233 punitive damages in these judgments and settlements may ~~shall~~  
234 not be included in the insurer's rate base and used ~~shall not be~~  
235 ~~utilized~~ to justify a rate or rate change.

236 (b) Any portion of a judgment or settlement for taxable  
237 costs and attorney fees in favor of a prevailing plaintiff  
238 against an insurer in a claim for benefits under the Florida  
239 Motor Vehicle No-Fault Law or the Florida Motor Vehicle No-Fault  
240 Emergency Care Coverage Law may not be included in the insurer's  
241 rate base and used to justify a rate or rate change.

242 Section 6. Subsection (6) is added to section 627.733,  
243 Florida Statutes, to read:

244 627.733 Required security.—



791184

245           (6) The owner or registrant of a motor vehicle otherwise  
246 subject to this section is not required to maintain the security  
247 described herein if the owner or registrant maintains the  
248 security required under s. 627.7483.

249           Section 7. Subsections (1), (4), (5), (8), (9), (10), (11),  
250 and (16) of section 627.736, Florida Statutes, are amended to  
251 read:

252           627.736 Required personal injury protection benefits;  
253 exclusions; priority; claims.—

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

266           (a) *Medical benefits.*—Eighty percent of all reasonable  
267 expenses for medically necessary medical, surgical, X-ray,  
268 dental, and rehabilitative services, including prosthetic  
269 devices, and medically necessary ambulance, hospital, and  
270 nursing services. Medical benefits do not include massage as  
271 defined in s. 480.033 or acupuncture as defined in s. 457.102.  
272 ~~However,~~ The medical benefits shall provide reimbursement only  
273 for ~~such~~ services and care that are lawfully provided,



791184

274 supervised, ordered, or prescribed by a physician licensed under  
275 chapter 458 or chapter 459, a dentist licensed under chapter  
276 466, or a chiropractic physician licensed under chapter 460 or  
277 that are provided by any of the following ~~persons or entities~~:

278 1. A hospital or ambulatory surgical center licensed under  
279 chapter 395.

280 2. A person or entity licensed under part III of chapter  
281 401 which ~~ss. 401.2101-401.45~~ that provides emergency  
282 transportation and treatment.

283 3. An entity wholly owned by one or more physicians  
284 licensed under chapter 458 or chapter 459, chiropractic  
285 physicians licensed under chapter 460, or dentists licensed  
286 under chapter 466 or by such ~~practitioner or~~ practitioners and  
287 the spouse, parent, child, or sibling of such ~~that practitioner~~  
288 ~~or these~~ practitioners.

289 4. An entity wholly owned, directly or indirectly, by a  
290 hospital or hospitals.

291 5. A health care clinic licensed under part X of chapter  
292 400 which ~~ss. 400.990-400.995~~ that is:

293 a. A health care clinic accredited by the Joint Commission  
294 on Accreditation of Healthcare Organizations, the American  
295 Osteopathic Association, the Commission on Accreditation of  
296 Rehabilitation Facilities, or the Accreditation Association for  
297 Ambulatory Health Care, Inc.; or

298 b. A health care clinic that:

299 (I) Has a medical director licensed under chapter 458,  
300 chapter 459, or chapter 460;

301 (II) Has been continuously licensed for more than 3 years  
302 or is a publicly traded corporation that issues securities



791184

303 traded on an exchange registered with the United States  
304 Securities and Exchange Commission as a national securities  
305 exchange; and

306 (III) Provides at least four of the following medical  
307 specialties:

308 (A) General medicine.

309 (B) Radiography.

310 (C) Orthopedic medicine.

311 (D) Physical medicine.

312 (E) Physical therapy.

313 (F) Physical rehabilitation.

314 (G) Prescribing or dispensing outpatient prescription  
315 medication.

316 (H) Laboratory services.

317

318 The Financial Services Commission shall adopt by rule the form  
319 that must be used by an insurer and a health care provider  
320 specified in subparagraph 3., subparagraph 4., or subparagraph  
321 5. to document that the health care provider meets the criteria  
322 of this paragraph, which rule must include a requirement for a  
323 sworn statement or affidavit.

324 (b) *Disability benefits.*—Sixty percent of any loss of gross  
325 income and loss of earning capacity per individual from  
326 inability to work proximately caused by the injury sustained by  
327 the injured person, plus all expenses reasonably incurred in  
328 obtaining from others ordinary and necessary services in lieu of  
329 those that, but for the injury, the injured person would have  
330 performed without income for the benefit of his or her  
331 household. All disability benefits payable under this provision



791184

332 ~~must shall~~ be paid at least ~~not less than~~ every 2 weeks.

333 (c) *Death benefits.*—Death benefits equal to the lesser of  
334 \$5,000 or the remainder of unused personal injury protection  
335 benefits per individual. The insurer shall give priority to the  
336 payment of death benefits over the payment of other benefits of  
337 the deceased and, upon learning of the death of the individual,  
338 shall stop paying the other benefits until the death benefits  
339 are paid. The insurer may pay death ~~such~~ benefits to the  
340 executor or administrator of the deceased, to any of the  
341 deceased's relatives by blood, ~~or~~ legal adoption, or ~~connection~~  
342 ~~by marriage,~~ or to any person appearing to the insurer to be  
343 equitably entitled to such benefits ~~thereto.~~

344  
345 ~~Only insurers writing motor vehicle liability insurance in this~~  
346 ~~state may provide the required benefits of this section, and no~~  
347 ~~such insurer shall require the purchase of any other motor~~  
348 ~~vehicle coverage other than the purchase of property damage~~  
349 ~~liability coverage as required by s. 627.7275 as a condition for~~  
350 ~~providing such required benefits. Insurers may not require that~~  
351 ~~property damage liability insurance in an amount greater than~~  
352 ~~\$10,000 be purchased in conjunction with personal injury~~  
353 ~~protection. Such insurers shall make benefits and required~~  
354 ~~property damage liability insurance coverage available through~~  
355 ~~normal marketing channels. Any insurer writing motor vehicle~~  
356 ~~liability insurance in this state who fails to comply with such~~  
357 ~~availability requirement as a general business practice shall be~~  
358 ~~deemed to have violated part IX of chapter 626, and such~~  
359 ~~violation shall constitute an unfair method of competition or an~~  
360 ~~unfair or deceptive act or practice involving the business of~~



791184

361 ~~insurance; and any such insurer committing such violation shall~~  
362 ~~be subject to the penalties afforded in such part, as well as~~  
363 ~~those which may be afforded elsewhere in the insurance code.~~

364 (4) PAYMENT OF BENEFITS; WHEN DUE. ~~Except for emergency~~  
365 ~~care coverage under ss. 627.748-627.7491, personal injury~~  
366 ~~protection benefits due from an insurer under ss. 627.730-~~  
367 ~~627.7405 are shall be~~ primary, except that benefits received  
368 under any workers' compensation law must ~~shall~~ be credited  
369 against the benefits provided by subsection (1) and are ~~shall be~~  
370 due and payable as loss accrues, upon receipt of reasonable  
371 proof of such loss and the amount of expenses and loss incurred  
372 which are covered by the policy issued under ss. 627.730-  
373 627.7405. If ~~When~~ the Agency for Health Care Administration  
374 provides, pays, or becomes liable for medical assistance under  
375 the Medicaid program related to injury, sickness, disease, or  
376 death arising out of the ownership, maintenance, or use of a  
377 motor vehicle, the benefits under ss. 627.730-627.7405 are ~~shall~~  
378 ~~be~~ subject to the provisions of the Medicaid program. However,  
379 within 30 days after receiving notice that the Medicaid program  
380 paid such benefits, the insurer shall repay the full amount of  
381 the benefits to the Medicaid program.

382 (a) An insurer may require written notice to be given as  
383 soon as practicable after an accident involving a motor vehicle  
384 with respect to which the policy affords the security required  
385 by ss. 627.730-627.7405.

386 (b) ~~Personal injury protection insurance~~ Benefits paid  
387 pursuant to this section are ~~shall be~~ overdue if not paid within  
388 30 days after the insurer is furnished written notice of the  
389 fact of a covered loss and of the amount of same. However:



791184

390           1. If ~~such~~ written notice of the entire claim is not  
391 furnished to the insurer ~~as to the entire claim~~, any partial  
392 amount supported by written notice is overdue if not paid within  
393 30 days after ~~such~~ written notice is furnished to the insurer.  
394 Any part or all of the remainder of the claim that is  
395 subsequently supported by written notice is overdue if not paid  
396 within 30 days after ~~such~~ written notice is furnished to the  
397 insurer.

398           2. If ~~When~~ an insurer pays only a portion of a claim or  
399 rejects a claim, the insurer shall provide at the time of the  
400 partial payment or rejection an itemized specification of each  
401 item that the insurer had reduced, omitted, or declined to pay  
402 and any information that the insurer desires the claimant to  
403 consider related to the medical necessity of the denied  
404 treatment or to explain the reasonableness of the reduced charge  
405 ~~if, provided that~~ this does shall not limit the introduction of  
406 evidence at trial. ~~and~~ The insurer must also shall include the  
407 name and address of the person to whom the claimant should  
408 respond and a claim number to be referenced in future  
409 correspondence.

410           3. If an insurer pays only a portion of a claim or rejects  
411 a claim due to an alleged error in the claim, the insurer shall  
412 provide at the time of the partial payment or rejection an  
413 itemized specification or explanation of benefits of the  
414 specified error. Upon receiving the specification or  
415 explanation, the person making the claim has, at the person's  
416 option and without waiving any other legal remedy for payment,  
417 15 days to submit a revised claim. The revised claim shall be  
418 considered a timely submission of written notice of a claim.



791184

419           4. ~~However,~~ Notwithstanding ~~the fact~~ that written notice  
420 has been furnished to the insurer, ~~any~~ payment is ~~shall~~ not ~~be~~  
421 ~~deemed~~ overdue if ~~when~~ the insurer has reasonable proof ~~to~~  
422 ~~establish~~ that the insurer is not responsible for the payment.

423           5. For the purpose of calculating the extent to which ~~any~~  
424 benefits are overdue, payment shall be treated as being made on  
425 the date a draft or other valid instrument that ~~which~~ is  
426 equivalent to payment was placed in the United States mail in a  
427 properly addressed, postpaid envelope or, if not so posted, on  
428 the date of delivery.

429           6. This paragraph does not preclude or limit the ability of  
430 the insurer to assert that the claim was unrelated, was not  
431 medically necessary, or was unreasonable or that the amount of  
432 the charge was in excess of that permitted under, or in  
433 violation of, subsection (5). Such assertion ~~by the insurer~~ may  
434 be made at any time, including after payment of the claim or  
435 after the 30-day ~~time~~ period for payment set forth in this  
436 paragraph.

437           (c) Upon receiving notice of an accident that is  
438 potentially covered by personal injury protection benefits, the  
439 insurer must reserve \$5,000 of coverage ~~of personal injury~~  
440 ~~protection benefits~~ for payment to physicians licensed under  
441 chapter 458 or chapter 459 or dentists licensed under chapter  
442 466 who provide emergency services and care, as defined in s.  
443 395.002(9), or who provide hospital inpatient care.

444  
445 The amount required to be held in reserve may be used only to  
446 pay claims from such physicians or dentists until 30 days after  
447 the date the insurer receives notice of the accident. After the



791184

448 30-day period, any amount of the reserve for which the insurer  
449 has not received notice of such claims ~~a claim from a physician~~  
450 ~~or dentist who provided emergency services and care or who~~  
451 ~~provided hospital inpatient care~~ may then be used by the insurer  
452 to pay other claims. The time periods specified in paragraph (b)  
453 for ~~required~~ payment of ~~personal injury protection~~ benefits are  
454 ~~shall be~~ tolled for the period of time that an insurer is  
455 ~~required by this paragraph~~ to hold payment of a claim that is  
456 not from a physician or dentist ~~who provided emergency services~~  
457 ~~and care or who provided hospital inpatient care~~ to the extent  
458 that the amount ~~personal injury protection~~ benefits not held in  
459 reserve is ~~are~~ insufficient to pay the claim. This paragraph  
460 does not require an insurer to establish a claim reserve for  
461 insurance accounting purposes.

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

469 (e) The insurer of the owner of a motor vehicle shall pay  
470 personal injury protection benefits for:

471 1. Accidental bodily injury sustained in this state by the  
472 owner while occupying a motor vehicle, or while not an occupant  
473 of a self-propelled vehicle if the injury is caused by physical  
474 contact with a motor vehicle.

475 2. Accidental bodily injury sustained outside this state,  
476 but within the United States of America or its territories or



791184

477 possessions or Canada, by the owner while occupying the owner's  
478 motor vehicle.

479 3. Accidental bodily injury sustained by a relative of the  
480 owner residing in the same household, under the circumstances  
481 described in subparagraph 1. or subparagraph 2., if provided the  
482 relative at the time of the accident is domiciled in the owner's  
483 household and is not ~~himself or herself~~ the owner of a motor  
484 vehicle with respect to which security is required under ss.  
485 627.730-627.7405.

486 4. Accidental bodily injury sustained in this state by any  
487 other person while occupying the owner's motor vehicle or, if a  
488 resident of this state, while not an occupant of a self-  
489 propelled vehicle, ~~if the injury is caused by physical contact~~  
490 with such motor vehicle, if provided the injured person is not  
491 ~~himself or herself~~:

492 a. The owner of a motor vehicle for ~~with respect to~~ which  
493 personal injury protection benefits have been obtained pursuant  
494 to security is required under ss. 627.730-627.7405; or

495 b. Entitled to personal injury benefits from the insurer of  
496 the owner ~~or owners~~ of such a motor vehicle.

497 (f) If two or more insurers are liable for paying ~~to pay~~  
498 personal injury protection benefits for the same injury to any  
499 one person, the maximum payable is ~~shall be~~ as specified in  
500 subsection (1), and the any insurer paying the benefits is ~~shall~~  
501 ~~be~~ entitled to recover from each of the other insurers an  
502 equitable pro rata share of the benefits paid and expenses  
503 incurred in processing the claim.

504 (g) It is a violation of the insurance code for an insurer  
505 to fail to timely provide benefits as required by this section



791184

506 with such frequency as to constitute a general business  
507 practice.

508 (h) Benefits are ~~shall~~ not be due or payable to or on the  
509 behalf of an insured person if that person has committed, by a  
510 material act or omission, ~~any~~ insurance fraud relating to  
511 personal injury protection coverage under his or her policy, if  
512 the fraud is admitted to in a sworn statement by the insured or  
513 ~~if it is~~ established in a court of competent jurisdiction. Any  
514 insurance fraud voids ~~shall void~~ all coverage arising from the  
515 claim related to such fraud under the personal injury protection  
516 coverage of the insured person who committed the fraud,  
517 irrespective of whether a portion of the insured person's claim  
518 may be legitimate, and any benefits paid before ~~prior to~~ the  
519 discovery of the ~~insured person's insurance~~ fraud is ~~shall be~~  
520 recoverable by the insurer in its entirety from the person who  
521 committed insurance fraud ~~in their entirety~~. The prevailing  
522 party is entitled to its costs and attorney ~~attorney's~~ fees in  
523 any action in which it prevails in an insurer's action to  
524 enforce its right of recovery under this paragraph.

525 (i) An insurer shall create and maintain for each insured a  
526 log of personal injury protection benefits paid by the insurer  
527 on behalf of the insured. The insurer shall provide to the  
528 insured, or an assignee of the insured, a copy of the log within  
529 30 days after receiving a request for the log from the insured  
530 or the assignee.

531 (j) In a dispute between the insured and the insurer, or  
532 between an assignee of the insured's rights and the insurer, the  
533 insurer must notify the insured or the assignee that the policy  
534 limits under this section have been reached within 15 days after



791184

535 the limits have been reached.

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

537 (a)~~1.~~ A Any physician, hospital, clinic, or other person or  
538 institution lawfully rendering treatment to an injured person  
539 for a bodily injury covered by personal injury protection  
540 insurance may charge the insurer and injured party only a  
541 reasonable amount pursuant to this section for the services and  
542 supplies rendered, and the insurer providing such coverage may  
543 pay for such charges directly to such person or institution  
544 lawfully rendering such treatment~~;~~ if the insured receiving such  
545 treatment or his or her guardian has countersigned the properly  
546 completed invoice, bill, or claim form approved by the office  
547 upon which such charges are to be paid for as having actually  
548 been rendered, to the best knowledge of the insured or his or  
549 her guardian. ~~In no event,~~ However, ~~may~~ such a charge may not  
550 exceed ~~be in excess of~~ the amount the person or institution  
551 customarily charges for like services or supplies. In  
552 determining ~~With respect to a determination of~~ whether a charge  
553 for a particular service, treatment, or supply ~~otherwise~~ is  
554 reasonable, consideration may be given to evidence of usual and  
555 customary charges and payments accepted by the provider involved  
556 in the dispute, ~~and~~ reimbursement levels in the community and  
557 various federal and state medical fee schedules applicable to  
558 motor vehicle ~~automobile~~ and other insurance coverages, and  
559 other information relevant to the reasonableness of the  
560 reimbursement for the service, treatment, or supply.

561 1.2. The insurer may limit reimbursement to 80 percent of  
562 the following schedule of maximum charges:

563 a. For emergency transport and treatment by providers



791184

564 licensed under chapter 401, 200 percent of Medicare.  
565       b. For emergency services and care provided by a hospital  
566 licensed under chapter 395, 75 percent of the hospital's usual  
567 and customary charges.  
568       c. For emergency services and care as defined by s.  
569 395.002~~(9)~~ provided in a facility licensed under chapter 395  
570 rendered by a physician or dentist, and related hospital  
571 inpatient services rendered by a physician or dentist, the usual  
572 and customary charges in the community.  
573       d. For hospital inpatient services, other than emergency  
574 services and care, 200 percent of the Medicare Part A  
575 prospective payment applicable to the specific hospital  
576 providing the inpatient services.  
577       e. For hospital outpatient services, other than emergency  
578 services and care, 200 percent of the Medicare Part A Ambulatory  
579 Payment Classification for the specific hospital providing the  
580 outpatient services.  
581       f. For all other medical services, supplies, and care, 200  
582 percent of the allowable amount under:  
583       (I) The participating physicians fee schedule of Medicare  
584 Part B, except as provided in sub-sub-subparagraphs (II) and  
585 (III).  
586       (II) Medicare Part B, in the case of services, supplies,  
587 and care provided by ambulatory surgical centers and clinical  
588 laboratories.  
589       (III) The Durable Medical Equipment Prosthetics/Orthotics  
590 and Supplies fee schedule of Medicare Part B, in the case of  
591 durable medical equipment.  
592



791184

593 However, if such services, supplies, or care is not reimbursable  
594 under Medicare Part B, as provided in this sub-subparagraph, the  
595 insurer may limit reimbursement to 80 percent of the maximum  
596 reimbursable allowance under workers' compensation, as  
597 determined under s. 440.13 and rules adopted thereunder which  
598 are in effect at the time such services, supplies, or care is  
599 provided. Services, supplies, or care that is not reimbursable  
600 under Medicare or workers' compensation is not required to be  
601 reimbursed by the insurer.

602 ~~2.3.~~ For purposes of subparagraph 1. 2., the applicable fee  
603 schedule or payment limitation under Medicare is the fee  
604 schedule or payment limitation in effect on January 1 of the  
605 year in which ~~at the time~~ the services, supplies, or care is was  
606 rendered and for the area in which such services, supplies, or  
607 care is were rendered, and the applicable fee schedule or  
608 payment limitation applies throughout the remainder of that  
609 year, notwithstanding any subsequent change made to the fee  
610 schedule or payment limitation, except that it may not be less  
611 than the allowable amount under the applicable participating  
612 ~~physicians~~ schedule of Medicare Part B for 2007 for medical  
613 services, supplies, and care subject to Medicare Part B.

614 ~~3.4.~~ Subparagraph 1. 2. does not allow the insurer to apply  
615 any limitation on the number of treatments or other utilization  
616 limits that apply under Medicare or workers' compensation. An  
617 insurer that applies the allowable payment limitations of  
618 subparagraph 1. 2. must reimburse a provider who lawfully  
619 provided care or treatment under the scope of his or her  
620 license, regardless of whether such provider is would be  
621 entitled to reimbursement under Medicare due to restrictions or



791184

622 limitations on the types or discipline of health care providers  
623 who may be reimbursed for particular procedures or procedure  
624 codes. However, subparagraph 1. does not prohibit an insurer  
625 from using the Medicare coding policies and payment  
626 methodologies of the federal Centers for Medicare and Medicaid  
627 Services, including applicable modifiers, to determine the  
628 appropriate amount of reimbursement for medical services,  
629 supplies, or care if the coding policy or payment methodology  
630 does not constitute a utilization limit.

631 ~~4.5.~~ If an insurer limits payment as authorized by  
632 subparagraph 1. 2., the person providing such services,  
633 supplies, or care may not bill or attempt to collect from the  
634 insured any amount in excess of such limits, except for amounts  
635 that are not covered by the insured's personal injury protection  
636 coverage due to the coinsurance amount or maximum policy limits.

637 5. Effective January 1, 2013, an insurer may limit payment  
638 as authorized by this paragraph only if the insurance policy  
639 includes a notice at the time of issuance or renewal that the  
640 insurer may limit payment pursuant to the schedule of charges  
641 specified in this paragraph. A policy form approved by the  
642 office satisfies this requirement. If a provider submits a  
643 charge for an amount less than the amount allowed under  
644 subparagraph 1., the insurer may pay the amount of the charge  
645 submitted.

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

648 a. Made by a broker or by a person making a claim on behalf  
649 of a broker;

650 b. For any service or treatment that was not lawful at the



791184

651 time rendered;

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

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

656 e. For any treatment or service that is upcoded, or that is  
657 unbundled when such treatment or services should be bundled, in  
658 accordance with paragraph (d). To facilitate prompt payment of  
659 lawful services, an insurer may change codes that it determines  
660 ~~to~~ have been improperly or incorrectly upcoded or unbundled, and  
661 may make payment based on the changed codes, without affecting  
662 the right of the provider to dispute the change by the insurer,  
663 if, provided that before doing so, the insurer contacts must  
664 ~~contact~~ the health care provider and discusses discuss the  
665 reasons for the insurer's change and the health care provider's  
666 reason for the coding, or makes make a reasonable good faith  
667 effort to do so, as documented in the insurer's file; and

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

674 2. The Department of Health, in consultation with the  
675 appropriate professional licensing boards, shall adopt, by rule,  
676 a list of diagnostic tests deemed not to be medically necessary  
677 for use in the treatment of persons sustaining bodily injury  
678 covered by personal injury protection benefits under this  
679 section. The ~~initial list shall be adopted by January 1, 2004,~~



791184

680 ~~and~~ shall be revised from time to time as determined by the  
681 Department of Health, in consultation with the respective  
682 professional licensing boards. Inclusion of a test on the list  
683 ~~of invalid diagnostic tests~~ shall be based on lack of  
684 demonstrated medical value and a level of general acceptance by  
685 the relevant provider community and may ~~shall~~ not be dependent  
686 for results entirely upon subjective patient response.  
687 Notwithstanding its inclusion on a fee schedule in this  
688 subsection, an insurer or insured is not required to pay any  
689 charges or reimburse claims for an ~~any~~ invalid diagnostic test  
690 as determined by the Department of Health.

691 (c)~~1~~. With respect to any treatment or service, other than  
692 medical services billed by a hospital or other provider for  
693 emergency services and care as defined in s. 395.002 or  
694 inpatient services rendered at a hospital-owned facility, the  
695 statement of charges must be furnished to the insurer by the  
696 provider and may not include, and the insurer is not required to  
697 pay, charges for treatment or services rendered more than 35  
698 days before the postmark date or electronic transmission date of  
699 the statement, except for past due amounts previously billed on  
700 a timely basis under this paragraph, and except that, if the  
701 provider submits to the insurer a notice of initiation of  
702 treatment within 21 days after its first examination or  
703 treatment of the claimant, the statement may include charges for  
704 treatment or services rendered up to, but not more than, 75 days  
705 before the postmark date of the statement. The injured party is  
706 not liable for, and the provider may ~~shall~~ not bill the injured  
707 party for, charges that are unpaid because of the provider's  
708 failure to comply with this paragraph. Any agreement requiring



791184

709 the injured person or insured to pay for such charges is  
710 unenforceable.

711 ~~1.2.~~ If, ~~however,~~ the insured fails to furnish the provider  
712 with the correct name and address of the insured's personal  
713 injury protection insurer, the provider has 35 days from the  
714 date the provider obtains the correct information to furnish the  
715 insurer with a statement of the charges. The insurer is not  
716 required to pay for such charges unless the provider includes  
717 with the statement documentary evidence that was provided by the  
718 insured during the 35-day period demonstrating that the provider  
719 reasonably relied on erroneous information from the insured and  
720 either:

- 721 a. A denial letter from the incorrect insurer; or  
722 b. Proof of mailing, which may include an affidavit under  
723 penalty of perjury, reflecting timely mailing to the incorrect  
724 address or insurer.

725 ~~2.3.~~ For emergency services and care ~~as defined in s.~~  
726 ~~395.002~~ rendered in a hospital emergency department or for  
727 transport and treatment rendered by an ambulance provider  
728 licensed pursuant to part III of chapter 401, the provider is  
729 not required to furnish the statement of charges within the time  
730 periods established by this paragraph, ~~+~~ and the insurer is ~~shall~~  
731 not ~~be~~ considered to have been furnished with notice of the  
732 amount of covered loss for purposes of paragraph (4) (b) until it  
733 receives a statement complying with paragraph (d), or copy  
734 thereof, which specifically identifies the place of service to  
735 be a hospital emergency department or an ambulance in accordance  
736 with billing standards recognized by the federal Centers for  
737 Medicare and Medicaid Services ~~Health Care Finance~~



791184

738 ~~Administration.~~

739 ~~3.4.~~ Each notice of the insured's rights under s. 627.7401  
740 must include the following statement in at least 12-point type  
741 ~~in type no smaller than 12 points:~~

742

743 BILLING REQUIREMENTS.—Florida law provides ~~Statutes~~  
744 ~~provide~~ that with respect to any treatment or  
745 services, other than certain hospital and emergency  
746 services, the statement of charges furnished to the  
747 insurer by the provider may not include, and the  
748 insurer and the injured party are not required to pay,  
749 charges for treatment or services rendered more than  
750 35 days before the postmark date of the statement,  
751 except for past due amounts previously billed on a  
752 timely basis, and except that, if the provider submits  
753 to the insurer a notice of initiation of treatment  
754 within 21 days after its first examination or  
755 treatment of the claimant, the statement may include  
756 charges for treatment or services rendered up to, but  
757 not more than, 75 days before the postmark date of the  
758 statement.

759

760 (d) All statements and bills for medical services rendered  
761 by a ~~any~~ physician, hospital, clinic, or other person or  
762 institution shall be submitted to the insurer on a properly  
763 completed Centers for Medicare and Medicaid Services (CMS) 1500  
764 form, UB 92 forms, or any other standard form approved by the  
765 office or adopted by the commission for purposes of this  
766 paragraph. All billings for such services rendered by providers



791184

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



791184

796 (e)1. At the initial treatment or service provided, each  
797 physician, other licensed professional, clinic, or other medical  
798 institution providing medical services upon which a claim for  
799 personal injury protection benefits is based shall require an  
800 insured person, or his or her guardian, to execute a disclosure  
801 and acknowledgment form, which reflects at a minimum that:

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

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

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

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

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

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

824 3. Countersignature by the insured, or his or her guardian,



791184

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

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

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

834 6. The ~~This~~ disclosure and acknowledgment form is not  
835 required for services billed by a provider ~~for emergency~~  
836 ~~services as defined in s. 395.002,~~ for emergency services and  
837 care as defined in s. 395.002 rendered in a hospital emergency  
838 department, or for transport and treatment rendered by an  
839 ambulance provider licensed pursuant to part III of chapter 401.

840 7. The Financial Services Commission shall adopt, by rule,  
841 a standard disclosure and acknowledgment form to ~~that shall~~ be  
842 used to fulfill the requirements of this paragraph, ~~effective 90~~  
843 ~~days after such form is adopted and becomes final.~~ The  
844 ~~commission shall adopt a proposed rule by October 1, 2003. Until~~  
845 ~~the rule is final, the provider may use a form of its own which~~  
846 ~~otherwise complies with the requirements of this paragraph.~~

847 8. As used in this paragraph, the term "countersign" or  
848 "countersignature" ~~"countersigned"~~ means a second or verifying  
849 signature, as on a previously signed document, and is not  
850 satisfied by the statement "signature on file" or any similar  
851 statement.

852 9. The requirements of this paragraph apply only with  
853 respect to the initial treatment or service of the insured by a



791184

854 provider. For subsequent treatments or service, the provider  
855 must maintain a patient log signed by the patient, in  
856 chronological order by date of service, which ~~that~~ is consistent  
857 with the services being rendered to the patient as claimed. The  
858 requirement to maintain ~~requirements of this subparagraph for~~  
859 ~~maintaining~~ a patient log signed by the patient may be met by a  
860 hospital that maintains medical records as required by s.  
861 395.3025 and applicable rules and makes such records available  
862 to the insurer upon request.

863 (f) Upon written notification by any person, an insurer  
864 shall investigate any claim of improper billing by a physician  
865 or other medical provider. The insurer shall determine if the  
866 insured was properly billed for only those services and  
867 treatments that the insured actually received. If the insurer  
868 determines that the insured has been improperly billed, the  
869 insurer shall notify the insured, the person making the written  
870 notification, and the provider of its findings and ~~shall~~ reduce  
871 the amount of payment to the provider by the amount determined  
872 to be improperly billed. If a reduction is made due to a such  
873 written notification by any person, the insurer shall pay to the  
874 person 20 percent of the amount of the reduction, up to \$500. If  
875 the provider is arrested due to the improper billing, ~~then~~ the  
876 insurer shall pay to the person 40 percent of the amount of the  
877 reduction, up to \$500.

878 (g) An insurer may not systematically downcode with the  
879 intent to deny reimbursement otherwise due. Such action  
880 constitutes a material misrepresentation under s.  
881 626.9541(1)(i)2.

882 (h) As provided in s. 400.9905, an entity excluded from the



791184

883 definition of a clinic shall be deemed a clinic and must be  
884 licensed under part X of chapter 400 in order to receive  
885 reimbursement under ss. 627.730-627.7405. However, this  
886 licensing requirement does not apply to:

887 1. An entity wholly owned by a physician licensed under  
888 chapter 458 or chapter 459, or by the physician and the spouse,  
889 parent, child, or sibling of the physician;

890 2. An entity wholly owned by a dentist licensed under  
891 chapter 466, or by the dentist and the spouse, parent, child, or  
892 sibling of the dentist;

893 3. An entity wholly owned by a chiropractic physician  
894 licensed under chapter 460, or by the chiropractic physician and  
895 the spouse, parent, child, or sibling of the chiropractic  
896 physician if such entity has filed for a licensing exemption  
897 with the Agency for Health Care Administration;

898 4. A hospital or ambulatory surgical center licensed under  
899 chapter 395; or

900 5. An entity wholly owned, directly or indirectly, by a  
901 hospital or hospitals licensed under chapter 395.

902 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY  
903 ATTORNEY'S FEES.—With respect to any dispute under the  
904 provisions of ss. 627.730-627.7405 between the insured and the  
905 insurer, or between an assignee of an insured's rights and the  
906 insurer, the provisions of ss. ~~s.~~ 627.428 and 768.79 shall  
907 apply, except as provided in subsections (10) and (15).

908 (9) PREFERRED PROVIDERS.—An insurer may negotiate and  
909 contract enter into contracts with preferred licensed health  
910 care providers for the benefits described in this section,  
911 including referred to in this section as "preferred providers,"



791184

912 ~~which shall include~~ health care providers licensed under chapter  
913 ~~chapters~~ 458, chapter 459, chapter 460, chapter 461, or chapter  
914 ~~and~~ 463. The insurer may provide an option to an insured to use  
915 a preferred provider at the time of purchasing ~~purchase~~ of the  
916 policy ~~for personal injury protection benefits~~, if the  
917 requirements of this subsection are met. If the insured elects  
918 to use a provider who is not a preferred provider, whether the  
919 insured purchased a preferred provider policy or a nonpreferred  
920 provider policy, the medical benefits provided by the insurer  
921 shall be as required by this section. If the insured elects to  
922 use a provider who is a preferred provider, the insurer may pay  
923 medical benefits in excess of the benefits required by this  
924 section and may waive or lower the amount of any deductible that  
925 applies to such medical benefits. If the insurer offers a  
926 preferred provider policy to a policyholder or applicant, it  
927 must also offer a nonpreferred provider policy. The insurer  
928 shall provide each insured ~~policyholder~~ with a current roster of  
929 preferred providers in the county in which the insured resides  
930 at the time of purchase of such policy, and shall make such list  
931 available for public inspection during regular business hours at  
932 the insurer's principal office ~~of the insurer~~ within the state.

933 (10) DEMAND LETTER.—

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

940 (b) The notice must ~~required shall~~ state that it is a



791184

941 "demand letter under s. 627.736(10)" and shall state with  
942 specificity:

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

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

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

962 (c) Each notice required by this subsection must be  
963 delivered to the insurer by United States certified or  
964 registered mail, return receipt requested. Such postal costs  
965 shall be reimbursed by the insurer if so requested by the  
966 claimant in the notice, when the insurer pays the claim. Such  
967 notice must be sent to the person and address specified by the  
968 insurer for the purposes of receiving notices under this  
969 subsection. Each licensed insurer, whether domestic, foreign, or



791184

970 alien, shall file with the office designation of the name and  
971 address of the person to whom notices must ~~pursuant to this~~  
972 ~~subsection shall~~ be sent which the office shall make available  
973 on its Internet website. The name and address on file with the  
974 office pursuant to s. 624.422 are ~~shall be~~ deemed the authorized  
975 representative to accept notice pursuant to this subsection if  
976 ~~in the event~~ no other designation has been made.

977 (d) If, within 30 days after receipt of notice by the  
978 insurer, the overdue claim specified in the notice is paid by  
979 the insurer together with applicable interest and a penalty of  
980 10 percent of the overdue amount paid by the insurer, subject to  
981 a maximum penalty of \$250, no action may be brought against the  
982 insurer. If the demand involves an insurer's withdrawal of  
983 payment under paragraph (7) (a) for future treatment not yet  
984 rendered, no action may be brought against the insurer if,  
985 within 30 days after its receipt of the notice, the insurer  
986 mails to the person filing the notice a written statement of the  
987 insurer's agreement to pay for such treatment in accordance with  
988 the notice and to pay a penalty of 10 percent, subject to a  
989 maximum penalty of \$250, when it pays for such future treatment  
990 in accordance with the requirements of this section. To the  
991 extent the insurer determines not to pay any amount demanded,  
992 the penalty is ~~shall~~ not be payable in any subsequent action.  
993 For purposes of this subsection, payment or the insurer's  
994 agreement shall be treated as being made on the date a draft or  
995 other valid instrument that is equivalent to payment, or the  
996 insurer's written statement of agreement, is placed in the  
997 United States mail in a properly addressed, postpaid envelope,  
998 or if not so posted, on the date of delivery. The insurer is not



791184

999 obligated to pay any attorney ~~attorney's~~ fees if the insurer  
1000 pays the claim or mails its agreement to pay for future  
1001 treatment within the time prescribed by this subsection.

1002 (e) The applicable statute of limitation for an action  
1003 under this section shall be tolled for ~~a period of~~ 30 business  
1004 days by the mailing of the notice required by this subsection.

1005 ~~(f) Any insurer making a general business practice of not~~  
1006 ~~paying valid claims until receipt of the notice required by this~~  
1007 ~~subsection is engaging in an unfair trade practice under the~~  
1008 ~~insurance code.~~

1009 (11) FAILURE TO PAY VALID CLAIMS; UNFAIR OR DECEPTIVE  
1010 PRACTICE.—

1011 (a) ~~If An insurer fails to pay valid claims for personal~~  
1012 ~~injury protection with such frequency so as to indicate a~~  
1013 ~~general business practice, the insurer is engaging in a~~  
1014 ~~prohibited unfair or deceptive practice that is subject to the~~  
1015 ~~penalties provided in s. 626.9521 and the office has the powers~~  
1016 ~~and duties specified in ss. 626.9561-626.9601 if the insurer,~~  
1017 ~~with such frequency so as to indicate a general business~~  
1018 ~~practice: with respect thereto~~

1019 1. Fails to pay valid claims for personal injury  
1020 protection; or

1021 2. Fails to pay valid claims until receipt of the notice  
1022 required by subsection (10).

1023 (b) Notwithstanding s. 501.212, the Department of Legal  
1024 Affairs may investigate and initiate actions for a violation of  
1025 this subsection, including, but not limited to, the powers and  
1026 duties specified in part II of chapter 501.

1027 (16) SECURE ELECTRONIC DATA TRANSFER.—~~If all parties~~



791184

1028 ~~mutually and expressly agree,~~ A notice, documentation,  
1029 transmission, or communication of any kind required or  
1030 authorized under ss. 627.730-627.7405 may be transmitted  
1031 electronically if it is transmitted by secure electronic data  
1032 transfer that is consistent with state and federal privacy and  
1033 security laws.

1034 Section 8. Section 627.748, Florida Statutes, is created to  
1035 read:

1036 627.748 Short title.—Sections 627.748-627.7491 may be cited  
1037 as the "Florida Motor Vehicle No-Fault Emergency Care Coverage  
1038 Law."

1039 Section 9. Section 627.7481, Florida Statutes, is created  
1040 to read:

1041 627.7481 Purposes.—The purpose of the Florida Motor Vehicle  
1042 No-Fault Emergency Care Coverage Law is to provide for emergency  
1043 services and care, services and care provided in a hospital,  
1044 prescribed follow-up care, funeral costs, and disability  
1045 insurance benefits without regard to fault; to require motor  
1046 vehicle insurance that secures such benefits for motor vehicles  
1047 required to be registered in this state; and, with respect to  
1048 motor vehicle accidents, to provide a limitation on the right to  
1049 claim damages for pain, suffering, mental anguish, and  
1050 inconvenience.

1051 Section 10. Section 627.74811, Florida Statutes, is created  
1052 to read:

1053 627.74811 Effect of law on emergency care coverage  
1054 policies.—The provisions, schedules, and procedures authorized  
1055 in ss. 627.748-627.7491 must be implemented by insurers offering  
1056 policies pursuant to the Florida Motor Vehicle No-Fault



791184

1057 Emergency Care Coverage Law. The Legislature intends that these  
1058 provisions, schedules, and procedures have full force and effect  
1059 regardless of their express inclusion in an insurance policy  
1060 form and govern over any general provisions in the insurance  
1061 policy form. An insurer is not required to amend its policy form  
1062 or to expressly notify providers, claimants, or insureds of the  
1063 applicable fee schedules in order to implement and apply such  
1064 provisions, schedules, or procedures.

1065 Section 11. Section 627.7482, Florida Statutes, is created  
1066 to read:

1067 627.7482 Definitions.—As used in ss. 627.748-627.7491, the  
1068 term:

1069 (1) "Broker" means any person not licensed under chapter  
1070 395, chapter 400, chapter 429, chapter 458, chapter 459, chapter  
1071 460, chapter 461, or chapter 641 who charges or receives  
1072 compensation for the use of medical equipment and is not the 100  
1073 percent owner or the 100 percent lessee of such equipment. For  
1074 purposes of this subsection, such owner or lessee may be an  
1075 individual, a corporation, a partnership, or any other entity  
1076 and any of its 100 percent owned affiliates and subsidiaries.

1077 (a) The term "broker" does not include:

1078 1. A hospital or physician management company whose medical  
1079 equipment is ancillary to the practices managed; a debt  
1080 collection agency; an entity that has contracted with the  
1081 insurer to obtain a discounted rate; a management company that  
1082 has contracted to provide general management services for a  
1083 licensed physician or health care facility and whose  
1084 compensation is not materially affected by the usage or  
1085 frequency of usage of medical equipment; or an entity that is



791184

1086 100 percent owned by one or more hospitals or physicians.  
1087 2. A person or entity that certifies, upon the request of  
1088 an insurer, that:  
1089 a. It is a clinic licensed under part X of chapter 400;  
1090 b. It is a 100 percent owner of medical equipment; and  
1091 c. The owner's only part-time lease of medical equipment  
1092 for emergency care coverage patients is on a temporary basis not  
1093 to exceed 30 days in a 12-month period and is necessitated by:  
1094 (I) The repair or maintenance of existing 100 percent-owned  
1095 medical equipment;  
1096 (II) The pending arrival and installation of newly  
1097 purchased medical equipment or the replacement 100-percent-owned  
1098 medical equipment; or  
1099 (III) A determination by the medical director or clinical  
1100 director that open-style medical equipment is medically  
1101 necessary for the performance of tests or procedures for  
1102 patients due to the patients' physical sizes or claustrophobia.  
1103 The leased medical equipment may not be used, for medical  
1104 treatment or services, for a patient who is not a patient of the  
1105 registered clinic for medical treatment of services.  
1106  
1107 However, the 30-day lease period provided in this sub-  
1108 subparagraph may be extended for an additional 60 days as  
1109 applicable to magnetic resonance imaging equipment if the owner  
1110 certifies that the extension otherwise complies with this  
1111 paragraph.  
1112 (b) As used in this subsection, the term "lessee" means a  
1113 long-term lessee under a capital or operating lease but does not  
1114 include a part-time lessee.



791184

1115 (c) Any person or entity making a false certification under  
1116 this subsection commits insurance fraud as defined in s.  
1117 817.234.

1118 (2) "Certify" means to swear or attest to a fact being true  
1119 or accurately represented in a writing.

1120 (3) "Emergency medical condition" means:

1121 (a) A medical condition manifesting itself by acute  
1122 symptoms of sufficient severity, which may include severe pain,  
1123 such that the absence of immediate medical attention could  
1124 reasonably be expected to result in any of the following:

1125 1. Serious jeopardy to the health of a patient, including a  
1126 pregnant woman or fetus.

1127 2. Serious impairment to bodily functions.

1128 3. Serious dysfunction of any bodily organ or part.

1129 (b) With respect to a pregnant woman:

1130 1. That there is inadequate time for a safe transfer to  
1131 another hospital before delivery;

1132 2. That a transfer may pose a threat to the health and  
1133 safety of the woman or fetus; or

1134 3. That there is evidence of the onset and persistence of  
1135 uterine contractions or rupture of the membranes.

1136 (4) "Emergency services and care" means medical screening,  
1137 examination and evaluation by a physician or, to the extent  
1138 permitted by applicable law, by other appropriate personnel  
1139 under the supervision of a physician, to determine if an  
1140 emergency medical condition exists and, if it does, the care,  
1141 treatment, or surgery by a physician necessary to relieve or  
1142 eliminate the emergency medical condition, within the service  
1143 capability of the facility.



791184

1144           (5) "Hospital" means a facility that, at the time services  
1145 or treatment was rendered, was licensed under chapter 395.

1146           (6) "Knowingly" means having actual knowledge of  
1147 information and acting in deliberate ignorance of the truth or  
1148 falsity of the information or in reckless disregard of the  
1149 information. Proof of specific intent to defraud is not  
1150 required.

1151           (7) "Lawful" or "lawfully" means in substantial compliance  
1152 with all relevant applicable criminal, civil, and administrative  
1153 requirements of state and federal law related to the provision  
1154 of medical services or treatment.

1155           (8) "Medically necessary" refers to a medical service or  
1156 supply that a prudent physician would provide for the purpose of  
1157 preventing, diagnosing, or treating an illness, injury, disease,  
1158 or symptom in a manner that is:

1159           (a) In accordance with generally accepted standards of  
1160 medical practice;

1161           (b) Clinically appropriate in terms of type, frequency,  
1162 extent, site, and duration; and

1163           (c) Not primarily for the convenience of the patient,  
1164 physician, or other health care provider.

1165           (9) "Motor vehicle" means any self-propelled vehicle that  
1166 has four or more wheels and is of a type both designed and  
1167 required to be licensed for use on the highways of this state  
1168 and any trailer or semitrailer designed for use with such  
1169 vehicle. The term includes:

1170           (a) A "private passenger motor vehicle," which is any motor  
1171 vehicle that is a sedan, station wagon, or jeep-type vehicle  
1172 and, if not used primarily for occupational, professional, or



791184

1173 business purposes, a motor vehicle of the pickup truck, panel  
1174 truck, van, camper, or motor home type.

1175 (b) A "commercial motor vehicle," which is a motor vehicle  
1176 that is not a private passenger motor vehicle.

1177

1178 The term does not include a mobile home or a motor vehicle that  
1179 is used in mass transit, other than public school  
1180 transportation; is designed to transport more than five  
1181 passengers exclusive of the operator of the motor vehicle; and  
1182 is owned by a municipality, a transit authority, or a political  
1183 subdivision of the state.

1184 (10) "Named insured" means a person, usually the owner of a  
1185 motor vehicle, identified in a policy by name as the insured  
1186 under the policy.

1187 (11) "Owner," with respect to a motor vehicle, means a  
1188 person who holds legal title to the motor vehicle or, if the  
1189 motor vehicle is the subject of a security agreement or lease  
1190 with an option to purchase and the debtor or lessee has the  
1191 right to possession, the debtor or lessee of the motor vehicle.

1192 (12) "Physician" means an allopathic physician licensed  
1193 under chapter 458 or an osteopathic physician licensed under  
1194 chapter 459.

1195 (13) "Properly completed" means providing truthful,  
1196 substantially complete, and substantially accurate responses as  
1197 to all material elements to each applicable request for  
1198 information or statement by a means that may lawfully be  
1199 provided and that complies with this section, or as otherwise  
1200 agreed to by the parties.

1201 (14) "Relative residing in the insured's household" means a



791184

1202 relative of any degree by blood, marriage, or adoption who  
1203 usually makes her or his home in the same family unit regardless  
1204 of whether she or he is temporarily living elsewhere.

1205 (15) "Unbundling" means separating treatment or services  
1206 that would be properly billed under one billing code into two or  
1207 more billing codes, resulting in a payment amount greater than  
1208 would be paid using one billing code.

1209 (16) "Upcoding" means using a billing code to describe  
1210 treatment or services in a manner that would result in a payment  
1211 amount greater than would be paid using a billing code that  
1212 accurately describes such treatment or services. The term does  
1213 not include an otherwise lawful bill by a magnetic resonance  
1214 imaging facility, which globally combines both technical and  
1215 professional components, if the amount of the global bill is not  
1216 more than the components if billed separately; however, payment  
1217 of such a bill constitutes payment in full for all components of  
1218 such service.

1219 Section 12. Section 627.7483, Florida Statutes, is created  
1220 to read:

1221 627.7483 Required security.-

1222 (1) An owner or registrant of a motor vehicle, other than a  
1223 motor vehicle used as a school bus as defined in s. 1006.25, a  
1224 limousine, or a taxicab, which must be registered and licensed  
1225 in this state shall continuously maintain security as described  
1226 in subsection (3) throughout the licensing or registration  
1227 period. An owner or registrant of a motor vehicle used as a  
1228 taxicab shall maintain security as required under s. 324.032(1)  
1229 and is exempt from s. 627.7486.

1230 (2) A nonresident owner or registrant of a motor vehicle,



791184

1231 whether operated or not operated, which has been physically  
1232 present within this state for more than 90 days during the  
1233 preceding 365 days must thereafter continuously maintain  
1234 security as described in subsection (3) while such motor vehicle  
1235 is physically present within this state.

1236 (3) Security required by this section shall be provided:

1237 (a) By an insurance policy delivered or issued for delivery  
1238 in this state by an authorized or eligible motor vehicle  
1239 liability insurer which provides the benefits and exemptions  
1240 contained in ss. 627.748-627.7491. Any policy of insurance  
1241 represented or sold as providing the security required under  
1242 this section shall be deemed to provide insurance for the  
1243 payment of the required benefits; or

1244 (b) By any other method authorized by s. 324.031(2), (3),  
1245 or (4) and approved by the Department of Highway Safety and  
1246 Motor Vehicles as affording security equivalent to that afforded  
1247 by a policy of insurance or by self-insuring as authorized by s.  
1248 768.28(16). The person filing such security has all of the  
1249 obligations and rights of an insurer under ss. 627.748-627.7491.

1250 (4) An owner of a motor vehicle for which security is  
1251 required by this section who fails to have such security in  
1252 effect at the time of an accident is not immune from tort  
1253 liability and is personally liable for the payment of benefits  
1254 under s. 627.7485. With respect to such benefits, the owner has  
1255 all of the rights and obligations of an insurer under ss.  
1256 627.748-627.7491.

1257 (5) In addition to persons who are not required to provide  
1258 security under this section or s. 324.022, the owner or  
1259 registrant of a motor vehicle who is a member of the United



791184

1260 States Armed Forces and who is called to or on active duty  
1261 outside the United States in an emergency situation is exempt  
1262 from such requirements. The exemption applies only while the  
1263 owner or registrant is on such active duty and while the motor  
1264 vehicle otherwise required to be covered by the security under  
1265 this section or s. 324.022 is not operated by any person. Upon  
1266 receipt of a written request from the insured to whom this  
1267 exemption applies, the insurer shall cancel the coverages and  
1268 return any unearned premium or suspend the security required by  
1269 this section and s. 324.022. Notwithstanding s. 324.0221(2), the  
1270 Department of Highway Safety and Motor Vehicles may not suspend  
1271 the registration or operator's license of the owner or  
1272 registrant of a motor vehicle during the time she or he  
1273 qualifies for this exemption. The owner or registrant of the  
1274 motor vehicle qualifying for the exemption must immediately  
1275 notify the department before and at the end of the expiration of  
1276 the exemption.

1277 Section 13. Section 627.7484, Florida Statutes, is created  
1278 to read:

1279 627.7484 Proof of security; security requirements;  
1280 penalties.—

1281 (1) The provisions of chapter 324 which pertain to the  
1282 method of giving and maintaining proof of financial  
1283 responsibility and which govern and define a motor vehicle  
1284 liability policy apply to filing and maintaining proof of  
1285 security required by ss. 627.748-627.7491.

1286 (2) Any person who:

1287 (a) Gives information required in a report or otherwise as  
1288 provided in ss. 627.748-627.7491, knowing or having reason to



791184

1289 believe that such information is false;

1290 (b) Forges or, without authority, signs any evidence of  
1291 proof of security; or

1292 (c) Files, or offers for filing, any such evidence of  
1293 proof, knowing or having reason to believe that it is forged or  
1294 signed without authority

1295

1296 commits a misdemeanor of the first degree, punishable as  
1297 provided in s. 775.082 or s. 775.083.

1298 Section 14. Section 627.7485, Florida Statutes, is created  
1299 to read:

1300 627.7485 Required emergency care coverage benefits.-

1301 (1) REQUIRED BENEFITS.-An insurance policy complying with  
1302 the security requirements of s. 627.7483 must provide emergency  
1303 care coverage to the named insured, relatives residing in the  
1304 insured's household, persons operating the insured motor  
1305 vehicle, passengers in the motor vehicle, and other persons  
1306 struck by such motor vehicle and suffering bodily injury while  
1307 not an occupant of a self-propelled vehicle, subject to  
1308 subsection (2) and paragraph (4) (b), up to a limit of \$10,000,  
1309 for loss sustained by any such person as a result of bodily  
1310 injury, sickness, disease, or death arising out of the  
1311 ownership, maintenance, or use of the motor vehicle as follows:

1312 (a) Medical benefits.-

1313 1. Eighty percent of all reasonable expenses for:

1314 a. Emergency transport and treatment rendered by an  
1315 ambulance provider licensed under part III of chapter 401 within  
1316 24 hours after the motor vehicle accident.

1317 b. Emergency services and care rendered by a dentist,



791184

1318 provided within 7 days after the motor vehicle accident if such  
1319 services and care are provided:

1320 (I) In a hospital or in a facility wholly owned by a  
1321 hospital;

1322 (II) In a facility wholly owned by a physician, or by the  
1323 physician and the spouse, parents, children, or siblings of such  
1324 physician; or

1325 (III) In a facility wholly owned by a dentist, or by the  
1326 dentist and the spouse, parents, children, or siblings of such  
1327 dentist.

1328 c. Services and care rendered when an insured is admitted  
1329 to a hospital within 7 days after the motor vehicle accident,  
1330 for a condition related to the motor vehicle accident.

1331 d. If the insured receives emergency transport and  
1332 treatment or emergency services and care pursuant to sub-sub-  
1333 subparagraph a. or sub-subparagraph b., or services and care  
1334 pursuant to sub-subparagraph c., prescribed follow-up services  
1335 and care directly related to the medical diagnosis arising from  
1336 the motor vehicle accident if:

1337 (I) The diagnosis is rendered by a physician; and

1338 (II) The prescribed follow-up services and care are  
1339 rendered by a physician, a dentist licensed under chapter 466, a  
1340 physician assistant licensed under chapter 458 or chapter 459,  
1341 an advanced registered nurse practitioner licensed under chapter  
1342 464, or a chiropractic physician licensed under chapter 460.

1343 2. Prescribed follow-up services and care must be provided  
1344 in a clinic licensed under part X of chapter 400 or an entity  
1345 excluded from the definition of a clinic. However, as provided  
1346 in s. 400.9905, an entity excluded from the definition of a



791184

1347 clinic shall be deemed a clinic and must be licensed under part  
1348 X of chapter 400 in order to receive reimbursement for  
1349 prescribed follow-up services and care under sub-subparagraph  
1350 1.d. unless the entity is:

1351 a. An entity wholly owned by a physician licensed under  
1352 chapter 458 or chapter 459, or by the physician and the spouse,  
1353 parent, child, or sibling of the physician;

1354 b. An entity wholly owned by a dentist licensed under  
1355 chapter 466, or by the dentist and the spouse, parent, child, or  
1356 sibling of the dentist;

1357 c. An entity wholly owned by a chiropractic physician  
1358 licensed under chapter 460, or by the chiropractic physician and  
1359 the spouse, parent, child, or sibling of the chiropractic  
1360 physician if such entity has filed for a licensing exemption  
1361 with the Agency for Health Care Administration;

1362 d. A hospital or ambulatory surgical center licensed under  
1363 chapter 395; or

1364 e. An entity wholly owned, directly or indirectly, by a  
1365 hospital or hospitals licensed under chapter 395.

1366 3. Reimbursement for services provided by a chiropractic  
1367 physician is limited to the lesser of 24 treatments or to  
1368 services rendered within 12 weeks after the date of the initial  
1369 chiropractic treatment, whichever comes first, unless the  
1370 insurer authorizes additional chiropractic services.

1371 4. Medical benefits do not include massage as defined in s.  
1372 480.033 or acupuncture as defined in s. 457.102.

1373 5. For purposes of ss. 627.748-627.7491, a medical  
1374 diagnosis that an emergency medical condition exists is presumed  
1375 to be correct unless rebutted by clear and convincing evidence



791184

1376 to the contrary.

1377 (b) Disability benefits.—Sixty percent of any loss of gross  
1378 income and loss of earning capacity per individual from  
1379 inability to work proximately caused by the injury sustained by  
1380 the injured person, plus all expenses reasonably incurred in  
1381 obtaining from others ordinary and necessary services in lieu of  
1382 those that, but for the injury, the injured person would have  
1383 performed without income for the benefit of her or his  
1384 household. All disability benefits payable under this paragraph  
1385 must be paid at least every 2 weeks.

1386 (c) Death benefits.—Death benefits equal to the lesser of  
1387 \$5,000 or the remainder of unused emergency care coverage  
1388 insurance benefits per individual. The insurer shall give  
1389 priority to the payment of death benefits over the payment of  
1390 other benefits of the deceased and, upon learning of the death  
1391 of the individual, shall stop paying the other benefits until  
1392 the death benefits are paid. The insurer may pay death benefits  
1393 to the executor or administrator of the deceased, to any of the  
1394 deceased's relatives by blood, legal adoption, or marriage, or  
1395 to any person who appears to the insurer to be equitably  
1396 entitled to such benefits.

1397  
1398 Only insurers writing motor vehicle liability insurance in this  
1399 state may provide the benefits required by this section, and  
1400 such insurer may not require the purchase of any other motor  
1401 vehicle coverage other than the purchase of property damage  
1402 liability coverage as required by s. 627.7275 as a condition for  
1403 providing such benefits. Insurers may not require that property  
1404 damage liability insurance in an amount greater than \$10,000 be



791184

1405 purchased in conjunction with emergency care coverage insurance.  
1406 Such insurers shall make benefits and required property damage  
1407 liability insurance coverage available through normal marketing  
1408 channels. An insurer writing motor vehicle liability insurance  
1409 in this state who fails to comply with such availability  
1410 requirement as a general business practice violates part IX of  
1411 chapter 626, and such violation constitutes an unfair method of  
1412 competition or an unfair or deceptive act or practice involving  
1413 the business of insurance. An insurer committing such violation  
1414 is subject to the penalties provided under that part, as well as  
1415 those provided elsewhere in the insurance code.

1416 (2) AUTHORIZED EXCLUSIONS.—An insurer may exclude benefits:

1417 (a) For injury sustained by the named insured and relatives  
1418 residing in the insured's household while occupying another  
1419 motor vehicle owned by the named insured and not insured under  
1420 the policy or for injury sustained by any person operating the  
1421 insured motor vehicle without the express or implied consent of  
1422 the insured.

1423 (b) To any injured person if such person's conduct  
1424 contributed to her or his injury under the following  
1425 circumstance:

- 1426 1. Causing injury to herself or himself intentionally; or  
1427 2. Being injured while committing a felony.

1428  
1429 If an insured is charged with conduct as set forth in  
1430 subparagraph 2., the 30-day payment provision of paragraph  
1431 (4) (f) shall be held in abeyance, and the insurer shall withhold  
1432 payment of any benefits pending the outcome of the case at the  
1433 trial level. If the charge is nolle prossed or dismissed or the



791184

1434 insured is acquitted, the 30-day payment provision shall run  
1435 from the date the insurer is notified of such action.

1436 (3) INSURED'S RIGHTS TO RECOVERY OF SPECIAL DAMAGES IN TORT  
1437 CLAIMS.—An insurer may not have a lien on any recovery in tort  
1438 by judgment, settlement, or otherwise for emergency care  
1439 coverage benefits, whether suit has been filed or settlement has  
1440 been reached without suit. An injured party who is entitled to  
1441 bring suit under ss. 627.748-627.7491, or her or his legal  
1442 representative, may not recover any damages for which benefits  
1443 are paid or payable. The plaintiff may prove all of her or his  
1444 special damages notwithstanding this limitation, but if special  
1445 damages are introduced in evidence, the trier of facts, whether  
1446 judge or jury, may not award damages for emergency care coverage  
1447 benefits paid or payable. In all cases in which a jury is  
1448 required to fix damages, the court shall instruct the jury that  
1449 the plaintiff may not recover such special damages for emergency  
1450 care coverage benefits paid or payable.

1451 (4) PAYMENT OF BENEFITS.—

1452 (a) Benefits due from an insurer under ss. 627.748-627.7491  
1453 are primary, except that benefits received under any workers'  
1454 compensation law must be credited against the benefits provided  
1455 under subsection (1) and are due and payable as loss accrues  
1456 upon receipt of reasonable proof of such loss and the amount of  
1457 expenses and loss incurred that are covered by the policy issued  
1458 under ss. 627.748-627.7491. If the Agency for Health Care  
1459 Administration provides, pays, or becomes liable for medical  
1460 assistance under the Medicaid program related to injury,  
1461 sickness, disease, or death arising out of the ownership,  
1462 maintenance, or use of a motor vehicle, the benefits under ss.



791184

1463 627.748-627.7491 are subject to the provisions of the Medicaid  
1464 program. However, within 30 days after receiving notice that the  
1465 Medicaid program paid such benefits, the insurer must repay the  
1466 full amount of the benefits to the Medicaid program.

1467 (b) The insurer of the owner of a motor vehicle shall pay  
1468 benefits for an emergency medical condition as described in  
1469 paragraph (1) (a) for accidental bodily injury requiring medical  
1470 treatment:

1471 1. Sustained in this state by the owner while occupying a  
1472 motor vehicle, or while not an occupant of a self-propelled  
1473 vehicle if the injury is caused by physical contact with a motor  
1474 vehicle.

1475 2. Sustained outside this state, but within the United  
1476 States or its territories or possessions or Canada, by the owner  
1477 while occupying the owner's motor vehicle.

1478 3. Sustained by a relative of the owner residing in the  
1479 owner's household, under the circumstances described in  
1480 subparagraph 1. or subparagraph 2. if the relative at the time  
1481 of the accident is domiciled in the owner's household and is not  
1482 the owner of a motor vehicle with respect to which security is  
1483 required under ss. 627.748-627.7491.

1484 4. Sustained in this state by any other person while  
1485 occupying the owner's motor vehicle or, if a resident of this  
1486 state, while not an occupant of a self-propelled vehicle, if the  
1487 injury is caused by physical contact with such motor vehicle if  
1488 the injured person is not:

1489 a. The owner of a motor vehicle for which security is  
1490 required under ss. 627.748-627.7491; or

1491 b. Entitled to benefits from the insurer of the owner of



791184

1492 such motor vehicle.

1493 (c) An insurer may require written notice to be given as  
1494 soon as practicable after an accident involving a motor vehicle  
1495 for which the policy provides the security required by ss.  
1496 627.748-627.7491.

1497 (d) Upon receiving notice of an accident that is  
1498 potentially covered by benefits under this section, the insurer  
1499 must reserve \$5,000 of such coverage for payment of medical  
1500 benefits provided by physicians or dentists pursuant to  
1501 subparagraph (1)(a). The reserved amount may be used only to pay  
1502 claims for such providers until 30 days after the date the  
1503 insurer receives notice of the accident. After the 30-day  
1504 period, any amount of the reserve for which the insurer has not  
1505 received notice of a claim for emergency care coverage benefits  
1506 may be used to pay other claims. The time periods specified in  
1507 paragraph (f) for the payment of benefits shall be tolled for  
1508 the period of time that the insurer is required by this  
1509 paragraph to hold payment of such other claims to the extent  
1510 that the amount not held in reserve is insufficient to pay such  
1511 other claims. This paragraph does not require an insurer to  
1512 establish a claim reserve for insurance accounting purposes.

1513 (e) An insurer shall create and maintain for each insured a  
1514 log of benefits paid by the insurer on behalf of the insured.  
1515 The insurer shall provide to the insured, or an assignee of the  
1516 insured, a copy of the log within 30 days after receiving a  
1517 request for the log from the insured or the assignee.

1518 (f) Benefits paid pursuant to this section are overdue if  
1519 not paid within 30 days after written notice of the fact and  
1520 amount of a covered loss is furnished to the insurer.



791184

1521           1. If written notice of the entire claim is not furnished  
1522 to the insurer, any partial amount supported by the written  
1523 notice is overdue if not paid within 30 days after the written  
1524 notice is furnished. Any part or all of the remainder of the  
1525 claim that is subsequently supported by written notice is  
1526 overdue if not paid within 30 days after subsequent written  
1527 notice is furnished to the insurer.

1528           2. This paragraph does not preclude or limit the ability of  
1529 the insurer to assert that the claim or a portion of the claim  
1530 was unrelated, was not medically necessary, or was unreasonable,  
1531 or that the amount of the charge was in excess of that permitted  
1532 under, or in violation of, subsection (5). Such assertion may be  
1533 made at any time, including after payment of the claim or after  
1534 the 30-day period for payment set forth in this paragraph.

1535           3. If an insurer pays only a portion of a claim or rejects  
1536 a claim, the insurer shall provide at the time of the partial  
1537 payment or rejection an itemized specification of each item that  
1538 the insurer has reduced, omitted, or declined to pay and any  
1539 information that the insurer desires the claimant to consider  
1540 related to the medical necessity of the denied treatment or to  
1541 explain the reasonableness of the reduced charge if this  
1542 information does not limit the introduction of evidence at  
1543 trial. The insurer must also include the name and address of the  
1544 person to whom the claimant should respond and a claim number to  
1545 be referenced in future correspondence.

1546           4. Notwithstanding that written notice has been furnished  
1547 to the insurer, payment is not overdue if the insurer has  
1548 reasonable proof that the insurer is not responsible for the  
1549 payment.



791184

1550           5. For the purpose of calculating the extent to which  
1551 benefits are overdue, payment shall be considered made on the  
1552 date a draft or other valid instrument that is equivalent to  
1553 payment was placed in the United States mail in a properly  
1554 addressed, postpaid envelope or, if not so posted, on the date  
1555 of delivery.

1556           6. All overdue payments bear simple interest at the rate  
1557 established under s. 55.03 or the rate established in the  
1558 insurance contract, whichever is greater, for the quarter in  
1559 which the payment became overdue, calculated from the date the  
1560 insurer was furnished with written notice of the amount of the  
1561 covered loss. Interest is due at the time payment of the overdue  
1562 claim is made.

1563           (g) If two or more insurers are liable for paying emergency  
1564 care coverage benefits for the same injury to any one person,  
1565 the maximum amount payable shall be as specified in subsection  
1566 (1), and an insurer paying the benefits is entitled to recover  
1567 from each of the other insurers an equitable pro rata share of  
1568 the benefits paid and expenses incurred in processing the claim.

1569           (h) In a dispute between the insured and the insurer, or  
1570 between an assignee of the insured's rights and the insurer, the  
1571 insurer must notify the insured or the assignee that the policy  
1572 limits under this section have been reached within 15 days after  
1573 the limits have been reached.

1574           (i) Benefits are not due or payable to or on behalf of an  
1575 insured, claimant, medical provider, or attorney if the insured,  
1576 claimant, medical provider, or attorney has:

1577           1. Knowingly submitted a false material statement,  
1578 document, record, or bill;



791184

1579           2. Knowingly submitted false material information; or  
1580           3. Otherwise committed or attempted to commit a fraudulent  
1581 insurance act as defined in s. 626.989.

1582  
1583 A claimant who violates this paragraph is not entitled to any  
1584 emergency care coverage benefits or payment for any bills and  
1585 services, regardless of whether a portion of the claim may be  
1586 legitimate. However, a medical provider who does not violate  
1587 this paragraph may not be denied benefits solely due to  
1588 violation by another claimant.

1589           (j) If an insurer has a reasonable belief that a fraudulent  
1590 insurance act, as defined in s. 626.989, has been committed and  
1591 reports its suspicions to the Division of Insurance Fraud, the  
1592 30-day period for payment is tolled for any portions of the  
1593 claim reported for investigation until the insurer receives  
1594 notice from the Division of Insurance Fraud that the claim has  
1595 been investigated and states whether a criminal action will be  
1596 recommended.

1597           1. The insurer must notify the claimant in writing that the  
1598 claim is being investigated for fraud within 30 days after the  
1599 insurer is furnished with written notice of the fact and amount  
1600 of a covered loss. Within 30 days after receipt of notice from  
1601 the Division of Insurance Fraud that a claim has been  
1602 investigated and that no criminal action will be recommended,  
1603 the insurer must pay the claim with simple interest as provided  
1604 in subparagraph (f) 6.

1605           2. Subject to s. 626.989(4), persons or entities that in  
1606 good faith report suspected fraud to the Division of Insurance  
1607 Fraud or share information in the furtherance of a fraud



791184

1608 investigation are not subject to any civil or criminal liability  
1609 relating to the reporting or release of such information.

1610 (k) It is a violation of the insurance code for an insurer  
1611 to fail to timely provide benefits as required by this section  
1612 with such frequency as to constitute a general business  
1613 practice.

1614 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.-

1615 (a) A physician, hospital, clinic, or other person or  
1616 institution lawfully rendering treatment to an injured person  
1617 for a bodily injury covered by emergency care coverage insurance  
1618 may charge the insurer and injured party only a reasonable  
1619 amount pursuant to this section for the services, treatment,  
1620 supplies, and care rendered, and the insurer providing such  
1621 coverage may pay such charges directly to such person or  
1622 institution lawfully rendering such treatment if the insured  
1623 receiving such treatment, or her or his guardian, has  
1624 countersigned the properly completed invoice, bill, or claim  
1625 form approved by the office attesting that such treatment has  
1626 actually been rendered to the best knowledge of the insured or  
1627 her or his guardian. However, such charge may not exceed the  
1628 amount that the person or institution customarily charges for  
1629 like services, treatment, supplies, or care. When determining  
1630 whether a charge for a particular service, treatment, supply, or  
1631 care is reasonable, consideration may be given to evidence of  
1632 usual and customary charges and payments accepted by the  
1633 provider involved in the dispute, reimbursement levels in the  
1634 community and various federal and state medical fee schedules  
1635 applicable to motor vehicle and other insurance coverages, and  
1636 other information relevant to the reasonableness of the charges



791184

1637 for the service, treatment, supply, or care.

1638 1. If a health care provider or entity bills an insurer an  
1639 amount less than that indicated in the following schedule of  
1640 maximum charges and the insurer pays the amount billed, the  
1641 payment shall be considered reasonable. A payment made by an  
1642 insurer that limits reimbursement to 80 percent of the following  
1643 schedule of maximum charges is considered reasonable:

1644 a. For emergency transport and treatment by providers  
1645 licensed under chapter 401, 200 percent of Medicare charges.

1646 b. For emergency services and care provided by a hospital,  
1647 75 percent of the hospital's usual and customary charges.

1648 c. For emergency services and care provided in a hospital  
1649 and rendered by a physician or dentist, and related hospital  
1650 inpatient services rendered by a physician or dentist, the usual  
1651 and customary charges in the community.

1652 d. For hospital inpatient services, other than emergency  
1653 services and care, 200 percent of the Medicare Part A  
1654 prospective payment applicable to the specific hospital  
1655 providing the inpatient services.

1656 e. For hospital outpatient services, other than emergency  
1657 services and care, 200 percent of the Medicare Part A Ambulatory  
1658 Payment Classification for the specific hospital providing the  
1659 outpatient services.

1660 f. For all other medical services, treatment, supplies, and  
1661 care, 200 percent of the allowable amount under:

1662 (I) The participating physicians fee schedule of Medicare  
1663 Part B.

1664 (II) For medical services, treatment, supplies, and care  
1665 provided by clinical laboratories, Medicare Part B.



791184

1666           (III) For durable medical equipment, the Durable Medical  
1667 Equipment Prosthetics/Orthotics & Supplies (DMEPOS) fee  
1668 schedule of Medicare Part B.

1669  
1670 However, if such services, treatment, supplies, or care is not  
1671 reimbursable under Medicare Part B as provided in this sub-  
1672 subparagraph, the insurer may limit reimbursement to 80 percent  
1673 of the maximum reimbursable allowance under workers'  
1674 compensation, as determined under s. 440.13 and rules adopted  
1675 thereunder which are in effect at the time such services,  
1676 treatment, supplies, or care is provided. Services, treatment,  
1677 supplies, or care that is not reimbursable under Medicare or  
1678 workers' compensation is not required to be reimbursed by the  
1679 insurer.

1680           2. For purposes of subparagraph 1., the applicable fee  
1681 schedule or payment limitation under Medicare is the fee  
1682 schedule or payment limitation that was in effect on March 1 of  
1683 the year and for the area in which the services, treatment,  
1684 supplies, or care was rendered, and applies until March 1 of the  
1685 following year, notwithstanding subsequent changes made to such  
1686 fee schedule or payment limitation, except that it may not be  
1687 less than the allowable amount under the participating  
1688 physicians schedule of Medicare Part B for 2007 for medical  
1689 services, treatment, supplies, and care subject to Medicare Part  
1690 B.

1691           3. Subparagraph 1. does not allow the insurer to apply any  
1692 limitation on the number of treatments or other utilization  
1693 limits that apply under Medicare or workers' compensation. An  
1694 insurer that applies the allowable payment limitations of



791184

1695 subparagraph 1. must reimburse a provider who lawfully provided  
1696 care or treatment under the scope of her or his license  
1697 regardless of whether such provider is entitled to reimbursement  
1698 under Medicare due to restrictions or limitations on the types  
1699 or discipline of health care providers who may be reimbursed for  
1700 particular procedures or procedure codes. However, subparagraph  
1701 1. does not prohibit an insurer from using the Medicare coding  
1702 policies and payment methodologies of the Centers for Medicare  
1703 and Medicaid Services, including applicable modifiers, to  
1704 determine the appropriate amount of reimbursement.

1705 4. If an insurer limits payment as authorized by  
1706 subparagraph 1., the person providing such services, treatment,  
1707 supplies, or care may not bill or attempt to collect from the  
1708 insured any amount in excess of such limits, except for amounts  
1709 that are not covered by the insured's emergency care coverage  
1710 insurance due to the coinsurance amount or maximum policy  
1711 limits.

1712 (b) An insurer or insured is not required to pay a claim or  
1713 charges:

1714 1. Made by a broker or by a person making a claim on behalf  
1715 of a broker;

1716 2. For any service or treatment that was not lawful at the  
1717 time rendered;

1718 3. To any person who knowingly submits a false material  
1719 statement relating to the claim or charges;

1720 4. With respect to a bill or statement that does not  
1721 substantially meet the applicable requirements of paragraph (d);

1722 5. For any treatment or service that is upcoded, or that is  
1723 unbundled when such treatment or services should be bundled, in



791184

1724 accordance with paragraph (e). To facilitate prompt payment of  
1725 lawful services, an insurer may change billing codes that it  
1726 determines have been improperly or incorrectly upcoded or  
1727 unbundled and may make payment based on the changed billing  
1728 codes without affecting the right of the provider to dispute the  
1729 change by the insurer. However, before doing that, the insurer  
1730 must contact the health care provider and discuss the reasons  
1731 for the insurer's change and the health care provider's reason  
1732 for the coding or make a reasonable good faith effort to do so  
1733 as documented in the insurer's file; or

1734 6. For medical services or treatment billed by a physician  
1735 and not provided in a hospital unless such services are rendered  
1736 by the physician or are incident to her or his professional  
1737 services and included on the physician's bill, including  
1738 documentation verifying that the physician is responsible for  
1739 the medical services that were rendered and billed.

1740 (c) The Department of Health, in consultation with the  
1741 appropriate professional licensing boards, shall adopt by rule a  
1742 list of diagnostic tests deemed not to be medically necessary  
1743 for use in the treatment of persons sustaining bodily injury  
1744 covered by emergency care coverage benefits under this section.  
1745 The list shall be revised from time to time as determined by the  
1746 Department of Health in consultation with the respective  
1747 professional licensing boards. Inclusion of a test on the list  
1748 shall be based on lack of demonstrated medical value and a level  
1749 of general acceptance by the relevant provider community and may  
1750 not be dependent entirely upon subjective patient response.  
1751 Notwithstanding its inclusion on a fee schedule in this  
1752 subsection, an insurer or insured is not required to pay any



791184

1753 charges or reimburse claims for any diagnostic test deemed not  
1754 medically necessary by the Department of Health.

1755 (d) With respect to any treatment or service, other than  
1756 medical services billed by a hospital or other provider for  
1757 emergency services and care or inpatient services rendered at a  
1758 hospital-owned facility, the statement of charges must be  
1759 furnished to the insurer by the provider and may not include,  
1760 and the insurer is not required to pay, charges for treatment or  
1761 services rendered more than 35 days before the postmark date or  
1762 electronic transmission date of the statement, except for past  
1763 due amounts previously billed on a timely basis under this  
1764 paragraph. However, if the provider submits to the insurer a  
1765 notice of initiation of treatment within 21 days after its first  
1766 examination or treatment of the claimant, the statement may  
1767 include charges for treatment or services rendered up to, but  
1768 not more than, 75 days before the postmark date of the  
1769 statement. The injured party is not liable for, and the provider  
1770 may not bill the injured party for, charges that are unpaid  
1771 because of the provider's failure to comply with this paragraph.  
1772 Any agreement requiring the injured person or insured to pay for  
1773 such charges is unenforceable.

1774 1. If the insured fails to furnish the provider with the  
1775 correct name and address of the insured's emergency care  
1776 coverage insurer, the provider has 35 days after the date the  
1777 provider obtains the correct information to furnish the insurer  
1778 with a statement of the charges. The insurer is not required to  
1779 pay for such charges unless the provider includes with the  
1780 statement documentary evidence that was provided by the insured  
1781 during the 35-day period which demonstrates that the provider



791184

1782 reasonably relied on erroneous information from the insured and:

1783 a. A denial letter from the incorrect insurer; or

1784 b. Proof of mailing, which may include an affidavit under  
1785 penalty of perjury reflecting timely mailing to the incorrect  
1786 address or insurer.

1787 2. For emergency services and care rendered in a hospital  
1788 emergency department or for transport and treatment rendered by  
1789 an ambulance provider licensed pursuant to part III of chapter  
1790 401, the provider is not required to furnish the statement of  
1791 charges within the time period established by this paragraph,  
1792 and the insurer is not considered to have been furnished with  
1793 notice of the amount of the covered loss for purposes of  
1794 paragraph (4) (f) until it receives a statement complying with  
1795 paragraph (e), or a copy thereof, which specifically identifies  
1796 the place of service as a hospital emergency department or an  
1797 ambulance in accordance with billing standards recognized by the  
1798 federal Centers for Medicare and Medicaid Services.

1799 3. Each notice of the insured's rights under s. 627.7488  
1800 must include the following statement in at least 12-point type:

1801  
1802 BILLING REQUIREMENTS.—Florida law provides that with  
1803 respect to any treatment or services, other than  
1804 certain hospital and emergency services, the statement  
1805 of charges furnished to the insurer by the provider  
1806 may not include, and the insurer and the injured party  
1807 are not required to pay, charges for treatment or  
1808 services rendered more than 35 days before the  
1809 postmark date of the statement, except for past due  
1810 amounts previously billed on a timely basis, and



791184

1811 except that, if the provider submits to the insurer a  
1812 notice of initiation of treatment within 21 days after  
1813 its first examination or treatment of the claimant,  
1814 the statement may include charges for treatment or  
1815 services rendered up to, but not more than, 75 days  
1816 before the postmark date of the statement.

1817  
1818 (e) All statements and bills for medical services rendered  
1819 by a physician, hospital, clinic, or other person or institution  
1820 shall be submitted to the insurer on a properly completed  
1821 Centers for Medicare and Medicaid Services (CMS) 1500 form, UB  
1822 92 form, or any other standard form approved by the office or  
1823 adopted by the commission for purposes of this paragraph. All  
1824 billings for such services rendered by providers must, to the  
1825 extent applicable, follow the Physicians' Current Procedural  
1826 Terminology (CPT) or Healthcare Correct Procedural Coding System  
1827 (HCPCS), or ICD-9 in effect for the year in which services are  
1828 rendered and comply with the CMS 1500 form instructions, the  
1829 American Medical Association CPT Editorial Panel and the HCPCS.  
1830 All providers, other than hospitals, must include on the  
1831 applicable claim form the professional license number of the  
1832 provider in the line or space provided for "Signature of  
1833 Physician or Supplier, Including Degrees or Credentials." In  
1834 determining compliance with applicable CPT and HCPCS coding,  
1835 guidance shall be provided by the CPT or HCPCS in effect for the  
1836 year in which services were rendered, the Office of the  
1837 Inspector General, Physicians Compliance Guidelines, and other  
1838 authoritative treatises designated by rule by the Agency for  
1839 Health Care Administration. A statement of medical services may



791184

1840 not include charges for the medical services of a person or  
1841 entity that performed such services without possessing the valid  
1842 licenses required to perform such services. For purposes of  
1843 paragraph (4) (f), an insurer is not considered to have been  
1844 furnished with notice of the amount of the covered loss or  
1845 medical bills due unless the statements or bills comply with  
1846 this paragraph and are properly completed in their entirety as  
1847 to all material provisions, with all relevant information being  
1848 provided therein.

1849 (f)1. At the time the initial treatment or service is  
1850 provided, each physician, licensed professional, clinic, or  
1851 medical institution providing medical services upon which a  
1852 claim for benefits is based shall require an insured person or  
1853 her or his guardian to execute a disclosure and acknowledgment  
1854 form that reflects at a minimum that:

1855 a. The insured or her or his guardian must countersign the  
1856 form attesting to the fact that the services set forth in the  
1857 form were actually rendered.

1858 b. The insured or her or his guardian has both the right  
1859 and the affirmative duty to confirm that the services were  
1860 actually rendered.

1861 c. The insured or her or his guardian was not solicited by  
1862 any person to seek any services from the medical provider.

1863 d. The physician, other licensed professional, clinic, or  
1864 other medical institution rendering services for which payment  
1865 is being claimed explained the services to the insured or her or  
1866 his guardian.

1867 e. If the insured notifies the insurer in writing of a  
1868 billing error, the insured may be entitled to a certain



791184

1869 percentage of any reduction in the amounts paid by the insured's  
1870 motor vehicle insurer.

1871 2. The physician, other licensed professional, clinic, or  
1872 other medical institution rendering services for which payment  
1873 is being claimed has the affirmative duty to explain the  
1874 services rendered to the insured or her or his guardian so that  
1875 the insured or her or his guardian countersigns the form with  
1876 informed consent.

1877 3. Countersignature by the insured or her or his guardian  
1878 is not required for the reading of diagnostic tests or other  
1879 services that are not required to be performed in the presence  
1880 of the insured.

1881 4. The licensed medical professional rendering treatment  
1882 for which payment is being claimed must, by her or his own hand,  
1883 sign the form complying with this paragraph.

1884 5. The completed original disclosure and acknowledgment  
1885 form shall be furnished to the insurer pursuant to paragraph  
1886 (4) (f) and may not be electronically furnished.

1887 6. The disclosure and acknowledgment form is not required  
1888 for services billed by a provider for emergency services and  
1889 care rendered in a hospital emergency department or for  
1890 transport and treatment rendered by an ambulance provider  
1891 licensed pursuant to part III of chapter 401.

1892 7. The Financial Services Commission shall adopt a standard  
1893 disclosure and acknowledgment form by rule to fulfill the  
1894 requirements of this paragraph.

1895 8. As used in this paragraph, the term "countersign" or  
1896 "countersignature" means bearing a second or verifying  
1897 signature, as on a previously signed document, and is not



791184

1898 satisfied by the statement "signature on file" or similar  
1899 statement.

1900 9. This paragraph applies only with respect to the initial  
1901 treatment or service of the insured by a provider. For  
1902 subsequent treatments or service, the provider must maintain a  
1903 patient log signed by the patient, in chronological order by  
1904 date of service, which is consistent with the services being  
1905 rendered to the patient as claimed. The requirement to maintain  
1906 a patient log signed by the patient may be met by a hospital  
1907 that maintains medical records as required by s. 395.3025 and  
1908 applicable rules and makes such records available to the insurer  
1909 upon request.

1910 (g) Upon written notification by any person, an insurer  
1911 shall investigate any claim of improper billing by a physician  
1912 or other medical provider. The insurer shall determine whether  
1913 the insured was properly billed for only those services and  
1914 treatments that the insured actually received. If the insurer  
1915 determines that the insured has been improperly billed, the  
1916 insurer shall notify the insured, the person making the written  
1917 notification, and the provider of its findings and reduce the  
1918 amount of payment to the provider by the amount determined to be  
1919 improperly billed. If a reduction is made due to a written  
1920 notification by any person, the insurer shall pay to that person  
1921 20 percent of the amount of the reduction, up to \$500. If the  
1922 provider is arrested due to the improper billing, the insurer  
1923 shall pay to that person 40 percent of the amount of the  
1924 reduction, up to \$500.

1925 (h) An insurer may not systematically downcode with the  
1926 intent to deny reimbursement otherwise due. Such action



791184

1927 constitutes a material misrepresentation under s.  
1928 626.9541(1)(i)2.

1929 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—

1930 (a) In all circumstances, an insured seeking under ss.  
1931 627.748-627.7491, including omnibus insureds, must comply with  
1932 the terms of the policy. Compliance with this paragraph is a  
1933 condition precedent to the insured's recovering of benefits,  
1934 except that an insured may not be required to submit to an  
1935 examination under oath. If a request is made by an insurer  
1936 providing emergency care coverage against whom a claim has been  
1937 made, an employer must furnish a sworn statement, in a form  
1938 approved by the office, of the earnings of the person upon whose  
1939 injury the claim is based since the time of the bodily injury  
1940 and for a reasonable period before the injury.

1941 (b) If an insured seeking to recover benefits pursuant to  
1942 ss. 627.748-627.7491 assigns the contractual right to such  
1943 benefits or payment of such benefits to any person or entity,  
1944 the assignee must comply with the terms of the policy. In all  
1945 circumstances, the assignee is obligated to cooperate under the  
1946 policy, except that an assignee may not be required to submit to  
1947 an examination under oath.

1948 (c) All claimants must produce and allow for the inspection  
1949 of all documents requested by the insurer which are relevant to  
1950 the services rendered and reasonably obtainable by the claimant.

1951 (d) Each physician, hospital, clinic, or other medical  
1952 institution providing, before or after bodily injury upon which  
1953 a claim for emergency care coverage is based, any products,  
1954 services, or accommodations relating to that or any other  
1955 injury, or to a condition claimed to be connected with that or



791184

1956 any other injury, shall, if requested by the insurer against  
1957 whom the claim has been made, permit the insurer or the  
1958 insurer's representative to conduct, within 10 days after the  
1959 insurer's request, an onsite physical review and examination of  
1960 the treatment location, treatment apparatuses, diagnostic  
1961 devices, and any other medical equipment used for the services  
1962 rendered, and shall furnish a written report of the history,  
1963 condition, treatment, dates, and costs of such treatment of the  
1964 injured person and why the items identified by the insurer were  
1965 reasonable in amount and medically necessary. The report shall  
1966 be furnished with a sworn statement that the treatment or  
1967 services rendered were reasonable and necessary with respect to  
1968 the bodily injury sustained and must identify which portion of  
1969 the expenses for the treatment or services was incurred as a  
1970 result of the bodily injury. The physician, hospital, clinic, or  
1971 other medical institution shall also permit the inspection and  
1972 copying of any records regarding such history, condition,  
1973 treatment, dates, and costs of treatment; however, this does not  
1974 limit the introduction of evidence at trial. The sworn statement  
1975 must read as follows: "Under penalty of perjury, I declare that  
1976 I have read the foregoing, and the facts alleged are true to the  
1977 best of my knowledge and belief."

1978  
1979 A cause of action for violation of the physician-patient  
1980 privilege or invasion of the right of privacy is prohibited  
1981 against any physician, hospital, clinic, or other medical  
1982 institution complying with this paragraph. The person requesting  
1983 such records and sworn statement shall pay all reasonable costs  
1984 connected therewith. If an insurer makes a written request for



791184

1985 documentation or information within 30 days after having  
1986 received notice of the amount of a covered loss under paragraph  
1987 (4) (f), the amount or the partial amount that is the subject of  
1988 the insurer's inquiry is overdue if the insurer does not pay in  
1989 accordance with paragraph (4) (f) or within 10 days after the  
1990 insurer's receipt of the requested documentation or information,  
1991 whichever occurs later. As used in this paragraph, the term  
1992 "receipt" includes, but is not limited to, inspection and  
1993 copying pursuant to this paragraph. An insurer that requests  
1994 documentation or information pertaining to the reasonableness of  
1995 charges or medical necessity without a reasonable basis for such  
1996 requests as a general business practice is engaging in an unfair  
1997 trade practice under the insurance code. Section 626.989(4) (d)  
1998 applies to the sharing of information related to reviews and  
1999 examinations conducted pursuant to this section.

2000 (e) If there is a dispute regarding an insurer's right to  
2001 discovery of facts under this section, the insurer may petition  
2002 the court to enter an order permitting such discovery. The order  
2003 may be made only on motion for good cause shown and upon notice  
2004 to all persons having an interest, and must specify the time,  
2005 place, manner, conditions, and scope of the discovery. The court  
2006 may, in order to protect against annoyance, embarrassment, or  
2007 oppression, as justice requires, enter an order refusing  
2008 discovery or specifying conditions of discovery and may order  
2009 payments of costs and expenses of the proceeding, including  
2010 reasonable fees for the appearance of attorneys at the  
2011 proceedings, as justice requires.

2012 (f) Upon request, the injured person shall be furnished a  
2013 copy of all information obtained by the insurer under this



791184

2014 section and shall pay a reasonable charge if required by the  
2015 insurer.

2016 (g) Notice to an insurer of the existence of a claim may  
2017 not be unreasonably withheld by an insured.

2018 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;  
2019 REPORTS.—If the mental or physical condition of an injured  
2020 person covered by emergency care coverage is material to a claim  
2021 that has been or may be made for past or future benefits under  
2022 such coverage, upon the request of an insurer, such person must  
2023 submit to mental or physical examination by a physician. The  
2024 costs of such examination shall be borne entirely by the  
2025 insurer. The insurer may include reasonable provisions in  
2026 emergency care coverage insurance policies for the mental and  
2027 physical examination of those claiming benefits under the  
2028 policy.

2029 (a) The examination must be conducted within the  
2030 municipality where the insured is receiving treatment, or in a  
2031 location reasonably accessible to the insured, which means any  
2032 location within the municipality in which the insured resides,  
2033 or within 10 miles by road of the insured's residence if such  
2034 location is within the county in which the insured resides. If  
2035 the examination is to be conducted in a location reasonably  
2036 accessible to the insured but there is no qualified physician to  
2037 conduct the examination in such location, the examination shall  
2038 be conducted in an area that is in the closest proximity to the  
2039 insured's residence.

2040 (b) An insurer may not withdraw payment from a treating  
2041 physician without the consent of the injured person covered by  
2042 the policy unless the insurer first obtains a valid report by a



791184

2043 Florida physician licensed under the same chapter as the  
2044 treating physician stating that treatment was not reasonable,  
2045 related, or necessary. A valid report is one that is prepared  
2046 and signed by the physician examining the injured person or who  
2047 reviewed the treatment records of the injured person, is  
2048 factually supported by the examination or treatment records  
2049 reviewed, and that has not been modified by anyone other than  
2050 the reviewing physician. The physician preparing the report must  
2051 be in active practice, unless he or she is physically disabled.  
2052 "Active practice" means that during the 3 years immediately  
2053 preceding the date of the physical examination or review of  
2054 treatment records, the physician devoted professional time to  
2055 the active clinical practice of evaluation, diagnosis, or  
2056 treatment of medical conditions or to the instruction of  
2057 students in an accredited health professional school, accredited  
2058 residency program, or a clinical research program that is  
2059 affiliated with an accredited health professional school,  
2060 teaching hospital, or accredited residency program. The insurer  
2061 and any person acting at the direction of or on behalf of the  
2062 insurer may not materially change an opinion in a report  
2063 prepared under this paragraph or direct the physician preparing  
2064 the report to change such opinion. The denial of a payment  
2065 resulting from a changed opinion constitutes a material  
2066 misrepresentation under s. 626.9541(1)(i)2. This provision does  
2067 not preclude the insurer from calling to the physician's  
2068 attention any errors of fact in the report based upon  
2069 information in the claim file.

2070 (c) If requested by the person examined, a party causing an  
2071 examination to be made must deliver a copy of every written



791184

2072 report concerning a examination rendered by an examining  
2073 physician to the person examined, at least one of which must set  
2074 out the examining physician's findings and conclusions in  
2075 detail. After such request and delivery, the party causing the  
2076 examination to be made is entitled, upon request, to receive  
2077 from the person examined every written report available to him  
2078 or her or his or her representative concerning any examination,  
2079 previously or thereafter made, of the same mental or physical  
2080 condition. By requesting and obtaining a report of the  
2081 examination so ordered, or by taking the deposition of the  
2082 examiner, the person examined waives any privilege he or she may  
2083 have, relating to the claim for benefits, regarding the  
2084 testimony of every other person who has examined, or may  
2085 thereafter examine, him or her with respect to the same mental  
2086 or physical condition.

2087 (d) The physician preparing a report at the request of an  
2088 insurer and physicians rendering expert opinions on behalf of  
2089 persons claiming medical benefits for emergency care coverage,  
2090 or on behalf of an insured through an attorney or another  
2091 entity, must maintain copies of all examination reports as  
2092 medical records and all payments for the examinations and  
2093 reports for at least 3 years.

2094 (e) If a person unreasonably refuses to submit to an  
2095 examination or fails to appear for an examination, the insurer  
2096 is no longer liable for subsequent emergency care benefits.  
2097 Refusal or failure to appear for two examinations raises a  
2098 rebuttable presumption that such refusal or failure was  
2099 unreasonable.

2100 (8) DEMAND LETTER.-



791184

2101           (a) As a condition precedent to filing an action for  
2102 benefits under this section, the insurer must be provided with  
2103 written notice of an intent to initiate litigation. Such notice  
2104 may not be sent until the claim is overdue, including any  
2105 additional time the insurer has to pay the claim pursuant to  
2106 subsection (4).

2107           (b) The notice required must state that it is a "demand  
2108 letter under s. 627.7485(8), F.S.," and state with specificity:

2109           1. The name of the insured upon whom such benefits are  
2110 being sought, including a copy of the assignment giving rights  
2111 to the claimant if the claimant is not the insured.

2112           2. The claim number or policy number upon which such claim  
2113 was originally submitted to the insurer.

2114           3. To the extent applicable, the name of any medical  
2115 provider who rendered the treatment, services, accommodations,  
2116 or supplies to an insured which form the basis of such claim and  
2117 an itemized statement specifying each exact amount, the date of  
2118 treatment, service, or accommodation, and the type of benefit  
2119 claimed to be due. A completed form satisfying the requirements  
2120 of paragraph (5)(e) or the lost-wage statement previously  
2121 submitted may be used as the itemized statement. If the demand  
2122 involves an insurer's withdrawal of payment under paragraph  
2123 (7)(b) for future treatment not yet rendered, the claimant shall  
2124 attach a copy of the insurer's notice withdrawing such payment  
2125 and an itemized statement of the type, frequency, and duration  
2126 of future treatment claimed to be reasonable and medically  
2127 necessary.

2128           (c) Each notice required by this subsection must be  
2129 delivered to the insurer by United States certified or



791184

2130 registered mail, return receipt requested. If requested by the  
2131 claimant in the notice, such postal costs shall be reimbursed by  
2132 the insurer when the insurer pays the claim. The notice must be  
2133 sent to the person and address specified by the insurer for the  
2134 purposes of receiving notices under this subsection. Each  
2135 licensed insurer, whether domestic, foreign, or alien, shall  
2136 file with the office the name and address of the person to whom  
2137 notices pursuant to this subsection are sent, which the office  
2138 shall make available on its website. The name and address on  
2139 file with the office pursuant to s. 624.422 shall be deemed the  
2140 authorized representative to accept notice pursuant to this  
2141 subsection if no other designation has been made.

2142 (d) If the overdue claim specified in the notice is paid by  
2143 the insurer within 30 days after receipt of notice by the  
2144 insurer, plus applicable interest and a penalty of 10 percent of  
2145 the overdue amount, subject to a maximum penalty of \$250, no  
2146 action may be brought against the insurer. If the demand  
2147 involves an insurer's withdrawal of payment under paragraph  
2148 (7) (b) for future treatment not yet rendered, no action may be  
2149 brought against the insurer if, within 30 days after receipt of  
2150 the notice, the insurer mails to the person filing the notice a  
2151 written statement of the insurer's agreement to pay for such  
2152 treatment in accordance with the notice and to pay a penalty of  
2153 10 percent, subject to a maximum penalty of \$250, when it pays  
2154 for such future treatment in accordance with the requirements of  
2155 this section. To the extent the insurer determines not to pay  
2156 any amount demanded, the penalty is not payable in any  
2157 subsequent action. For purposes of this paragraph, payment or  
2158 the insurer's agreement are considered made on the date a draft



791184

2159 or other valid instrument that is equivalent to payment, or the  
2160 insurer's written statement of agreement, is placed in the  
2161 United States mail in a properly addressed, postpaid envelope,  
2162 or if not so posted, on the date of delivery. The insurer is not  
2163 obligated to pay any attorney fees if the insurer pays the claim  
2164 or mails its agreement to pay for future treatment within the  
2165 time prescribed by this paragraph.

2166 (e) The applicable statute of limitation for an action  
2167 under this section shall be tolled for 30 business days by the  
2168 mailing of the notice required by this subsection.

2169 (f) Any insurer making a general business practice of not  
2170 paying valid claims until receipt of the notice required by this  
2171 subsection is engaging in an unfair trade practice under the  
2172 insurance code.

2173 (9) FAILURE TO PAY VALID CLAIMS; UNFAIR OR DECEPTIVE  
2174 PRACTICE.—

2175 (a) If an insurer fails to pay valid claims for emergency  
2176 care coverage with such frequency as to indicate a general  
2177 business practice, the insurer is engaging in a prohibited  
2178 unfair or deceptive practice subject to the penalties provided  
2179 in s. 626.9521, and the office has the powers and duties  
2180 specified in ss. 626.9561-626.9601 with respect thereto.

2181 (b) Notwithstanding s. 501.212, the Department of Legal  
2182 Affairs may investigate and initiate actions for a violation of  
2183 this subsection, including, but not limited to, the powers and  
2184 duties specified in part II of chapter 501.

2185 (10) CIVIL ACTION FOR INSURANCE FRAUD.—An insurer shall  
2186 have a cause of action against any person convicted of, or who,  
2187 regardless of adjudication of guilt, pleads guilty or nolo



791184

2188 contendere to, insurance fraud under s. 817.234, patient  
2189 brokering under s. 817.505, or kickbacks under s. 456.054,  
2190 associated with a claim for emergency care coverage in  
2191 accordance with this section. An insurer prevailing in an action  
2192 brought under this subsection may recover compensatory,  
2193 consequential, and punitive damages subject to the requirements  
2194 and limitations of part II of chapter 768 and attorney fees and  
2195 costs incurred in litigating the cause of action.

2196 (11) FRAUD ADVISORY NOTICE.—Upon receiving notice of a  
2197 claim under this section, an insurer shall provide a notice to  
2198 the insured or to a person for whom a claim for reimbursement  
2199 for diagnosis or treatment of injuries has been filed advising  
2200 that:

2201 (a) Pursuant to s. 626.9892, the Department of Financial  
2202 Services may pay rewards of up to \$25,000 to persons providing  
2203 information leading to the arrest and conviction of persons  
2204 committing crimes investigated by the Division of Insurance  
2205 Fraud arising from violations of s. 440.105, s. 624.15, s.  
2206 626.9541, s. 626.989, or s. 817.234.

2207 (b) Solicitation of a person injured in a motor vehicle  
2208 crash for purposes of filing emergency care coverage or tort  
2209 claims could be a violation of s. 817.234 or s. 817.505 or the  
2210 rules regulating The Florida Bar and, if such conduct has taken  
2211 place, should be immediately reported to the Division of  
2212 Insurance Fraud.

2213 (12) ALL CLAIMS BROUGHT IN A SINGLE ACTION.—In any civil  
2214 action to recover emergency care coverage brought by a claimant  
2215 pursuant to this section against an insurer, all claims related  
2216 to the same health care provider for the same injured person



791184

2217 shall be brought in one action unless good cause is shown why  
2218 such claims should be brought separately. If the court  
2219 determines that a civil action is filed for a claim that should  
2220 have been brought in a prior civil action, the court may not  
2221 award attorney fees to the claimant.

2222 (13) SECURE ELECTRONIC DATA TRANSFER.—A notice,  
2223 documentation, transmission, or communication of any kind  
2224 required or authorized under ss. 627.748-627.7491 may be  
2225 transmitted electronically if it is transmitted by secure  
2226 electronic data transfer that is consistent with state and  
2227 federal privacy and security laws.

2228 Section 15. Section 627.7486, Florida Statutes, is created  
2229 to read:

2230 627.7486 Tort exemption; limitation on right to damages;  
2231 punitive damages.—

2232 (1) Every owner, registrant, operator, or occupant of a  
2233 motor vehicle for which security has been provided as required  
2234 by ss. 627.748-627.7491, and every person or organization  
2235 legally responsible for her or his acts or omissions, is exempt  
2236 from tort liability for damages because of bodily injury,  
2237 sickness, or disease arising out of the ownership, operation,  
2238 maintenance, or use of such motor vehicle in this state to the  
2239 extent that the benefits described in s. 627.7485(1) are payable  
2240 for such injury, or would be payable but for any exclusion  
2241 authorized by ss. 627.748-627.7491, under any insurance policy  
2242 or other method of security complying with s. 627.7483, or by an  
2243 owner personally liable under s. 627.7483 for the payment of  
2244 such benefits, unless the person is entitled to maintain an  
2245 action for pain, suffering, mental anguish, and inconvenience



791184

2246 for such injury under subsection (2).

2247 (2) In any action of tort brought against the owner,  
2248 registrant, operator, or occupant of a motor vehicle for which  
2249 security has been provided as required by ss. 627.748-627.7491,  
2250 or against any person or organization legally responsible for  
2251 her or his acts or omissions, a plaintiff may recover damages in  
2252 tort for pain, suffering, mental anguish, and inconvenience  
2253 because of bodily injury, sickness, or disease arising out of  
2254 the ownership, maintenance, operation, or use of such motor  
2255 vehicle only if the injury or disease consists in whole or in  
2256 part of:

2257 (a) Significant and permanent loss of an important bodily  
2258 function;

2259 (b) Permanent injury within a reasonable degree of medical  
2260 probability, other than scarring or disfigurement;

2261 (c) Significant and permanent scarring or disfigurement; or

2262 (d) Death.

2263 (3) If a defendant in a proceeding brought pursuant to ss.  
2264 627.748-627.7491 questions whether the plaintiff has met the  
2265 requirements of subsection (2), the defendant may file an  
2266 appropriate motion with the court, and the court, 30 days before  
2267 the date set for the trial or the pretrial hearing, whichever is  
2268 first, shall, on a one-time basis only, ascertain by examining  
2269 the pleadings and the evidence before it whether the plaintiff  
2270 will be able to submit some evidence that the plaintiff will  
2271 meet the requirements of subsection (2). If the court finds that  
2272 the plaintiff will not be able to submit such evidence, the  
2273 court shall dismiss the plaintiff's claim without prejudice.

2274 (4) A claim for punitive damages is not allowed in any



791184

2275 action brought against a motor vehicle liability insurer for  
2276 damages in excess of its policy limits.

2277 Section 16. Section 627.7487, Florida Statutes, is created  
2278 to read:

2279 627.7487 Emergency care coverage; optional limitations;  
2280 deductibles.-

2281 (1) The named insured may elect a deductible or modified  
2282 coverage or combination thereof to apply to the named insured  
2283 alone or to the named insured and dependent relatives residing  
2284 in the insured's household but may not elect a deductible or  
2285 modified coverage to apply to any other person covered under the  
2286 policy.

2287 (2) Upon the renewal of an existing policy, an insurer  
2288 shall offer deductibles of \$250, \$500, and \$1,000 to each  
2289 applicant and to each policyholder. The deductible amount must  
2290 be applied to 100 percent of the expenses and losses described  
2291 in s. 627.7485. After the deductible is met, each insured may  
2292 receive up to \$10,000 in total benefits as described in s.  
2293 627.7485(1). However, this subsection may not be applied to  
2294 reduce the amount of any benefits received in accordance with s.  
2295 627.7485(1)(c).

2296 (3) An insurer shall offer coverage where, at the election  
2297 of the named insured, the benefits for loss of gross income and  
2298 loss of earning capacity described in s. 627.7485(1)(b) are  
2299 excluded.

2300 (4) The named insured may not be prevented from electing a  
2301 deductible under subsection (2) and modified coverage under  
2302 subsection (3). Each election made by the named insured under  
2303 this section must result in an appropriate reduction of premium



791184

2304 associated with that election.

2305 (5) All such offers must be made in clear and unambiguous  
2306 language at the time the initial application is taken and before  
2307 each annual renewal and indicate that a premium reduction will  
2308 result from each election. At the option of the insurer, such  
2309 requirement may be met by using forms of notice approved by the  
2310 office or by providing the following notice in 10-point type in  
2311 the insurer's application for initial issuance of a policy of  
2312 motor vehicle insurance and the insurer's annual notice of  
2313 renewal premium:

2314  
2315 For emergency care coverage insurance, the named insured may  
2316 elect a deductible and may choose to exclude coverage for loss  
2317 of gross income and loss of earning capacity ("lost wages").  
2318 This selection and choice apply to the named insured alone, or  
2319 to the named insured and all dependent resident relatives. A  
2320 premium reduction will result from these elections. The named  
2321 insured is hereby advised not to elect the lost wage exclusion  
2322 if the named insured or dependent resident relatives are  
2323 employed, since lost wages will not be payable in the event of  
2324 an accident.

2325 Section 17. Section 627.7488, Florida Statutes, is created  
2326 to read:

2327 627.7488 Notice of insured's rights.-

2328 (1) The commission shall adopt by rule a form for notifying  
2329 insureds of their right to receive coverage under the Florida  
2330 Motor Vehicle No-Fault Emergency Care Coverage Law. Such notice  
2331 must include:

2332 (a) A description of the benefits provided, including, but



791184

2333 not limited to, the specific types of services for which medical  
2334 benefits are paid, disability benefits, death benefits,  
2335 significant exclusions from and limitations on coverage, how  
2336 benefits are coordinated with other insurance benefits that the  
2337 insured may have, when payments are due, penalties and interest  
2338 that may be imposed on insurers for failure to make timely  
2339 payments of benefits, and rights of parties regarding disputes  
2340 as to benefits.

2341 (b) An advisory informing insureds that:

2342 1. Pursuant to s. 626.9892, the Department of Financial  
2343 Services may pay rewards of up to \$25,000 to persons providing  
2344 information leading to the arrest and conviction of persons  
2345 committing crimes investigated by the Division of Insurance  
2346 Fraud arising from violations of s. 440.105, s. 624.15, s.  
2347 626.9541, s. 626.989, or s. 817.234.

2348 2. Pursuant to s. 627.7485(5)(f)1.e., if the insured  
2349 notifies the insurer in writing of a billing error, the insured  
2350 may be entitled to a certain percentage of a reduction in the  
2351 amounts paid by the insured's motor vehicle insurer.

2352 (c) A notice that solicitation of a person injured in a  
2353 motor vehicle crash for purposes of filing emergency care  
2354 coverage or tort claims could be a violation of s. 817.234 or s.  
2355 817.505 or the rules regulating The Florida Bar and, if such  
2356 conduct has taken place, it should be immediately reported to  
2357 the Division of Insurance Fraud.

2358 (2) Each insurer issuing a policy in this state providing  
2359 emergency care coverage must mail or deliver the notice as  
2360 specified in subsection (1) to an insured within 21 days after  
2361 receiving from the insured notice of a motor vehicle accident or



791184

2362 claim involving personal injury to an insured who is covered  
2363 under the policy. The office may allow an insurer additional  
2364 time, not to exceed 30 days, to provide the notice specified in  
2365 subsection (1) upon a showing by the insurer that an emergency  
2366 justifies an extension of time.

2367 (3) The notice required by this section does not alter or  
2368 modify the terms of the insurance contract or other requirements  
2369 of ss. 627.748-627.7491.

2370 Section 18. Section 627.7489, Florida Statutes, is created  
2371 to read:

2372 627.7489 Mandatory joinder of derivative claim.-In any  
2373 action brought pursuant to s. 627.7486 claiming personal  
2374 injuries, all claims arising out of the plaintiff's injuries,  
2375 including all derivative claims, shall be brought together,  
2376 unless good cause is shown why such claims should be brought  
2377 separately.

2378 Section 19. Section 627.749, Florida Statutes, is created  
2379 to read:

2380 627.749 Insurers' right of reimbursement.-Notwithstanding  
2381 any other provisions of ss. 627.748-627.7491, an insurer  
2382 providing emergency care coverage on a private passenger motor  
2383 vehicle shall, to the extent of any emergency care coverage paid  
2384 to any person as a benefit arising out of such private passenger  
2385 motor vehicle insurance, have a right of reimbursement against  
2386 the owner or the insurer of the owner of a commercial motor  
2387 vehicle if the benefits paid result from such person having been  
2388 an occupant of the commercial motor vehicle or having been  
2389 struck by the commercial motor vehicle while not an occupant of  
2390 any self-propelled vehicle.



791184

2391 Section 20. Section 627.7491, Florida Statutes, is created  
2392 to read:

2393 627.7491 Application of the Florida Motor Vehicle No-Fault  
2394 Emergency Care Coverage Law.-

2395 (1) On or after January 1, 2013, any person subject to ss.  
2396 627.748-627.7491 must maintain security for emergency care  
2397 coverage.

2398 (2) All forms and rates for policies issued or renewed on  
2399 or after January 1, 2013, must reflect ss. 627.748-627.7491 and  
2400 must be approved by the office before use.

2401 (3) After January 1, 2013, insurers must provide notice of  
2402 the Florida Motor Vehicle No-Fault Emergency Care Coverage Law  
2403 to existing policyholders at least 30 days before the policy  
2404 expiration date and to applicants for no-fault coverage upon  
2405 receipt of the application. The notice is not subject to  
2406 approval by the office and must clearly inform the policyholder  
2407 or applicant of the following:

2408 (a) That no-fault motor vehicle insurance requirements are  
2409 governed by the Florida Motor Vehicle No-Fault Emergency Care  
2410 Coverage Law and must provide an explanation of emergency care  
2411 coverage. With respect to the initial renewal after January 1,  
2412 2013, current policyholders must also be provided with an  
2413 explanation of differences between their current policies and  
2414 the coverage provided under emergency care coverage policies.

2415 (b) That failure to maintain required emergency care  
2416 coverage and \$10,000 in property damage liability coverage may  
2417 result in state suspension of the policyholder's driver license  
2418 and vehicle registration.

2419 (c) The name and telephone number of a person to contact



791184

2420 with any questions she or he may have.

2421           Section 21. Subsection (1), paragraph (c) of subsection  
2422 (7), paragraphs (a), (b), and (c) of subsection (8), and  
2423 subsections (9), (10), and (13) of section 817.234, Florida  
2424 Statutes, are amended to read:

2425           817.234 False and fraudulent insurance claims.—

2426           (1) (a) A person commits insurance fraud punishable as  
2427 provided in subsection (11) if that person, with the intent to  
2428 injure, defraud, or deceive any insurer:

2429           1. Presents or causes to be presented any written or oral  
2430 statement as part of, or in support of, a claim for payment or  
2431 other benefit pursuant to an insurance policy or a health  
2432 maintenance organization subscriber or provider contract,  
2433 knowing that such statement contains any false, incomplete, or  
2434 misleading information concerning any fact or thing material to  
2435 such claim;

2436           2. Prepares or makes any written or oral statement that is  
2437 intended to be presented to any insurer in connection with, or  
2438 in support of, any claim for payment or other benefit pursuant  
2439 to an insurance policy or a health maintenance organization  
2440 subscriber or provider contract, knowing that such statement  
2441 contains any false, incomplete, or misleading information  
2442 concerning any fact or thing material to such claim; ~~or~~

2443           3.a. Knowingly presents, causes to be presented, or  
2444 prepares or makes with knowledge or belief that it will be  
2445 presented to any insurer, purported insurer, servicing  
2446 corporation, insurance broker, or insurance agent, or any  
2447 employee or agent thereof, any false, incomplete, or misleading  
2448 information or written or oral statement as part of, or in



791184

2449 support of, an application for the issuance of, or the rating  
2450 of, any insurance policy, or a health maintenance organization  
2451 subscriber or provider contract; or

2452 b. ~~Who~~ Knowingly conceals information concerning any fact  
2453 material to such application; ~~or-~~

2454 4. Knowingly presents, causes to be presented, or, with  
2455 knowledge or belief that it will be presented to an insurer,  
2456 prepares or makes a claim for payment or other benefit under a  
2457 personal injury protection insurance policy or an emergency care  
2458 overage insurance policy and the person knows that the payee  
2459 knowingly submitted a false, misleading, or fraudulent  
2460 application or other document when applying for licensure as a  
2461 health care clinic, seeking an exemption from licensure as a  
2462 health care clinic, or demonstrating compliance with part X of  
2463 chapter 400.

2464 (b) All claims and application forms must ~~shall~~ contain a  
2465 statement that is approved by the Office of Insurance Regulation  
2466 of the Financial Services Commission which clearly states in  
2467 substance the following: "Any person who knowingly and with  
2468 intent to injure, defraud, or deceive any insurer files a  
2469 statement of claim or an application containing any false,  
2470 incomplete, or misleading information is guilty of a felony of  
2471 the third degree." This paragraph does ~~shall~~ not apply to  
2472 reinsurance contracts, reinsurance agreements, or reinsurance  
2473 claims transactions.

2474 (7)

2475 (c) An insurer, or any person acting at the direction of or  
2476 on behalf of an insurer, may not change an opinion in a mental  
2477 or physical report prepared under s. 627.736(7) or s.



791184

2478 627.7485(7), as applicable, ~~s. 627.736(8)~~ or direct the  
2479 physician preparing the report to change such opinion; however,  
2480 this provision does not preclude the insurer from calling to the  
2481 attention of the physician errors of fact in the report based  
2482 upon information in the claim file. Any person who violates this  
2483 paragraph commits a felony of the third degree, punishable as  
2484 provided in s. 775.082, s. 775.083, or s. 775.084.

2485 (8) (a) It is unlawful for any person intending to defraud  
2486 any other person to solicit or cause to be solicited any  
2487 business from a person involved in a motor vehicle accident for  
2488 the purpose of making, adjusting, or settling motor vehicle tort  
2489 claims or claims for personal injury protection or emergency  
2490 care coverage benefits required by s. 627.736 or 627.7485, as  
2491 applicable. Any person who violates ~~the provisions of this~~  
2492 paragraph commits a felony of the second degree, punishable as  
2493 provided in s. 775.082, s. 775.083, or s. 775.084. A person who  
2494 is convicted of a violation of this subsection shall be  
2495 sentenced to a minimum term of imprisonment of 2 years.

2496 (b) A person may not solicit or cause to be solicited any  
2497 business from a person involved in a motor vehicle accident by  
2498 any means of communication other than advertising directed to  
2499 the public for the purpose of making motor vehicle tort claims  
2500 or claims for personal injury protection or emergency care  
2501 coverage benefits required by s. 627.736 or 627.7485, as  
2502 applicable, within 60 days after the occurrence of the motor  
2503 vehicle accident. Any person who violates this paragraph commits  
2504 a felony of the third degree, punishable as provided in s.  
2505 775.082, s. 775.083, or s. 775.084.

2506 (c) A lawyer, health care practitioner as defined in s.



791184

2507 456.001, or owner or medical director of a clinic required to be  
2508 licensed pursuant to s. 400.9905 may not, at any time after 60  
2509 days have elapsed from the occurrence of a motor vehicle  
2510 accident, solicit or cause to be solicited any business from a  
2511 person involved in a motor vehicle accident by means of in  
2512 person or telephone contact at the person's residence, for the  
2513 purpose of making motor vehicle tort claims or claims for  
2514 personal injury protection or emergency care coverage benefits  
2515 required by s. 627.736 or 627.7485, as applicable. Any person  
2516 who violates this paragraph commits a felony of the third  
2517 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
2518 775.084.

2519 (9) A person may not organize, plan, or knowingly  
2520 participate in an intentional motor vehicle crash or a scheme to  
2521 create documentation of a motor vehicle crash that did not occur  
2522 for the purpose of making motor vehicle tort claims or claims  
2523 for personal injury protection or emergency care coverage  
2524 benefits as required by s. 627.736 or s. 627.7485, as  
2525 applicable. Any person who violates this subsection commits a  
2526 felony of the second degree, punishable as provided in s.  
2527 775.082, s. 775.083, or s. 775.084. A person who is convicted of  
2528 a violation of this subsection shall be sentenced to a minimum  
2529 term of imprisonment of 2 years.

2530 (10) A licensed health care practitioner who is found  
2531 guilty of insurance fraud under this section for an act relating  
2532 to a personal injury protection or emergency care coverage  
2533 insurance policy may not be licensed or continue to be licensed  
2534 for 5 years and may not receive reimbursement for benefits under  
2535 such policies for 10 years. ~~As used in this section, the term~~



791184

2536 ~~"insurer" means any insurer, health maintenance organization,~~  
2537 ~~self-insurer, self-insurance fund, or other similar entity or~~  
2538 ~~person regulated under chapter 440 or chapter 641 or by the~~  
2539 ~~Office of Insurance Regulation under the Florida Insurance Code.~~

2540 (13) As used in this section, the term:

2541 (a) "Insurer" means any insurer, health maintenance  
2542 organization, self-insurer, self-insurance fund, or similar  
2543 entity or person regulated under chapter 440 or chapter 641 or  
2544 by the Office of Insurance Regulation under the Florida  
2545 Insurance Code.

2546 (b) ~~(a)~~ "Property" means property as defined in s. 812.012.

2547 (c) ~~(b)~~ "Value" means value as defined in s. 812.012.

2548 Section 22. Subsection (4) of section 316.065, Florida  
2549 Statutes, is amended to read:

2550 316.065 Crashes; reports; penalties.—

2551 (4) Any person who knowingly repairs a motor vehicle  
2552 without having made a report as required by subsection (3) is  
2553 guilty of a misdemeanor of the first degree, punishable as  
2554 provided in s. 775.082 or s. 775.083. The owner and driver of a  
2555 vehicle involved in a crash who makes a report thereof in  
2556 accordance with subsection (1) ~~or s. 316.066(1)~~ is not liable  
2557 under this section.

2558 Section 23. Subsection (1) of section 316.646, Florida  
2559 Statutes, is amended to read:

2560 316.646 Security required; proof of security and display  
2561 thereof; dismissal of cases.—

2562 (1) Any person required by s. 324.022 to maintain property  
2563 damage liability security, required by s. 324.023 to maintain  
2564 liability security for bodily injury or death, ~~or~~ required by s.



791184

2565 627.733 to maintain personal injury protection security, or  
2566 required by s. 627.7483 to maintain emergency care coverage  
2567 security, as applicable, on a motor vehicle must ~~shall~~ have in  
2568 his or her immediate possession at all times while operating  
2569 such motor vehicle proper proof of maintenance of the required  
2570 security. Such proof must ~~shall~~ be a uniform proof-of-insurance  
2571 card in a form prescribed by the department, a valid insurance  
2572 policy, an insurance policy binder, a certificate of insurance,  
2573 or such other proof as may be prescribed by the department.

2574 Section 24. Paragraph (b) of subsection (2) of section  
2575 318.18, Florida Statutes, is amended to read:

2576 318.18 Amount of penalties.—The penalties required for a  
2577 noncriminal disposition pursuant to s. 318.14 or a criminal  
2578 offense listed in s. 318.17 are as follows:

2579 (2) Thirty dollars for all nonmoving traffic violations  
2580 and:

2581 (b) For all violations of ss. 320.0605, 320.07(1), 322.065,  
2582 and 322.15(1). Any person who is cited for a violation of s.  
2583 320.07(1) shall be charged a delinquent fee pursuant to s.  
2584 320.07(4).

2585 1. If a person who is cited for a violation of s. 320.0605  
2586 or s. 320.07 can show proof of having a valid registration at  
2587 the time of arrest, the clerk of the court may dismiss the case  
2588 and may assess a dismissal fee of up to \$10. A person who finds  
2589 it impossible or impractical to obtain a valid registration  
2590 certificate must submit an affidavit detailing the reasons for  
2591 the impossibility or impracticality. The reasons may include,  
2592 but are not limited to, the fact that the vehicle was sold,  
2593 stolen, or destroyed; that the state in which the vehicle is



791184

2594 registered does not issue a certificate of registration; or that  
2595 the vehicle is owned by another person.

2596 2. If a person who is cited for a violation of s. 322.03,  
2597 s. 322.065, or s. 322.15 can show a driver ~~driver's~~ license  
2598 issued to him or her and valid at the time of arrest, the clerk  
2599 of the court may dismiss the case and may assess a dismissal fee  
2600 of up to \$10.

2601 3. If a person who is cited for a violation of s. 316.646  
2602 can show proof of security as required by s. 627.733 or s.  
2603 627.7483, as applicable, issued to the person and valid at the  
2604 time of arrest, the clerk of the court may dismiss the case and  
2605 may assess a dismissal fee of up to \$10. A person who finds it  
2606 impossible or impractical to obtain proof of security must  
2607 submit an affidavit detailing the reasons for the  
2608 impracticality. The reasons may include, but are not limited to,  
2609 the fact that the vehicle has since been sold, stolen, or  
2610 destroyed; that the owner or registrant of the vehicle is not  
2611 required by s. 627.733 or s. 627.7483 to maintain personal  
2612 injury protection insurance or emergency care coverage  
2613 insurance, as applicable; or that the vehicle is owned by  
2614 another person.

2615 Section 25. Paragraphs (a) and (d) of subsection (5) of  
2616 section 320.02, Florida Statutes, are amended to read:

2617 320.02 Registration required; application for registration;  
2618 forms.-

2619 (5) (a) Proof that personal injury protection benefits or  
2620 emergency care coverage benefits, as applicable, have been  
2621 purchased if when required under s. 627.733 or s. 627.7483, as  
2622 applicable, that property damage liability coverage has been



791184

2623 purchased as required under s. 324.022, that bodily injury or  
2624 death coverage has been purchased if required under s. 324.023,  
2625 and that combined bodily liability insurance and property damage  
2626 liability insurance have been purchased if ~~when~~ required under  
2627 s. 627.7415 shall be provided in the manner prescribed by law by  
2628 the applicant at the time of application for registration of any  
2629 motor vehicle that is subject to such requirements. The issuing  
2630 agent shall refuse to issue registration if such proof of  
2631 purchase is not provided. Insurers shall furnish uniform proof-  
2632 of-purchase cards in a form prescribed by the department and  
2633 ~~shall~~ include the name of the insured's insurance company, the  
2634 coverage identification number, and the make, year, and vehicle  
2635 identification number of the vehicle insured. The card must  
2636 ~~shall~~ contain a statement notifying the applicant of the penalty  
2637 specified in s. 316.646(4). The card or insurance policy,  
2638 insurance policy binder, or certificate of insurance or a  
2639 photocopy of any of these; an affidavit containing the name of  
2640 the insured's insurance company, the insured's policy number,  
2641 and the make and year of the vehicle insured; or such other  
2642 proof as may be prescribed by the department ~~shall~~ constitute  
2643 sufficient proof of purchase. If an affidavit is provided as  
2644 proof, it must ~~shall~~ be in substantially the following form:

2645  
2646 Under penalty of perjury, I ...(Name of insured)... do  
2647 hereby certify that I have ...(Personal Injury Protection or  
2648 Emergency Care Coverage, as applicable, Property Damage  
2649 Liability, and, if ~~when~~ required, Bodily Injury Liability)...  
2650 Insurance currently in effect with ...(Name of insurance  
2651 company)... under ...(policy number)... covering ...(make, year,



791184

2652 and vehicle identification number of vehicle).... ..(Signature  
2653 of Insured)...

2654

2655 The ~~Such~~ affidavit must ~~shall~~ include the following  
2656 warning:

2657

2658 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A  
2659 VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER  
2660 FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT  
2661 IS SUBJECT TO PROSECUTION.

2662

2663 If ~~When~~ an application is made through a licensed motor  
2664 vehicle dealer as required in s. 319.23, the original or a  
2665 photostatic copy of such card, insurance policy, insurance  
2666 policy binder, or certificate of insurance or the original  
2667 affidavit from the insured shall be forwarded by the dealer to  
2668 the tax collector of the county or the Department of Highway  
2669 Safety and Motor Vehicles for processing. By executing the  
2670 aforesaid affidavit, the ~~no~~ licensed motor vehicle dealer will  
2671 not be liable in damages for any inadequacy, insufficiency, or  
2672 falsification of any statement contained therein. A card must  
2673 ~~shall~~ also indicate the existence of any bodily injury liability  
2674 insurance voluntarily purchased.

2675

2676 (d) The verifying of proof of personal injury protection  
2677 insurance or emergency care coverage insurance, as applicable,  
2678 proof of property damage liability insurance, proof of combined  
2679 bodily liability insurance and property damage liability  
2680 insurance, or proof of financial responsibility insurance and  
the issuance or failure to issue the motor vehicle registration



791184

2681 under ~~the provisions of~~ this chapter may not be construed in any  
2682 court as a warranty of the reliability or accuracy of the  
2683 evidence of such proof. Neither the department nor any tax  
2684 collector is liable in damages for any inadequacy,  
2685 insufficiency, falsification, or unauthorized modification of  
2686 any item of the proof of personal injury protection insurance or  
2687 emergency care coverage insurance, as applicable, proof of  
2688 property damage liability insurance, proof of combined bodily  
2689 liability insurance and property damage liability insurance, or  
2690 proof of financial responsibility insurance before ~~prior to,~~  
2691 during, or subsequent to the verification of the proof. The  
2692 issuance of a motor vehicle registration does not constitute  
2693 prima facie evidence or a presumption of insurance coverage.

2694 Section 26. Paragraph (b) of subsection (1) of section  
2695 320.0609, Florida Statutes, is amended to read:

2696 320.0609 Transfer and exchange of registration license  
2697 plates; transfer fee.—

2698 (1)

2699 (b) The transfer of a license plate from a vehicle disposed  
2700 of to a newly acquired vehicle does not constitute a new  
2701 registration. The application for transfer shall be accepted  
2702 without requiring proof of personal injury protection insurance  
2703 or emergency care coverage insurance, as applicable, or  
2704 liability insurance.

2705 Section 27. Subsection (3) of section 320.27, Florida  
2706 Statutes, is amended to read:

2707 320.27 Motor vehicle dealers.—

2708 (3) APPLICATION AND FEE.—The application for the license  
2709 must ~~shall~~ be in such form as may be prescribed by the



791184

2710 department and ~~shall be~~ subject to such rules with respect  
2711 thereto as may be so prescribed by it. Such application must  
2712 ~~shall~~ be verified by oath or affirmation and ~~shall~~ contain a  
2713 full statement of the name and birth date of the applicant  
2714 ~~person or persons applying therefor~~; the name of the firm or  
2715 copartnership, with the names and places of residence of all  
2716 members thereof, if such applicant is a firm or copartnership;  
2717 the names and places of residence of the principal officers, if  
2718 the applicant is a body corporate or other artificial body; the  
2719 name of the state under whose laws the corporation is organized;  
2720 the present and former place or places of residence of the  
2721 applicant; and prior business in which the applicant has been  
2722 engaged and the location thereof. The ~~Such~~ application must  
2723 ~~shall~~ describe the exact location of the place of business and  
2724 ~~shall~~ state whether the place of business is owned by the  
2725 applicant and if ~~when~~ acquired, or, if leased, a true copy of  
2726 the lease must ~~shall~~ be attached to the application. The  
2727 applicant shall certify that the location provides an adequately  
2728 equipped office and is not a residence; that the location  
2729 affords sufficient unoccupied space upon and within which to  
2730 adequately ~~to~~ store all motor vehicles offered and displayed for  
2731 sale; and that the location is a suitable place where the  
2732 applicant can in good faith carry on such business and keep and  
2733 maintain books, records, and files necessary to conduct such  
2734 business, which will be available at all reasonable hours for ~~to~~  
2735 inspection by the department or ~~any of~~ its inspectors or other  
2736 employees. The applicant shall certify that the business of a  
2737 motor vehicle dealer is the principal business that will ~~which~~  
2738 ~~shall~~ be conducted at that location. The ~~Such~~ application must



791184

2739 ~~shall~~ contain a statement that the applicant is ~~either~~  
2740 franchised by a manufacturer of motor vehicles, in which case  
2741 the name of each motor vehicle that the applicant is franchised  
2742 to sell shall be included, or an independent, ~~(nonfranchised,)~~  
2743 motor vehicle dealer. The ~~Such~~ application must ~~shall~~ contain  
2744 such other relevant information as may be required by the  
2745 department, including evidence that the applicant is insured  
2746 under a garage liability insurance policy or a general liability  
2747 insurance policy coupled with a business automobile policy,  
2748 which includes ~~shall include~~, at a minimum, \$25,000 combined  
2749 single-limit liability coverage including bodily injury and  
2750 property damage protection and \$10,000 personal injury  
2751 protection or emergency care coverage, as applicable. Franchise  
2752 dealers must submit a garage liability insurance policy, and all  
2753 other dealers must submit a garage liability insurance policy or  
2754 a general liability insurance policy coupled with a business  
2755 automobile policy. The ~~Such~~ policy shall be for the license  
2756 period, and evidence of a new or continued policy must ~~shall~~ be  
2757 delivered to the department at the beginning of each license  
2758 period. Upon making initial application, the applicant shall pay  
2759 to the department a fee of \$300 in addition to any other fees  
2760 ~~now~~ required by law; upon making a subsequent renewal  
2761 application, the applicant shall pay to the department a fee of  
2762 \$75 in addition to any other fees ~~now~~ required by law. Upon  
2763 making an application for a change of location, the person shall  
2764 pay a fee of \$50 in addition to any other fees ~~now~~ required by  
2765 law. The department shall, in the case of every application for  
2766 initial licensure, verify whether certain facts set forth in the  
2767 application are true. Each applicant, general partner in the



791184

2768 case of a partnership, or corporate officer and director in the  
2769 case of a corporate applicant, must file a set of fingerprints  
2770 with the department for the purpose of determining any prior  
2771 criminal record or any outstanding warrants. The department  
2772 shall submit the fingerprints to the Department of Law  
2773 Enforcement for state processing and forwarding to the Federal  
2774 Bureau of Investigation for federal processing. The actual cost  
2775 of state and federal processing shall be borne by the applicant  
2776 and is in addition to the fee for licensure. The department may  
2777 issue a license to an applicant pending the results of the  
2778 fingerprint investigation, which ~~license~~ is fully revocable if  
2779 the department subsequently determines that any facts set forth  
2780 in the application are not true or correctly represented.

2781 Section 28. Paragraph (j) of subsection (3) of section  
2782 320.771, Florida Statutes, is amended to read:

2783 320.771 License required of recreational vehicle dealers.—

2784 (3) APPLICATION.—The application for such license shall be  
2785 in the form prescribed by the department and subject to such  
2786 rules as may be prescribed by it. The application shall be  
2787 verified by oath or affirmation and shall contain:

2788 (j) A statement that the applicant is insured under a  
2789 garage liability insurance policy, which ~~shall include~~, at a  
2790 minimum, includes \$25,000 combined single-limit liability  
2791 coverage, including bodily injury and property damage  
2792 protection, and \$10,000 personal injury protection or emergency  
2793 care coverage, as applicable, if the applicant is to be licensed  
2794 as a dealer in, or intends to sell, recreational vehicles.

2795  
2796 The department shall, if it deems necessary, cause an



791184

2797 investigation to be made to ascertain if the facts set forth in  
2798 the application are true and may ~~shall~~ not issue a license to  
2799 the applicant until it is satisfied that the facts set forth in  
2800 the application are true.

2801 Section 29. Subsection (1) of section 322.251, Florida  
2802 Statutes, is amended to read:

2803 322.251 Notice of cancellation, suspension, revocation, or  
2804 disqualification of license.—

2805 (1) All orders of cancellation, suspension, revocation, or  
2806 disqualification issued under ~~the provisions of~~ this chapter,  
2807 chapter 318, chapter 324, ~~or~~ ss. 627.732-627.734, or ss.  
2808 627.748-627.7491 must be made ~~shall be given either~~ by personal  
2809 delivery ~~thereof~~ to the licensee whose license is being  
2810 canceled, suspended, revoked, or disqualified or by deposit in  
2811 the United States mail in an envelope, first class, postage  
2812 prepaid, addressed to the licensee at his or her last known  
2813 mailing address furnished to the department. Such mailing by the  
2814 department constitutes notification, and any failure by the  
2815 person to receive the mailed order does ~~will~~ not affect or stay  
2816 the effective date or term of the cancellation, suspension,  
2817 revocation, or disqualification of the licensee's driving  
2818 privilege.

2819 Section 30. Paragraph (a) of subsection (8) of section  
2820 322.34, Florida Statutes, is amended to read:

2821 322.34 Driving while license suspended, revoked, canceled,  
2822 or disqualified.—

2823 (8) (a) Upon the arrest of a person for the offense of  
2824 driving while the person's driver ~~driver's~~ license or driving  
2825 privilege is suspended or revoked, the arresting officer must



791184

2826 ~~shall~~ determine:

2827 1. Whether the person's driver ~~driver's~~ license is  
2828 suspended or revoked.

2829 2. Whether the person's driver ~~driver's~~ license has  
2830 remained suspended or revoked since a conviction for the offense  
2831 of driving with a suspended or revoked license.

2832 3. Whether the suspension or revocation was made under s.  
2833 316.646, ~~or~~ s. 627.733, or s. 627.7483, relating to failure to  
2834 maintain required security, or under s. 322.264, relating to  
2835 habitual traffic offenders.

2836 4. Whether the driver is the registered owner or coowner of  
2837 the vehicle.

2838 Section 31. Subsection (1) and paragraph (c) of subsection  
2839 (9) of section 324.021, Florida Statutes, are amended to read:

2840 324.021 Definitions; minimum insurance required.—The  
2841 following words and phrases when used in this chapter shall, for  
2842 the purpose of this chapter, have the meanings respectively  
2843 ascribed to them in this section, except in those instances  
2844 where the context clearly indicates a different meaning:

2845 (1) MOTOR VEHICLE.—Every self-propelled vehicle that ~~which~~  
2846 is designed and required to be licensed for use upon a highway,  
2847 including trailers and semitrailers designed for use with such  
2848 vehicles, except traction engines, road rollers, farm tractors,  
2849 power shovels, and well drillers, and every vehicle that ~~which~~  
2850 is propelled by electric power obtained from overhead wires but  
2851 not operated upon rails, but not including any bicycle or moped.  
2852 However, the term "motor vehicle" does ~~shall~~ not include a ~~any~~  
2853 motor vehicle as defined in s. 627.732(3) or s. 627.7482(9), as  
2854 applicable, if ~~when~~ the owner of such vehicle has complied with



791184

2855 ~~the requirements of ss. 627.730-627.7405 or ss. 627.748-~~  
2856 ~~627.7491, as applicable, inclusive,~~ unless the provisions of s.  
2857 324.051 applies apply; and, in such case, the applicable proof  
2858 of insurance provisions of s. 320.02 apply.

2859 (9) OWNER; OWNER/LESSOR.—

2860 (c) *Application.*—

2861 1. The limits on liability in subparagraphs (b)2. and 3. do  
2862 not apply to an owner of motor vehicles that are used for  
2863 commercial activity in the owner's ordinary course of business,  
2864 other than a rental company that rents or leases motor vehicles.  
2865 For purposes of this paragraph, the term "rental company"  
2866 includes only an entity that is engaged in the business of  
2867 renting or leasing motor vehicles to the general public and that  
2868 rents or leases a majority of its motor vehicles to persons who  
2869 have ~~with~~ no direct or indirect affiliation with the rental  
2870 company. The term also includes a motor vehicle dealer that  
2871 provides temporary replacement vehicles to its customers for up  
2872 to 10 days. The term "rental company" also includes:

2873 a. A related rental or leasing company that is a subsidiary  
2874 of the same parent company as that of the renting or leasing  
2875 company that rented or leased the vehicle.

2876 b. The holder of a motor vehicle title or an equity  
2877 interest in a motor vehicle title if the title or equity  
2878 interest is held pursuant to or to facilitate an asset-backed  
2879 securitization of a fleet of motor vehicles used solely in the  
2880 business of renting or leasing motor vehicles to the general  
2881 public and under the dominion and control of a rental company,  
2882 as described in this subparagraph, in the operation of such  
2883 rental company's business.



791184

2884           2. ~~Furthermore,~~ With respect to commercial motor vehicles  
2885 as defined in s. 627.732 or s. 627.7482, as applicable, the  
2886 limits on liability in subparagraphs (b)2. and 3. do not apply  
2887 if, at the time of the incident, the commercial motor vehicle is  
2888 being used in the transportation of materials found to be  
2889 hazardous for the purposes of the Hazardous Materials  
2890 Transportation Authorization Act of 1994, as amended, 49 U.S.C.  
2891 ss. 5101 et seq., and that is required pursuant to such act to  
2892 carry placards warning others of the hazardous cargo, unless at  
2893 the time of lease or rental ~~either:~~

2894           a. The lessee indicates in writing that the vehicle will  
2895 not be used to transport materials found to be hazardous for the  
2896 purposes of the Hazardous Materials Transportation Authorization  
2897 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

2898           b. The lessee or other operator of the commercial motor  
2899 vehicle has in effect insurance with limits of at least  
2900 \$5,000,000 combined property damage and bodily injury liability.

2901           Section 32. Section 324.0221, Florida Statutes, is amended  
2902 to read:

2903           324.0221 Reports by insurers to the department; suspension  
2904 of driver ~~driver's~~ license and vehicle registrations;  
2905 reinstatement.—

2906           (1) (a) Each insurer that has issued a policy providing  
2907 personal injury protection or emergency care coverage or  
2908 property damage liability coverage shall report the renewal,  
2909 cancellation, or nonrenewal of the policy ~~thereof~~ to the  
2910 department within 45 days after the effective date of each  
2911 renewal, cancellation, or nonrenewal. Upon the issuance of a  
2912 policy providing personal injury protection or emergency care



791184

2913 coverage or property damage liability coverage to a named  
2914 insured not previously insured by the insurer during that  
2915 calendar year, the insurer shall report the issuance of the new  
2916 policy to the department within 30 days. The report shall be in  
2917 the form and format and contain any information required by the  
2918 department and must be provided in a format that is compatible  
2919 with the data processing capabilities of the department. The  
2920 department may adopt rules regarding the form and documentation  
2921 required. Failure by an insurer to file proper reports with the  
2922 department as required by this subsection or rules adopted with  
2923 respect to the requirements of this subsection constitutes a  
2924 violation of the Florida Insurance Code. These records shall be  
2925 used by the department only for enforcement and regulatory  
2926 purposes, including the generation by the department of data  
2927 regarding compliance by owners of motor vehicles with the  
2928 requirements for financial responsibility coverage.

2929 (b) With respect to an insurance policy providing personal  
2930 injury protection or emergency care coverage or property damage  
2931 liability coverage, each insurer shall notify the named insured,  
2932 or the first-named insured in the case of a commercial fleet  
2933 policy, in writing that any cancellation or nonrenewal of the  
2934 policy will be reported by the insurer to the department. The  
2935 notice must also inform the named insured that failure to  
2936 maintain personal injury protection or emergency care coverage  
2937 and property damage liability coverage on a motor vehicle as  
2938 ~~when~~ required by law may result in the loss of registration and  
2939 driving privileges in this state and inform the named insured of  
2940 the amount of the reinstatement fees required by this section.  
2941 This notice is for informational purposes only, and an insurer



791184

2942 is not civilly liable for failing to provide this notice.

2943 (2) The department shall suspend, after due notice and an  
2944 opportunity to be heard, the registration and driver ~~driver's~~  
2945 license of any owner or registrant of a motor vehicle with  
2946 respect to which security is required under s. ss. 324.022 and  
2947 either s. 627.733 or s. 627.7483, as applicable, upon:

2948 (a) The department's records showing that the owner or  
2949 registrant of such motor vehicle did not have in full force and  
2950 effect when required security that complies with the  
2951 requirements of s. ss. 324.022 and either s. 627.733 or s.  
2952 627.7483, as applicable; or

2953 (b) Notification by the insurer to the department, in a  
2954 form approved by the department, of cancellation or termination  
2955 of the required security.

2956 (3) An operator or owner whose driver ~~driver's~~ license or  
2957 registration has been suspended under this section or s. 316.646  
2958 may effect its reinstatement upon compliance with the  
2959 requirements of this section and upon payment to the department  
2960 of a nonrefundable reinstatement fee of \$150 for the first  
2961 reinstatement. The reinstatement fee is \$250 for the second  
2962 reinstatement and \$500 for each subsequent reinstatement during  
2963 the 3 years following the first reinstatement. A person  
2964 reinstating her or his insurance under this subsection must also  
2965 secure noncancelable coverage as described in ss. 324.021(8),  
2966 324.023, and 627.7275(2) and present proof to the appropriate  
2967 person ~~proof~~ that the coverage is in force on a form adopted by  
2968 the department, and such proof shall be maintained for 2 years.  
2969 If the person does not have a second reinstatement within 3  
2970 years after her or his initial reinstatement, the reinstatement



791184

2971 fee is \$150 for the first reinstatement after that 3-year  
2972 period. If a person's license and registration are suspended  
2973 under this section or s. 316.646, only one reinstatement fee  
2974 must be paid to reinstate the license and the registration. All  
2975 fees shall be collected by the department at the time of  
2976 reinstatement. The department shall issue proper receipts for  
2977 such fees and ~~shall~~ promptly deposit those fees in the Highway  
2978 Safety Operating Trust Fund. One-third of the fees collected  
2979 ~~under this subsection~~ shall be distributed from the Highway  
2980 Safety Operating Trust Fund to the local governmental entity or  
2981 state agency that employed the law enforcement officer seizing  
2982 the license plate pursuant to s. 324.201. The funds may be used  
2983 by the local governmental entity or state agency for any  
2984 authorized purpose.

2985 Section 33. Paragraph (a) of subsection (1) of section  
2986 324.032, Florida Statutes, is amended to read:

2987 324.032 Manner of proving financial responsibility; for-  
2988 hire passenger transportation vehicles.—Notwithstanding the  
2989 provisions of s. 324.031:

2990 (1) (a) A person who is ~~either~~ the owner or a lessee  
2991 required to maintain insurance under s. 627.733(1) (b) or s.  
2992 627.7483(1), as applicable, and who operates one or more  
2993 taxicabs, limousines, jitneys, or any other for-hire passenger  
2994 transportation vehicles may prove financial responsibility by  
2995 furnishing satisfactory evidence of holding a motor vehicle  
2996 liability policy that has, ~~but with~~ minimum limits of  
2997 \$125,000/250,000/50,000.

2998  
2999 Upon request by the department, the applicant must provide the



791184

3000 department at the applicant's principal place of business in  
3001 this state access to the applicant's underlying financial  
3002 information and financial statements that provide the basis of  
3003 the certified public accountant's certification. The applicant  
3004 shall reimburse the requesting department for all reasonable  
3005 costs incurred by it in reviewing the supporting information.  
3006 The maximum amount of self-insurance permissible under this  
3007 subsection is \$300,000 and must be stated on a per-occurrence  
3008 basis, and the applicant shall maintain adequate excess  
3009 insurance issued by an authorized or eligible insurer licensed  
3010 or approved by the Office of Insurance Regulation. All risks  
3011 self-insured shall remain with the owner or lessee providing it,  
3012 and the risks are not transferable to any other person, unless a  
3013 policy complying with subsection (1) is obtained.

3014 Section 34. Subsection (2) of section 324.171, Florida  
3015 Statutes, is amended to read:

3016 324.171 Self-insurer.—

3017 (2) The self-insurance certificate must ~~shall~~ provide  
3018 limits of liability insurance in the amounts specified under s.  
3019 324.021(7) or s. 627.7415 and ~~shall~~ provide personal injury  
3020 protection or emergency care coverage under s. 627.733(3)(b) or  
3021 s. 627.7483(3)(b), as applicable.

3022 Section 35. Paragraph (g) of subsection (1) of section  
3023 400.9935, Florida Statutes, is amended to read:

3024 400.9935 Clinic responsibilities.—

3025 (1) Each clinic shall appoint a medical director or clinic  
3026 director who shall agree in writing to accept legal  
3027 responsibility for the following activities on behalf of the  
3028 clinic. The medical director or the clinic director shall:



791184

3029 (g) Conduct systematic reviews of clinic billings to ensure  
3030 that the billings are not fraudulent or unlawful. Upon discovery  
3031 of an unlawful charge, the medical director or clinic director  
3032 must ~~shall~~ take immediate corrective action. If the clinic  
3033 performs only the technical component of magnetic resonance  
3034 imaging, static radiographs, computed tomography, or positron  
3035 emission tomography, and provides the professional  
3036 interpretation of such services, in a fixed facility that is  
3037 accredited by the Joint Commission on Accreditation of  
3038 Healthcare Organizations or the Accreditation Association for  
3039 Ambulatory Health Care, and the American College of Radiology;  
3040 and if, in the preceding quarter, the percentage of scans  
3041 performed by that clinic which was billed to all personal injury  
3042 protection insurance or emergency care coverage insurance  
3043 carriers was less than 15 percent, the chief financial officer  
3044 of the clinic may, in a written acknowledgment provided to the  
3045 agency, assume ~~the~~ responsibility for the conduct of the  
3046 systematic reviews of clinic billings to ensure that the  
3047 billings are not fraudulent or unlawful.

3048 Section 36. Subsection (28) of section 409.901, Florida  
3049 Statutes, is amended to read:

3050 409.901 Definitions; ss. 409.901-409.920.—As used in ss.  
3051 409.901-409.920, except as otherwise specifically provided, the  
3052 term:

3053 (28) "Third-party benefit" means any benefit that is or may  
3054 be available at any time through contract, court award,  
3055 judgment, settlement, agreement, or any arrangement between a  
3056 third party and any person or entity, including, without  
3057 limitation, a Medicaid recipient, a provider, another third



791184

3058 party, an insurer, or the agency, for any Medicaid-covered  
3059 injury, illness, goods, or services, including costs of related  
3060 medical services ~~related thereto~~, for personal injury or for  
3061 death of the recipient, but specifically excluding policies of  
3062 life insurance on the recipient, unless available under terms of  
3063 the policy to pay medical expenses before ~~prior to~~ death. The  
3064 term includes, without limitation, collateral, ~~as defined in~~  
3065 ~~this section~~, health insurance, any benefit under a health  
3066 maintenance organization, a preferred provider arrangement, a  
3067 prepaid health clinic, liability insurance, uninsured motorist  
3068 insurance or personal injury protection or emergency care  
3069 coverage, medical benefits under workers' compensation, and any  
3070 obligation under law or equity to provide medical support.

3071 Section 37. Paragraph (f) of subsection (11) of section  
3072 409.910, Florida Statutes, is amended to read:

3073 409.910 Responsibility for payments on behalf of Medicaid-  
3074 eligible persons when other parties are liable.-

3075 (11) The agency may, as a matter of right, in order to  
3076 enforce its rights under this section, institute, intervene in,  
3077 or join any legal or administrative proceeding in its own name  
3078 in one or more of the following capacities: individually, as  
3079 subrogee of the recipient, as assignee of the recipient, or as  
3080 lienholder of the collateral.

3081 (f) Notwithstanding any other provision in this section ~~to~~  
3082 ~~the contrary~~, in the event of an action in tort against a third  
3083 party in which the recipient or his or her legal representative  
3084 is a party which results in a judgment, award, or settlement  
3085 from a third party, the amount recovered shall be distributed as  
3086 follows:



791184

3087 1. After attorney ~~attorney's~~ fees and taxable costs as  
3088 defined by the Florida Rules of Civil Procedure, one-half of the  
3089 remaining recovery shall be paid to the agency up to the total  
3090 amount of medical assistance provided by Medicaid.

3091 2. The remaining amount of the recovery shall be paid to  
3092 the recipient.

3093 3. For purposes of calculating the agency's recovery of  
3094 medical assistance benefits paid, the fee for services of an  
3095 attorney retained by the recipient or his or her legal  
3096 representative shall be calculated at 25 percent of the  
3097 judgment, award, or settlement.

3098 4. Notwithstanding any other provision of this section ~~to~~  
3099 ~~the contrary~~, the agency is ~~shall be~~ entitled to all medical  
3100 coverage benefits up to the total amount of medical assistance  
3101 provided by Medicaid. For purposes of this paragraph, "medical  
3102 coverage" means any benefits under health insurance, a health  
3103 maintenance organization, a preferred provider arrangement, or a  
3104 prepaid health clinic, and the portion of benefits designated  
3105 for medical payments under coverage for workers' compensation,  
3106 emergency care coverage, personal injury protection, and  
3107 casualty.

3108 Section 38. Paragraph (k) of subsection (2) of section  
3109 456.057, Florida Statutes, is amended to read:

3110 456.057 Ownership and control of patient records; report or  
3111 copies of records to be furnished.—

3112 (2) As used in this section, the terms "records owner,"  
3113 "health care practitioner," and "health care practitioner's  
3114 employer" do not include any of the following persons or  
3115 entities; furthermore, the following persons or entities may ~~are~~



791184

3116 not ~~authorized to~~ acquire or own medical records, but, are  
3117 ~~authorized~~ under the confidentiality and disclosure requirements  
3118 of this section, may ~~to~~ maintain those documents that are  
3119 required by the part or chapter under which they are licensed or  
3120 regulated:

3121 (k) Persons or entities practicing under s. 627.736(7) or  
3122 s. 627.7485(7), as applicable.

3123 Section 39. Paragraphs (ee) and (ff) of subsection (1) of  
3124 section 456.072, Florida Statutes, are amended to read:

3125 456.072 Grounds for discipline; penalties; enforcement.—

3126 (1) The following acts shall constitute grounds for which  
3127 the disciplinary actions specified in subsection (2) may be  
3128 taken:

3129 (ee) With respect to making a personal injury protection or  
3130 an emergency care coverage claim as required by s. 627.736 or s.  
3131 627.7485, respectively, intentionally submitting a claim,  
3132 statement, or bill that has been "upcoded" as defined in s.  
3133 627.732 or s. 627.7482, as applicable.

3134 (ff) With respect to making a personal injury protection or  
3135 an emergency care coverage claim as required by s. 627.736 or s.  
3136 627.7485, respectively, intentionally submitting a claim,  
3137 statement, or bill for payment of services that were not  
3138 rendered.

3139 Section 40. Paragraph (o) of subsection (1) of section  
3140 626.9541, Florida Statutes, is amended to read:

3141 626.9541 Unfair methods of competition and unfair or  
3142 deceptive acts or practices defined.—

3143 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
3144 ACTS.—The following are defined as unfair methods of competition



791184

3145 and unfair or deceptive acts or practices:

3146 (o) *Illegal dealings in premiums; excess or reduced charges*  
3147 *for insurance.*—

3148 1. Knowingly collecting any sum as a premium or charge for  
3149 insurance, which is not then provided, or is not in due course  
3150 to be provided, subject to acceptance of the risk by the  
3151 insurer, by an insurance policy issued by an insurer as  
3152 permitted by this code.

3153 2. Knowingly collecting as a premium or charge for  
3154 insurance any sum in excess of or less than the premium or  
3155 charge applicable to such insurance, in accordance with the  
3156 applicable classifications and rates as filed with and approved  
3157 by the office, and as specified in the policy; or, if in cases  
3158 ~~when~~ classifications, premiums, or rates are not required by  
3159 this code to be so filed and approved, premiums and charges  
3160 collected from a Florida resident in excess of or less than  
3161 those specified in the policy and as fixed by the insurer. This  
3162 provision may ~~shall~~ not be deemed to prohibit the charging and  
3163 collection, by surplus lines agents licensed under part VIII of  
3164 this chapter, of the amount of applicable state and federal  
3165 taxes, or fees as authorized by s. 626.916(4), in addition to  
3166 the premium required by the insurer or the charging and  
3167 collection, by licensed agents, of the exact amount of any  
3168 discount or other such fee charged by a credit card facility in  
3169 connection with the use of a credit card, as authorized by  
3170 subparagraph (q)3., in addition to the premium required by the  
3171 insurer. This subparagraph does ~~shall~~ not be construed to  
3172 prohibit collection of a premium for a universal life or a  
3173 variable or indeterminate value insurance policy made in



791184

3174 accordance with the terms of the contract.

3175       ~~3.a.~~ Imposing or requesting an additional premium for a  
3176 policy of motor vehicle liability, emergency care coverage,  
3177 personal injury protection, medical payment, or collision  
3178 insurance or any combination thereof or refusing to renew the  
3179 policy solely because the insured was involved in a motor  
3180 vehicle accident unless the insurer's file contains information  
3181 from which the insurer in good faith determines that the insured  
3182 was substantially at fault in the accident.

3183       ~~a.b.~~ An insurer which imposes and collects such a surcharge  
3184 or which refuses to renew such policy shall, in conjunction with  
3185 the notice of premium due or notice of nonrenewal, notify the  
3186 named insured that he or she is entitled to reimbursement of  
3187 such amount or renewal of the policy under the conditions listed  
3188 below and will subsequently reimburse him or her or renew the  
3189 policy, if the named insured demonstrates that the operator  
3190 involved in the accident was:

3191           (I) Lawfully parked;

3192           (II) Reimbursed by, or on behalf of, a person responsible  
3193 for the accident or has a judgment against such person;

3194           (III) Struck in the rear by another vehicle headed in the  
3195 same direction and was not convicted of a moving traffic  
3196 violation in connection with the accident;

3197           (IV) Hit by a "hit-and-run" driver, if the accident was  
3198 reported to the proper authorities within 24 hours after  
3199 discovering the accident;

3200           (V) Not convicted of a moving traffic violation in  
3201 connection with the accident, but the operator of the other  
3202 automobile involved in such accident was convicted of a moving



791184

3203 traffic violation;

3204 (VI) Finally adjudicated not to be liable by a court of  
3205 competent jurisdiction;

3206 (VII) In receipt of a traffic citation that ~~which~~ was  
3207 dismissed or nolle prossed; or

3208 (VIII) Not at fault as evidenced by a written statement  
3209 from the insured establishing facts demonstrating lack of fault  
3210 which are not rebutted by information in the insurer's file from  
3211 which the insurer in good faith determines that the insured was  
3212 substantially at fault.

3213 ~~b.e.~~ In addition to the other provisions of this  
3214 subparagraph, an insurer may not fail to renew a policy if the  
3215 insured has had only one accident in which he or she was at  
3216 fault within the current 3-year period. However, an insurer may  
3217 nonrenew a policy for reasons other than accidents in accordance  
3218 with s. 627.728. This subparagraph does not prohibit nonrenewal  
3219 of a policy under which the insured has had three or more  
3220 accidents, regardless of fault, during the most recent 3-year  
3221 period.

3222 4. Imposing or requesting an additional premium for, or  
3223 refusing to renew, a policy for motor vehicle insurance solely  
3224 because the insured committed a noncriminal traffic infraction  
3225 as described in s. 318.14 unless the infraction is:

3226 a. A second infraction committed within an 18-month period,  
3227 or a third or subsequent infraction committed within a 36-month  
3228 period.

3229 b. A violation of s. 316.183, if ~~when~~ such violation is a  
3230 result of exceeding the lawful speed limit by more than 15 miles  
3231 per hour.



791184

3232           5. Upon the request of the insured, the insurer and  
3233 licensed agent shall supply to the insured the complete proof of  
3234 fault or other criteria which justifies the additional charge or  
3235 cancellation.

3236           6. Imposing or requesting ~~No insurer shall impose or~~  
3237 ~~request~~ an additional premium for motor vehicle insurance,  
3238 cancelling or refusing ~~cancel or refuse~~ to issue a policy, or  
3239 refusing ~~refuse~~ to renew a policy because the insured or the  
3240 applicant is a handicapped or physically disabled person if, so  
3241 ~~long as~~ such handicap or physical disability does not  
3242 substantially impair such person's mechanically assisted driving  
3243 ability.

3244           7. Cancelling ~~No insurer may cancel~~ or otherwise  
3245 terminating an ~~terminate any~~ insurance contract or coverage, or  
3246 requiring ~~require~~ execution of a consent to rate endorsement,  
3247 during the stated policy term for the purpose of offering to  
3248 issue, or issuing, a similar or identical contract or coverage  
3249 to the same insured with the same exposure at a higher premium  
3250 rate or continuing an existing contract or coverage with the  
3251 same exposure at an increased premium.

3252           8. Issuing ~~No insurer may issue~~ a nonrenewal notice on any  
3253 insurance contract or coverage, or requiring ~~require~~ execution  
3254 of a consent to rate endorsement, for the purpose of offering to  
3255 issue, or issuing, a similar or identical contract or coverage  
3256 to the same insured at a higher premium rate or continuing an  
3257 existing contract or coverage at an increased premium without  
3258 meeting any applicable notice requirements.

3259           9. ~~No insurer shall,~~ With respect to premiums charged for  
3260 motor vehicle insurance, unfairly discriminating ~~discriminate~~



791184

3261 solely on the basis of age, sex, marital status, or scholastic  
3262 achievement.

3263 10. Imposing or requesting an additional premium for motor  
3264 vehicle comprehensive or uninsured motorist coverage solely  
3265 because the insured was involved in a motor vehicle accident or  
3266 was convicted of a moving traffic violation.

3267 11. Cancelling or issuing ~~No insurer shall cancel or issue~~  
3268 a nonrenewal notice on any insurance policy or contract without  
3269 complying with any applicable cancellation or nonrenewal  
3270 provision required under the Florida Insurance Code.

3271 12. Imposing or requesting ~~No insurer shall impose or~~  
3272 ~~request~~ an additional premium, cancelling ~~cancel~~ a policy, or  
3273 issuing ~~issue~~ a nonrenewal notice on any insurance policy or  
3274 contract because of any traffic infraction when adjudication has  
3275 been withheld and no points have been assessed pursuant to s.  
3276 318.14(9) and (10). However, this subparagraph does not apply to  
3277 traffic infractions involving accidents in which the insurer has  
3278 incurred a loss due to the fault of the insured.

3279 Section 41. Subsection (5) of section 626.9894, Florida  
3280 Statutes, is amended to read:

3281 626.9894 Gifts and grants.—

3282 (5) Notwithstanding ~~the provisions of~~ s. 216.301 and  
3283 pursuant to s. 216.351, any balance of moneys deposited into the  
3284 Insurance Regulatory Trust Fund pursuant to this section or s.  
3285 626.9895 remaining at the end of any fiscal year is ~~shall be~~  
3286 available for carrying out the duties and responsibilities of  
3287 the division. The department may request annual appropriations  
3288 from the grants and donations received pursuant to this section  
3289 or s. 626.9895 and cash balances in the Insurance Regulatory



791184

3290 Trust Fund for the purpose of carrying out its duties and  
3291 responsibilities related to the division's anti-fraud efforts,  
3292 including the funding of dedicated prosecutors and related  
3293 personnel.

3294 Section 42. Subsection (1) of section 627.06501, Florida  
3295 Statutes, is amended to read:

3296 627.06501 Insurance discounts for certain persons  
3297 completing driver improvement course.—

3298 (1) Any rate, rating schedule, or rating manual for the  
3299 liability, emergency care coverage, personal injury protection,  
3300 and collision coverages of a motor vehicle insurance policy  
3301 filed with the office may provide for an appropriate reduction  
3302 in premium charges as to such coverages if ~~when~~ the principal  
3303 operator on the covered vehicle has successfully completed a  
3304 driver improvement course approved and certified by the  
3305 Department of Highway Safety and Motor Vehicles which is  
3306 effective in reducing crash or violation rates, or both, as  
3307 determined pursuant to s. 318.1451(5). Any discount, not to  
3308 exceed 10 percent, used by an insurer is presumed to be  
3309 appropriate unless credible data demonstrates otherwise.

3310 Section 43. Subsection (1) of section 627.0652, Florida  
3311 Statutes, is amended to read:

3312 627.0652 Insurance discounts for certain persons completing  
3313 safety course.—

3314 (1) Any rates, rating schedules, or rating manuals for the  
3315 liability, emergency care coverage, personal injury protection,  
3316 and collision coverages of a motor vehicle insurance policy  
3317 filed with the office must ~~shall~~ provide for an appropriate  
3318 reduction in premium charges as to such coverages if ~~when~~ the



791184

3319 principal operator on the covered vehicle is an insured 55 years  
3320 of age or older who has successfully completed a motor vehicle  
3321 accident prevention course approved by the Department of Highway  
3322 Safety and Motor Vehicles. Any discount used by an insurer is  
3323 presumed to be appropriate unless credible data demonstrates  
3324 otherwise.

3325 Section 44. Subsections (1) and (3) of section 627.0653,  
3326 Florida Statutes, are amended to read:

3327 627.0653 Insurance discounts for specified motor vehicle  
3328 equipment.—

3329 (1) Any rates, rating schedules, or rating manuals for the  
3330 liability, emergency care coverage, personal injury protection,  
3331 and collision coverages of a motor vehicle insurance policy  
3332 filed with the office must ~~shall~~ provide a premium discount if  
3333 the insured vehicle is equipped with factory-installed, four-  
3334 wheel antilock brakes.

3335 (3) Any rates, rating schedules, or rating manuals for  
3336 emergency care coverage, personal injury protection coverage,  
3337 and medical payments coverage, if offered, of a motor vehicle  
3338 insurance policy filed with the office shall provide a premium  
3339 discount if the insured vehicle is equipped with one or more air  
3340 bags that ~~which~~ are factory installed.

3341 Section 45. Section 627.4132, Florida Statutes, is amended  
3342 to read:

3343 627.4132 Stacking of coverages prohibited.—If an insured or  
3344 named insured is protected by any type of motor vehicle  
3345 insurance policy for liability, emergency care coverage,  
3346 personal injury protection, or other coverage, the policy must  
3347 ~~shall~~ provide that the insured or named insured is protected



791184

3348 only to the extent of the coverage she or he has on the vehicle  
3349 involved in the accident. However, if none of the insured's or  
3350 named insured's vehicles is involved in the accident, coverage  
3351 is available only to the extent of coverage on any one of the  
3352 vehicles with applicable coverage. Coverage on any other  
3353 vehicles may ~~shall~~ not be added to or stacked upon that  
3354 coverage. This section does not apply:

3355 (1) To uninsured motorist coverage that ~~which~~ is separately  
3356 governed by s. 627.727.

3357 (2) To reduce the coverage available by reason of insurance  
3358 policies insuring different named insureds.

3359 Section 46. Subsection (6) of section 627.6482, Florida  
3360 Statutes, is amended to read:

3361 627.6482 Definitions.—As used in ss. 627.648-627.6498, the  
3362 term:

3363 (6) "Health insurance" means any hospital and medical  
3364 expense incurred policy, minimum premium plan, stop-loss  
3365 coverage, health maintenance organization contract, prepaid  
3366 health clinic contract, multiple-employer welfare arrangement  
3367 contract, or fraternal benefit society health benefits contract,  
3368 whether sold as an individual or group policy or contract. The  
3369 term does not include a ~~any~~ policy covering medical payment  
3370 coverage or emergency care coverage or personal injury  
3371 protection coverage in a motor vehicle policy, coverage issued  
3372 as a supplement to liability insurance, or workers'  
3373 compensation.

3374 Section 47. Section 627.7263, Florida Statutes, is amended  
3375 to read:

3376 627.7263 Rental and leasing driver ~~driver's~~ insurance to be



791184

3377 primary; exception.—

3378 (1) The valid and collectible liability insurance,  
3379 emergency care coverage insurance, or personal injury protection  
3380 insurance providing coverage for the lessor of a motor vehicle  
3381 for rent or lease is primary unless otherwise stated in at least  
3382 10-point type on the face of the rental or lease agreement. Such  
3383 insurance is primary for the limits of liability and personal  
3384 injury protection or emergency care coverage as required by s.  
3385 ~~ss.~~ 324.021(7) and either s. 627.736 or s. 627.7485, as  
3386 applicable.

3387 (2) If the lessee's coverage is to be primary, the rental  
3388 or lease agreement must contain the following language, in at  
3389 least 10-point type:

3390  
3391 "The valid and collectible liability insurance and  
3392 personal injury protection insurance or emergency care  
3393 coverage insurance, as applicable, of an any  
3394 authorized rental or leasing driver is primary for the  
3395 limits of liability and personal injury protection or  
3396 emergency care coverage required by s. ~~ss.~~ 324.021(7)  
3397 and either s. 627.736 or s. 627.7485, Florida  
3398 Statutes, as applicable."

3399  
3400 Section 48. Subsections (1) and (7) of section 627.727,  
3401 Florida Statutes, are amended to read:

3402 627.727 Motor vehicle insurance; uninsured and underinsured  
3403 vehicle coverage; insolvent insurer protection.—

3404 (1) A ~~No~~ motor vehicle liability insurance policy which  
3405 provides bodily injury liability coverage may not shall be



791184

3406 delivered or issued for delivery in this state with respect to  
3407 any specifically insured or identified motor vehicle registered  
3408 or principally garaged in this state unless uninsured motor  
3409 vehicle coverage is provided therein or supplemental thereto for  
3410 the protection of persons insured thereunder who are legally  
3411 entitled to recover damages from owners or operators of  
3412 uninsured motor vehicles because of bodily injury, sickness, or  
3413 disease, including death, resulting therefrom. However, the  
3414 coverage required under this section is not applicable if when,  
3415 or to the extent that, an insured named in the policy makes a  
3416 written rejection of the coverage on behalf of all insureds  
3417 under the policy. If When a motor vehicle is leased for ~~a period~~  
3418 ~~of 1 year or longer and the lessor of such vehicle~~, by the terms  
3419 of the lease contract, provides liability coverage on the leased  
3420 vehicle, the lessee ~~of such vehicle~~ shall have the sole  
3421 privilege to reject uninsured motorist coverage or to select  
3422 lower limits than the bodily injury liability limits, regardless  
3423 of whether the lessor is qualified as a self-insurer pursuant to  
3424 s. 324.171. Unless an insured, or lessee having the privilege of  
3425 rejecting uninsured motorist coverage, requests such coverage or  
3426 requests higher uninsured motorist limits in writing, the  
3427 coverage or such higher uninsured motorist limits need not be  
3428 provided in or supplemental to any other policy that which  
3429 renews, extends, changes, supersedes, or replaces an existing  
3430 policy with the same bodily injury liability limits if when an  
3431 insured or lessee had rejected the coverage. If When an insured  
3432 or lessee has initially selected limits of uninsured motorist  
3433 coverage lower than her or his bodily injury liability limits,  
3434 higher limits of uninsured motorist coverage need not be



791184

3435 provided in or supplemental to any other policy that ~~which~~  
3436 renews, extends, changes, supersedes, or replaces an existing  
3437 policy with the same bodily injury liability limits unless an  
3438 insured requests higher uninsured motorist coverage in writing.  
3439 The rejection or selection of lower limits shall be made on a  
3440 form approved by the office. The form must ~~shall~~ fully advise  
3441 the applicant of the nature of the coverage and ~~shall~~ state that  
3442 the coverage is equal to bodily injury liability limits unless  
3443 lower limits are requested or the coverage is rejected. The  
3444 heading of the form must ~~shall~~ be in 12-point bold type and  
3445 ~~shall~~ state: "You are electing not to purchase certain valuable  
3446 coverage that ~~which~~ protects you and your family or you are  
3447 purchasing uninsured motorist limits less than your bodily  
3448 injury liability limits when you sign this form. Please read  
3449 carefully." If this form is signed by a named insured, it will  
3450 be conclusively presumed that there was an informed, knowing  
3451 rejection of coverage or election of lower limits on behalf of  
3452 all insureds. The insurer shall notify the named insured at  
3453 least annually of her or his options as to the coverage required  
3454 by this section. Such notice must ~~shall~~ be part of, and attached  
3455 to, the notice of premium, ~~shall~~ provide for a means to allow  
3456 the insured to request such coverage, and ~~shall~~ be given in a  
3457 manner approved by the office. Receipt of this notice does not  
3458 constitute an affirmative waiver of the insured's right to  
3459 uninsured motorist coverage if ~~where~~ the insured has not signed  
3460 a selection or rejection form. The coverage described under this  
3461 section shall be over and above, but may ~~shall~~ not duplicate,  
3462 the benefits available to an insured under any workers'  
3463 compensation law, emergency care coverage or personal injury



791184

3464 protection benefits, disability benefits law, or similar law;  
3465 under any automobile medical expense coverage; under any motor  
3466 vehicle liability insurance coverage; or from the owner or  
3467 operator of the uninsured motor vehicle or any other person or  
3468 organization jointly or severally liable together with such  
3469 owner or operator for the accident; and such coverage must ~~shall~~  
3470 cover the difference, if any, between the sum of such benefits  
3471 and the damages sustained, up to the maximum amount of ~~such~~  
3472 coverage provided under this section. The amount of coverage  
3473 available under this section may ~~shall~~ not be reduced by a  
3474 setoff against any coverage, including liability insurance. Such  
3475 coverage may ~~shall~~ not inure directly or indirectly to the  
3476 benefit of any workers' compensation or disability benefits  
3477 carrier or any person or organization qualifying as a self-  
3478 insurer under any workers' compensation or disability benefits  
3479 law or similar law.

3480 (7) The legal liability of an uninsured motorist coverage  
3481 insurer does not include damages in tort for pain, suffering,  
3482 mental anguish, and inconvenience unless the injury or disease  
3483 is described in one or more of paragraphs (a)-(d) of s.  
3484 627.737(2) or paragraphs (a)-(d) of s. 627.7486(2).

3485 Section 49. Subsection (1) of section 627.7275, Florida  
3486 Statutes, is amended to read:

3487 627.7275 Motor vehicle liability.—

3488 (1) A motor vehicle insurance policy providing personal  
3489 injury protection as set forth in s. 627.736 or emergency care  
3490 coverage as set forth in s. 627.7485 may not be delivered or  
3491 issued for delivery in this state with respect to any  
3492 specifically insured or identified motor vehicle registered or



791184

3493 principally garaged in this state unless the policy also  
3494 provides coverage for property damage liability as required by  
3495 s. 324.022.

3496 Section 50. Paragraph (a) of subsection (1) of section  
3497 627.728, Florida Statutes, is amended to read:

3498 627.728 Cancellations; nonrenewals.—

3499 (1) As used in this section, the term:

3500 (a) "Policy" means the bodily injury and property damage  
3501 liability, emergency care coverage, personal injury protection,  
3502 medical payments, comprehensive, collision, and uninsured  
3503 motorist coverage portions of a policy of motor vehicle  
3504 insurance delivered or issued for delivery in this state:

3505 1. Insuring a natural person as named insured or one or  
3506 more related individuals resident of the same household; and

3507 2. Insuring only a motor vehicle of the private passenger  
3508 type or station wagon type which is not used as a public or  
3509 livery conveyance for passengers or rented to others; or  
3510 insuring any other four-wheel motor vehicle having a load  
3511 capacity of 1,500 pounds or less which is not used in the  
3512 occupation, profession, or business of the insured other than  
3513 farming; other than any policy issued under an automobile  
3514 insurance assigned risk plan; insuring more than four  
3515 automobiles; or covering garage, automobile sales agency, repair  
3516 shop, service station, or public parking place operation  
3517 hazards.

3518  
3519 The term "policy" does not include a binder as defined in s.  
3520 627.420 unless the duration of the binder period exceeds 60  
3521 days.



791184

3522           Section 51. Subsection (1), paragraph (a) of subsection  
3523 (5), and subsections (6) and (7) of section 627.7295, Florida  
3524 Statutes, are amended to read:

3525           627.7295 Motor vehicle insurance contracts.-

3526           (1) As used in this section, the term:

3527           (a) "Policy" means a motor vehicle insurance policy that  
3528 provides personal injury protection or emergency care coverage,  
3529 or property damage liability coverage, or both.

3530           (b) "Binder" means a binder that provides motor vehicle  
3531 personal injury protection or emergency care coverage and  
3532 property damage liability coverage.

3533           (5) (a) A licensed general lines agent may charge a per-  
3534 policy fee of up to ~~not to exceed~~ \$10 to cover the  
3535 administrative costs of the agent associated with selling the  
3536 motor vehicle insurance policy if the policy covers only  
3537 personal injury protection or emergency care coverage as  
3538 provided by s. 627.736 or s. 627.7485, as applicable, and  
3539 property damage liability coverage as provided by s. 627.7275  
3540 and if no other insurance is sold or issued in conjunction with  
3541 or collateral to the policy. The fee is not considered part of  
3542 the premium.

3543           (6) If a motor vehicle owner's driver license, license  
3544 plate, and registration have previously been suspended pursuant  
3545 to s. 316.646, ~~or~~ s. 627.733, or s. 627.7483, an insurer may  
3546 cancel a new policy only as provided in s. 627.7275.

3547           (7) A policy of private passenger motor vehicle insurance  
3548 or a binder for such a policy may be initially issued in this  
3549 state only if, before the effective date of such binder or  
3550 policy, the insurer or agent ~~has~~ collected from the insured an



791184

3551 amount equal to 2 months' premium. An insurer, agent, or premium  
3552 finance company may not, directly or indirectly, take any action  
3553 resulting in the insured paying ~~having paid~~ from the insured's  
3554 own funds an amount less than the 2 months' premium required by  
3555 this subsection. This subsection applies without regard to  
3556 whether the premium is financed by a premium finance company or  
3557 is paid pursuant to a periodic payment plan of an insurer or an  
3558 insurance agent.

3559 (a) This subsection does not apply:

3560 1. If an insured or member of the insured's family is  
3561 renewing or replacing a policy or a binder for such policy  
3562 written by the same insurer or a member of the same insurer  
3563 group. ~~This subsection does not apply~~

3564 2. To an insurer that issues private passenger motor  
3565 vehicle coverage primarily to active duty or former military  
3566 personnel or their dependents. ~~This subsection does not apply~~

3567 3. If all policy payments are paid pursuant to a payroll  
3568 deduction plan or an automatic electronic funds transfer payment  
3569 plan from the policyholder.

3570 (b) This subsection and subsection (4) do not apply

3571 1. If all policy payments to an insurer are paid pursuant  
3572 to an automatic electronic funds transfer payment plan from an  
3573 agent, a managing general agent, or a premium finance company  
3574 and if the policy includes, at a minimum, personal injury  
3575 protection or emergency care coverage pursuant to ss. 627.730-  
3576 627.7405 or ss. 627.748-627.7491, as applicable; motor vehicle  
3577 property damage liability pursuant to s. 627.7275; and bodily  
3578 injury liability in at least the amount of \$10,000 because of  
3579 bodily injury to, or death of, one person in any one accident



791184

3580 and in the amount of \$20,000 because of bodily injury to, or  
3581 death of, two or more persons in any one accident. ~~This~~  
3582 ~~subsection and subsection (4) do not apply~~

3583 2. If an insured has had a policy in effect for at least 6  
3584 months, the insured's agent is terminated by the insurer that  
3585 issued the policy, and the insured obtains coverage on the  
3586 policy's renewal date with a new company through the terminated  
3587 agent.

3588 Section 52. Subsections (1), (2), and (3) of section  
3589 627.737, Florida Statutes, are amended to read:

3590 627.737 Tort exemption; limitation on right to damages;  
3591 punitive damages.—

3592 (1) Every owner, registrant, operator, or occupant of a  
3593 motor vehicle with respect to which security has been provided  
3594 as required by ss. 627.730-627.7405 or ss. 627.748-627.7491, as  
3595 applicable, and every person or organization legally responsible  
3596 for her or his acts or omissions, is ~~hereby~~ exempted from tort  
3597 liability for damages because of bodily injury, sickness, or  
3598 disease arising out of the ownership, operation, maintenance, or  
3599 use of such motor vehicle in this state to the extent that the  
3600 benefits described in s. 627.736(1) or s. 627.7485(1), as  
3601 applicable, are payable for such injury, or would be payable but  
3602 for any exclusion authorized by ss. 627.730-627.7405 or ss.  
3603 627.748-627.7491, as applicable, under any insurance policy or  
3604 other method of security complying with the requirements of s.  
3605 627.733, or by an owner personally liable under s. 627.733 for  
3606 the payment of such benefits, unless a person is entitled to  
3607 maintain an action for pain, suffering, mental anguish, and  
3608 inconvenience for such injury under the provisions of subsection



791184

3609 (2).

3610 (2) In any action of tort brought against the owner,  
3611 registrant, operator, or occupant of a motor vehicle with  
3612 respect to which security has been provided as required by ss.  
3613 627.730-627.7405 or ss. 627.748-627.7491, as applicable, or  
3614 against any person or organization legally responsible for her  
3615 or his acts or omissions, a plaintiff may recover damages in  
3616 tort for pain, suffering, mental anguish, and inconvenience  
3617 because of bodily injury, sickness, or disease arising out of  
3618 the ownership, maintenance, operation, or use of such motor  
3619 vehicle only if ~~in the event that~~ the injury or disease consists  
3620 in whole or in part of:

3621 (a) Significant and permanent loss of an important bodily  
3622 function.

3623 (b) Permanent injury within a reasonable degree of medical  
3624 probability, other than scarring or disfigurement.

3625 (c) Significant and permanent scarring or disfigurement.

3626 (d) Death.

3627 (3) If ~~When~~ a defendant, in a proceeding brought pursuant  
3628 to ss. 627.730-627.7405 or ss. 627.748-627.7491, as applicable,  
3629 questions whether the plaintiff has met the requirements of  
3630 subsection (2), ~~then~~ the defendant may file an appropriate  
3631 motion with the court, and the court shall, on a one-time basis  
3632 only, 30 days before the date set for the trial or the pretrial  
3633 hearing, whichever is first, by examining the pleadings and the  
3634 evidence before it, ascertain whether the plaintiff will be able  
3635 to submit some evidence that the plaintiff will meet the  
3636 requirements of subsection (2). If the court finds that the  
3637 plaintiff will not be able to submit such evidence, ~~then~~ the



791184

3638 court shall dismiss the plaintiff's claim without prejudice.

3639 Section 53. Section 627.8405, Florida Statutes, is amended  
3640 to read:

3641 627.8405 Prohibited acts; financing companies.—A ~~No~~ premium  
3642 finance company ~~shall~~, in a premium finance agreement or other  
3643 agreement, may not finance the cost of or otherwise provide for  
3644 the collection or remittance of dues, assessments, fees, or  
3645 other periodic payments of money for the cost of:

3646 (1) A membership in an automobile club. The term  
3647 "automobile club" means a legal entity that ~~which~~, in  
3648 consideration of dues, assessments, or periodic payments of  
3649 money, promises its members or subscribers to assist them in  
3650 matters relating to the ownership, operation, use, or  
3651 maintenance of a motor vehicle; however, this definition of  
3652 "automobile club" does not include persons, associations, or  
3653 corporations that ~~which~~ are organized and operated solely for  
3654 the purpose of conducting, sponsoring, or sanctioning motor  
3655 vehicle races, exhibitions, or contests upon racetracks, or upon  
3656 racecourses established and marked as such for the duration of  
3657 such particular events. The term ~~words~~ "motor vehicle" has ~~used~~  
3658 ~~herein have~~ the same meaning as provided ~~defined~~ in s. 320.01  
3659 ~~chapter 320~~.

3660 (2) An accidental death and dismemberment policy sold in  
3661 combination with a personal injury protection and property  
3662 damage only policy or an emergency care and property damage only  
3663 policy, as applicable.

3664 (3) Any product not regulated under the ~~provisions of this~~  
3665 insurance code.

3666



791184

3667 This section also applies to premium financing by any insurance  
3668 agent or insurance company under part XVI. The commission shall  
3669 adopt rules to assure disclosure, at the time of sale, of  
3670 coverages financed with personal injury protection or emergency  
3671 care coverage and ~~shall~~ prescribe the form of such disclosure.

3672 Section 54. Subsection (1) of section 627.915, Florida  
3673 Statutes, is amended to read:

3674 627.915 Insurer experience reporting.—

3675 (1) Each insurer transacting private passenger automobile  
3676 insurance in this state shall report certain information  
3677 annually to the office. The information is ~~will be~~ due on or  
3678 before July 1 of each year. The information shall be divided  
3679 into the following categories: bodily injury liability; property  
3680 damage liability; uninsured motorist; emergency care coverage or  
3681 personal injury protection benefits; medical payments;  
3682 comprehensive and collision. The information given must ~~shall~~ be  
3683 on direct insurance writings in the state alone and ~~shall~~  
3684 represent total limits data. The information set forth in  
3685 paragraphs (a)-(f) is applicable to voluntary private passenger  
3686 and Joint Underwriting Association private passenger writings  
3687 and must ~~shall~~ be reported for each of the latest 3 calendar-  
3688 accident years, with an evaluation date of March 31 of the  
3689 current year. The information set forth in paragraphs (g)-(j) is  
3690 applicable to voluntary private passenger writings and must  
3691 ~~shall~~ be reported on a calendar-accident year basis ultimately  
3692 seven times at seven different stages of development.

3693 (a) Premiums earned for the latest 3 calendar-accident  
3694 years.

3695 (b) Loss development factors and the historic development



791184

3696 of those factors.

3697 (c) Policyholder dividends incurred.

3698 (d) Expenses for other acquisition and general expense.

3699 (e) Expenses for agents' commissions and taxes, licenses,  
3700 and fees.

3701 (f) Profit and contingency factors as used ~~utilized~~ in the  
3702 insurer's automobile rate filings for the applicable years.

3703 (g) Losses paid.

3704 (h) Losses unpaid.

3705 (i) Loss adjustment expenses paid.

3706 (j) Loss adjustment expenses unpaid.

3707 Section 55. Paragraph (d) of subsection (2) and paragraph  
3708 (d) of subsection (3) of section 628.909, Florida Statutes, are  
3709 amended to read:

3710 628.909 Applicability of other laws.—

3711 (2) The following provisions of the Florida Insurance Code  
3712 shall apply to captive insurers who are not industrial insured  
3713 captive insurers to the extent that such provisions are not  
3714 inconsistent with this part:

3715 (d) Sections 627.730-627.7405 or ss. 627.748-627.7491, as  
3716 applicable, if when no-fault coverage is provided.

3717 (3) The following provisions of the Florida Insurance Code  
3718 ~~shall~~ apply to industrial insured captive insurers to the extent  
3719 that such provisions are not inconsistent with this part:

3720 (d) Sections 627.730-627.7405 or ss. 627.748-627.7491, as  
3721 applicable, if when no-fault coverage is provided.

3722 Section 56. Subsections (2) and (6) and paragraphs (a),  
3723 (c), and (d) of subsection (7) of section 705.184, Florida  
3724 Statutes, are amended to read:



791184

3725           705.184 Derelict or abandoned motor vehicles on the  
3726 premises of public-use airports.—  
3727           (2) The airport director or the director's designee shall  
3728 contact the Department of Highway Safety and Motor Vehicles to  
3729 notify that department that the airport has possession of the  
3730 abandoned or derelict motor vehicle and to determine the name  
3731 and address of the owner of the motor vehicle, the insurance  
3732 company insuring the motor vehicle, notwithstanding ~~the~~  
3733 ~~provisions of s. 627.736 or s. 627.7485, as applicable,~~ and any  
3734 person who has filed a lien on the motor vehicle. Within 7  
3735 business days after receipt of the information, the director or  
3736 the director's designee shall send notice by certified mail,  
3737 return receipt requested, to the owner of the motor vehicle, the  
3738 insurance company insuring the motor vehicle, notwithstanding  
3739 ~~the provisions of s. 627.736 or s. 627.7485, as applicable,~~ and  
3740 all persons of record claiming a lien against the motor vehicle.  
3741 The notice must ~~shall~~ state the fact of possession of the motor  
3742 vehicle, that charges for reasonable towing, storage, and  
3743 parking fees, if any, have accrued and the amount thereof, that  
3744 a lien as provided in subsection (6) will be claimed, that the  
3745 lien is subject to enforcement pursuant to law, that the owner  
3746 or lienholder, if any, has the right to a hearing as set forth  
3747 in subsection (4), and that any motor vehicle that ~~which~~, at the  
3748 end of 30 calendar days after receipt of the notice, has not  
3749 been removed from the airport upon payment in full of all  
3750 accrued charges for reasonable towing, storage, and parking  
3751 fees, if any, may be disposed of as provided in s.  
3752 705.182(2) (a), (b), (d), or (e), including, but not limited to,  
3753 ~~the motor vehicle~~ being sold free of all prior liens after 35



791184

3754 calendar days after the time the motor vehicle is stored if any  
3755 prior liens on the motor vehicle are more than 5 years of age or  
3756 after 50 calendar days after the time the motor vehicle is  
3757 stored if any prior liens on the motor vehicle are 5 years of  
3758 age or less.

3759 (6) The airport pursuant to this section or, if used, a  
3760 licensed independent wrecker company pursuant to s. 713.78 shall  
3761 have a lien on an abandoned or derelict motor vehicle for all  
3762 reasonable towing, storage, and accrued parking fees, if any,  
3763 except that a no storage fee may not shall be charged if the  
3764 motor vehicle is stored less than 6 hours. As a prerequisite to  
3765 perfecting a lien under this section, the airport director or  
3766 the director's designee must serve a notice in accordance with  
3767 subsection (2) on the owner of the motor vehicle, the insurance  
3768 company insuring the motor vehicle, notwithstanding ~~the~~  
3769 ~~provisions of s. 627.736 or s. 627.7485, as applicable,~~ and all  
3770 persons of record claiming a lien against the motor vehicle. If  
3771 attempts to notify the owner, the insurance company insuring the  
3772 motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ or  
3773 lienholders are not successful, the requirement of notice by  
3774 mail shall be considered met. Serving of the notice does not  
3775 dispense with recording the claim of lien.

3776 (7) (a) For the purpose of perfecting its lien under this  
3777 section, the airport shall record a claim of lien which shall  
3778 state:

3779 1. The name and address of the airport.

3780 2. The name of the owner of the motor vehicle, the  
3781 insurance company insuring the motor vehicle, notwithstanding  
3782 ~~the provisions of s. 627.736 or s. 627.7485, as applicable,~~ and



791184

3783 all persons of record claiming a lien against the motor vehicle.

3784 3. The costs incurred from reasonable towing, storage, and  
3785 parking fees, if any.

3786 4. A description of the motor vehicle sufficient for  
3787 identification.

3788 (c) The claim of lien shall be sufficient if it is in  
3789 substantially the following form:

3790 CLAIM OF LIEN

3791 State of ....

3792 County of ....

3793 Before me, the undersigned notary public, personally  
3794 appeared ....., who was duly sworn and says that he/she is the  
3795 .... of ....., whose address is.....; and that the following  
3796 described motor vehicle:

3797 ...(Description of motor vehicle)...

3798 owned by ....., whose address is ....., has accrued \$.... in  
3799 fees for a reasonable tow, for storage, and for parking, if  
3800 applicable; that the lienor served its notice to the owner, the  
3801 insurance company insuring the motor vehicle notwithstanding ~~the~~  
3802 ~~provisions of~~ s. 627.736 or s. 627.7485, Florida Statutes, as  
3803 applicable, and all persons of record claiming a lien against  
3804 the motor vehicle on ....., ...(year)..., by.....

3805 ...(Signature)...

3806 Sworn to (or affirmed) and subscribed before me this ....  
3807 day of ....., ...(year)..., by ...(name of person making  
3808 statement)....

3809 ...(Signature of Notary Public).....(Print, Type, or Stamp  
3810 Commissioned name of Notary Public)...

3811 Personally Known....OR Produced....as identification.



791184

3812  
3813 However, the negligent inclusion or omission of any information  
3814 in this claim of lien which does not prejudice the owner does  
3815 not constitute a default that operates to defeat an otherwise  
3816 valid lien.

3817 (d) The claim of lien shall be served on the owner of the  
3818 motor vehicle, the insurance company insuring the motor vehicle,  
3819 notwithstanding ~~the provisions of s. 627.736 or s. 627.7485, as~~  
3820 applicable, if no-fault coverage is provided, and all persons of  
3821 record claiming a lien against the motor vehicle. If attempts to  
3822 notify the owner, the insurance company insuring the motor  
3823 vehicle ~~notwithstanding the provisions of s. 627.736, or~~  
3824 lienholders are not successful, the requirement of notice by  
3825 mail shall be considered met. The claim of lien shall be so  
3826 served before recordation.

3827 Section 57. Paragraphs (a), (b), and (c) of subsection (4)  
3828 of section 713.78, Florida Statutes, are amended to read:

3829 713.78 Liens for recovering, towing, or storing vehicles  
3830 and vessels.-

3831 (4) (a) Any person regularly engaged in the business of  
3832 recovering, towing, or storing vehicles or vessels who comes  
3833 into possession of a vehicle or vessel pursuant to subsection  
3834 (2), and who claims a lien for recovery, towing, or storage  
3835 services, must ~~shall~~ give notice to the registered owner, the  
3836 insurance company insuring the vehicle notwithstanding ~~the~~  
3837 ~~provisions of s. 627.736 or s. 627.7485, as applicable~~, and to  
3838 all persons claiming a lien thereon, as disclosed by the records  
3839 in the Department of Highway Safety and Motor Vehicles or of a  
3840 corresponding agency in any other state.



791184

3841           (b) If a ~~Whenever any~~ law enforcement agency authorizes the  
3842 removal of a vehicle or vessel or if ~~whenever~~ any towing  
3843 service, garage, repair shop, or automotive service, storage, or  
3844 parking place notifies the law enforcement agency of possession  
3845 of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law  
3846 enforcement agency of the jurisdiction where the vehicle or  
3847 vessel is stored shall contact the Department of Highway Safety  
3848 and Motor Vehicles, or the appropriate agency of the state of  
3849 registration, if known, within 24 hours through the medium of  
3850 electronic communications, giving the full description of the  
3851 vehicle or vessel. Upon receipt of the full description of the  
3852 vehicle or vessel, the department shall search its files to  
3853 determine the owner's name, the insurance company insuring the  
3854 vehicle or vessel, and whether any person has filed a lien upon  
3855 the vehicle or vessel as provided in s. 319.27(2) and (3) and  
3856 notify the applicable law enforcement agency within 72 hours.  
3857 The person in charge of the towing service, garage, repair shop,  
3858 or automotive service, storage, or parking place shall obtain  
3859 such information from the applicable law enforcement agency  
3860 within 5 days after the date of storage and ~~shall~~ give notice  
3861 pursuant to paragraph (a). The department may release the  
3862 insurance company information to the requestor notwithstanding  
3863 ~~the provisions of~~ s. 627.736 or s. 627.7485, as applicable.

3864           (c) Notice by certified mail, return receipt requested,  
3865 shall be sent within 7 business days after the date of storage  
3866 of the vehicle or vessel to the registered owner, the insurance  
3867 company insuring the vehicle notwithstanding ~~the provisions of~~  
3868 s. 627.736 or s. 627.7485, as applicable, and all persons of  
3869 record claiming a lien against the vehicle or vessel. The notice



791184

3870 must ~~It shall~~ state the fact of possession of the vehicle or  
3871 vessel, that a lien as provided in subsection (2) is claimed,  
3872 that charges have accrued and the amount thereof, that the lien  
3873 is subject to enforcement pursuant to law, and that the owner or  
3874 lienholder, if any, has the right to a hearing as set forth in  
3875 subsection (5), and that any vehicle or vessel that ~~which~~  
3876 remains unclaimed, or for which the charges for recovery,  
3877 towing, or storage services remain unpaid, may be sold free of  
3878 all prior liens after 35 days if the vehicle or vessel is more  
3879 than 3 years of age or after 50 days if the vehicle or vessel is  
3880 3 years of age or less.

3881 Section 58. The Office of Insurance Regulation shall  
3882 perform a data call relating to coverage under the Florida Motor  
3883 Vehicle No-Fault Emergency Care Coverage Law and publish the  
3884 results by January 1, 2015. It is the intent of the Legislature  
3885 that the office design the data call with the expectation that  
3886 the Legislature will use the data to help evaluate market  
3887 conditions relating to motor vehicle insurance and the impact on  
3888 the market of reforms made by this act. The elements of the data  
3889 call must address, but need not be limited to, the following  
3890 components of the new law:

- 3891 (1) Quantity of claims.  
3892 (2) Type or nature of claimants.  
3893 (3) Amount and type of benefits paid and expenses incurred.  
3894 (4) Type and quantity of, and charges for, medical  
3895 benefits.  
3896 (5) Attorney fees related to bringing and defending actions  
3897 for benefits.  
3898 (6) Direct earned premiums for emergency care coverage,



791184

3899 pure loss ratios, pure premiums, and other information related  
3900 to premiums and losses.

3901 (7) Licensed drivers and accidents.

3902 (8) Fraud and enforcement.

3903 Section 59. Any motor vehicle policy issued or renewed on  
3904 or after January 1, 2013, is subject to and deemed to  
3905 incorporate the Florida Motor Vehicle No-Fault Emergency Care  
3906 Coverage Law as created by this act and is not subject to ss.  
3907 627.730-627.7405, the Florida Motor Vehicle No-Fault Act.

3908 Section 60. If any provision of this act or its application  
3909 to any person or circumstance is held invalid, the invalidity  
3910 does not affect other provisions or applications of the act  
3911 which can be given effect without the invalid provision or  
3912 application, and to this end the provisions of this act are  
3913 severable.

3914 Section 61. This act shall take effect January 1, 2013.

3915

3916 ===== T I T L E A M E N D M E N T =====

3917 And the title is amended as follows:

3918 Delete lines 14 - 96

3919 and insert:

3920 injury protection and emergency care coverage  
3921 benefits; amending s. 400.991, F.S.; requiring that an  
3922 application for licensure, or exemption from  
3923 licensure, as a health care clinic include a statement  
3924 regarding insurance fraud; amending s. 626.989, F.S.;  
3925 providing that knowingly submitting false, misleading,  
3926 or fraudulent documents relating to licensure as a  
3927 health care clinic, or submitting a claim for personal



791184

3928 injury protection or emergency care coverage relating  
3929 to clinic licensure documents, is a fraudulent  
3930 insurance act under certain conditions; creating s.  
3931 626.9895, F.S.; providing definitions; authorizing the  
3932 Division of Insurance Fraud of the Department of  
3933 Financial Services to establish a direct-support  
3934 organization for the purpose of prosecuting,  
3935 investigating, and preventing motor vehicle insurance  
3936 fraud; providing requirements for, and duties of, the  
3937 organization; requiring that the organization operate  
3938 pursuant to a contract with the division; providing  
3939 for the requirements of the contract; providing for a  
3940 board of directors; authorizing the organization to  
3941 use the division's property and facilities subject to  
3942 certain requirements; requiring that the department  
3943 adopt rules relating to procedures for the  
3944 organization's governance and relating to conditions  
3945 for the use of the division's property or facilities;  
3946 authorizing contributions from insurers; authorizing  
3947 any moneys received by the organization to be held in  
3948 a separate depository account in the name of the  
3949 organization; requiring that the division deposit  
3950 certain proceeds into the Insurance Regulatory Trust  
3951 Fund; amending s. 627.0651, F.S.; prohibiting certain  
3952 costs and attorney fees awarded to plaintiffs in  
3953 claims for benefits under the motor vehicle no-fault  
3954 law from being included in insurance rates; amending  
3955 s. 627.733, F.S.; providing that an owner or  
3956 registrant of a motor vehicle does not have to comply



791184

3957 with this section if required security is obtained  
3958 under the Florida Motor Vehicle No-Fault Emergency  
3959 Care Coverage Law; amending s. 627.736, F.S. ;  
3960 excluding massage and acupuncture from medical  
3961 benefits that may be reimbursed under the motor  
3962 vehicle no-fault law; requiring that an insurer give  
3963 priority to the payment of death benefits under  
3964 certain conditions; deleting provisions prohibiting  
3965 the purchase of other motor vehicle coverage;  
3966 requiring that an insurer repay any benefits covered  
3967 by the Medicaid program within a specified time;  
3968 requiring that an insurer provide a claimant an  
3969 opportunity to revise claims that contain errors;  
3970 requiring that an insurer create and maintain a log of  
3971 benefits paid and that the insurer provide to the  
3972 insured or an assignee of the insured, upon request, a  
3973 copy of the log; requiring that an insurer notify  
3974 parties in disputes over claims when policy limits are  
3975 reached; revising the Medicare fee schedules that an  
3976 insurer may use as a basis for limiting reimbursement  
3977 of benefits; providing that the Medicare fee schedule  
3978 in effect on a specific date applies for purposes of  
3979 limiting such reimbursement; authorizing insurers to  
3980 apply certain Medicare coding policies and payment  
3981 methodologies; requiring that an insurer that limits  
3982 payments based on the statutory fee schedule include a  
3983 notice in insurance policies at the time of issuance  
3984 or renewal; deleting obsolete provisions; providing  
3985 that certain entities exempt from licensure as a



791184

3986 clinic must nonetheless be licensed to receive  
3987 reimbursement for the provision of personal injury  
3988 protection benefits; providing exceptions;  
3989 consolidating provisions relating to unfair or  
3990 deceptive practices under certain conditions;  
3991 eliminating a requirement that all parties mutually  
3992 and expressly agree for the use of electronic  
3993 transmission of data; creating s. 627.748, F.S.;

3994 designating specified provisions as the Florida Motor  
3995 Vehicle No-Fault Emergency Care Coverage Law; creating  
3996 s. 627.7481, F.S.; providing purposes; creating s.  
3997 627.74811, F.S.; providing legislative intent that  
3998 provisions, schedules, or procedures are to be given  
3999 full force and effect regardless of their express  
4000 inclusion in insurer forms; creating s. 627.7482,  
4001 F.S.; providing definitions; creating s. 627.7483,  
4002 F.S.; requiring every owner or registrant of a motor  
4003 vehicle required to be registered and licensed in this  
4004 state to maintain specified security; providing  
4005 exceptions; requiring every nonresident owner or  
4006 registrant of a motor vehicle that has been physically  
4007 present within this state for a specified period to  
4008 maintain security; specifying means by which such  
4009 security is provided; providing that an owner of a  
4010 motor vehicle who fails to have such security is not  
4011 immune to certain liabilities; providing an exemption;  
4012 creating s. 627.7484, F.S.; providing requirements for  
4013 filing and maintaining proof of security; providing  
4014 penalties; creating s. 627.7485, F.S.; requiring that



791184

4015 insurance policies provide emergency care coverage to  
4016 specified persons; providing limits of coverage;  
4017 specifying limits for medical, disability, and death  
4018 benefits; providing restrictions on insurers with  
4019 respect to provision of required benefits; prohibiting  
4020 an insurer from requiring the purchase of other motor  
4021 vehicle coverage as a condition for providing such  
4022 benefits; prohibiting an insurer from requiring the  
4023 purchase of property damage liability insurance  
4024 exceeding a specified amount in conjunction with  
4025 emergency care coverage insurance; providing that  
4026 failure to comply with specified availability  
4027 requirements constitutes an unfair method of  
4028 competition or an unfair or deceptive act or practice;  
4029 providing penalties; authorizing an insurer to exclude  
4030 certain benefits; providing procedure with respect to  
4031 such exclusions; specifying when benefits are due from  
4032 an insurer; prohibiting insurers from obtaining liens  
4033 on recovery of special damages in tort claims for  
4034 emergency care coverage benefits; prohibiting an  
4035 insured party from recovering any damages for which  
4036 emergency care coverage benefits are paid or payable;  
4037 requiring that benefits received under any workers'  
4038 compensation law be credited against the benefits  
4039 provided under the emergency care coverage; providing  
4040 that benefits under the Florida Motor Vehicle No-Fault  
4041 Emergency Care Coverage Law are subject to the  
4042 Medicaid program in specified circumstances;  
4043 specifying injuries for which an insurer must pay



791184

4044 benefits; providing for notice to insurers; requiring  
4045 insurers to hold a specified amount of benefits in  
4046 reserve for a certain time for the payment of  
4047 providers; requiring that an insurer create and  
4048 maintain a log of benefits paid and that the insurer  
4049 provide to the insured or an assignee of the insured,  
4050 upon request, a copy of the log; specifying when  
4051 benefits are overdue; providing for interest on  
4052 overdue payments; authorizing an insurer to make  
4053 certain assertions about a claim; requiring an insurer  
4054 to provide an itemized specification of each item of a  
4055 claim which has been reduced, omitted, or denied;  
4056 providing that payment is not overdue if the insurer  
4057 has reasonable proof that the insurer is not  
4058 responsible for the payment; providing for a pro rata  
4059 distribution of benefits paid and expenses if there  
4060 are two or more insurers; requiring that an insurer  
4061 notify parties in disputes over claims when policy  
4062 limits are reached; providing for tolling the time  
4063 period in which benefits are required to be paid when  
4064 the insurer has reasonable belief that fraud has been  
4065 committed; requiring that the insurer notify the  
4066 claimant if the claim is being investigated for fraud;  
4067 providing immunity to persons or entities that report  
4068 suspected fraud in good faith; providing that an  
4069 insurer who fails to timely provide benefits violates  
4070 the insurance code; providing that a person or entity  
4071 lawfully rendering treatment to an injured person for  
4072 a bodily injury covered by emergency care coverage may



791184

4073 charge only a reasonable amount for services and care;  
4074 providing that the insurer may pay such charges  
4075 directly to the person or entity lawfully rendering  
4076 such treatment; providing limits on such charges;  
4077 providing for determination of reasonableness of  
4078 charges; providing that payments made by an insurer  
4079 pursuant to the schedule of maximum charges, or for  
4080 lesser amounts billed by providers, are considered  
4081 reasonable; establishing a schedule of maximum  
4082 charges; specifying that reimbursement under a  
4083 schedule of maximum charges which is based on Medicare  
4084 is to be calculated under the applicable Medicare  
4085 schedule in effect on a specified date each year;  
4086 authorizing insurers to use all Medicare coding  
4087 policies and CMS payment methodologies in determining  
4088 reimbursement under a schedule of maximum charges  
4089 which is Medicare based; establishing limits on  
4090 specified emergency services and care; providing  
4091 conditions under which an insurer or insured is not  
4092 required to pay a claim or charges; requiring the  
4093 Department of Health to adopt by rule a list of  
4094 diagnostic tests deemed not to be medically necessary  
4095 and to periodically revise the list; providing  
4096 procedures and requirements with respect to statements  
4097 of and bills for charges for emergency services and  
4098 care; requiring that a notice of the insured's rights  
4099 include a specified statement; requiring that a  
4100 physician, licensed professional, clinic, or medical  
4101 institution providing medical services require an



791184

4102 insured person to execute and countersign a disclosure  
4103 and acknowledgement form; directing the Financial  
4104 Services Commission to adopt by rule a disclosure and  
4105 acknowledgment form to be countersigned by claimants  
4106 upon receipt of medical services; providing procedures  
4107 and requirements with respect to investigation of  
4108 claims of improper billing by a physician or other  
4109 medical provider; prohibiting insurers from  
4110 systematically downcoding with intent to deny  
4111 reimbursement; requiring insureds and persons to whom  
4112 the right to payment for benefits has been assigned to  
4113 comply with all terms of the policy; providing that  
4114 compliance with policy terms is a condition precedent  
4115 to the receipt of benefits; requiring that an employer  
4116 furnish a sworn statement of an employee's earnings  
4117 under certain circumstances; requiring that an  
4118 insured's assignee comply with the terms of the  
4119 insurance policy; prohibiting an insured from being  
4120 required to submit to an examination under oath;  
4121 requiring that all claimants produce and allow for the  
4122 inspection of all documents requested by the insurer  
4123 under certain circumstances; providing for insurers to  
4124 inspect the physical premises of providers seeking  
4125 payment; requiring that a provider seeking payment  
4126 furnish to the insurer a written report; authorizing  
4127 the insurer to petition the court to enter an order  
4128 permitting discovery of facts under certain  
4129 circumstances; requiring the insurer to furnish to the  
4130 injured person a copy of all information; prohibiting



791184

4131 an insured from unreasonably withholding notice to an  
4132 insurer of the existence of a claim; providing for the  
4133 examination of the injured person and reports  
4134 regarding the examination; prohibiting an insurer from  
4135 withdrawing payment from a treating physician under  
4136 certain circumstances; providing requirements with  
4137 respect to a demand letter; providing procedures and  
4138 requirements with respect to payment of an overdue  
4139 claim; providing for the tolling of the time period  
4140 for an action against an insurer; providing that  
4141 failure to pay valid claims with specified frequency  
4142 constitutes an unfair or deceptive trade practice;  
4143 providing penalties; providing circumstances under  
4144 which an insurer has a cause of action; providing for  
4145 fraud advisory notice; requiring that all claims  
4146 related to the same health care provider for the same  
4147 injured person be brought in one action unless good  
4148 cause is shown; authorizing the electronic  
4149 transmission of notices and communications under  
4150 certain conditions; creating s. 627.7486, F.S.;  
4151 providing an exemption from tort liability for certain  
4152 damages in legal actions under the Florida Motor  
4153 Vehicle No-Fault Emergency Care Coverage Law in  
4154 certain circumstances; providing for recovery of tort  
4155 damages in certain circumstances; providing for  
4156 motions to dismiss action on specified grounds;  
4157 prohibiting a claim for punitive damages in excess of  
4158 the coverage policy limits; creating s. 627.7487,  
4159 F.S.; providing for optional deductibles and



791184

4160 limitations of coverage for emergency care coverage  
4161 policies; requiring a specified notice to  
4162 policyholders; creating s. 627.7488, F.S.; requiring  
4163 the commission to adopt by rule a form for the  
4164 notification of insureds of their right to receive  
4165 emergency care coverage benefits; specifying contents  
4166 of such notice; providing requirements for the mailing  
4167 or delivery of such notice; creating s. 627.7489,  
4168 F.S.; providing for mandatory joinder of specified  
4169 claims; creating s. 627.749, F.S.; providing for an  
4170 insurer's right of reimbursement for emergency medical  
4171 care benefits paid to a person injured by a commercial  
4172 motor vehicle under specified circumstances; creating  
4173 s. 627.7491, F.S.; providing for application of the  
4174 Florida Motor Vehicle No-Fault Emergency Care Coverage  
4175 Law; providing for requirements for forms and rates  
4176 for policies issued or renewed on or after a specified  
4177 date; requiring a specified notice to existing  
4178 policyholders; amending s. 817.234, F.S.; providing  
4179 that it is insurance fraud to present a claim for  
4180 personal injury protection or emergency care coverage  
4181 benefits payable to a person or entity that knowingly  
4182 submitted false, misleading, or fraudulent documents  
4183 relating to licensure as a health care clinic;  
4184 providing that a licensed health care practitioner who  
4185 is found guilty of certain insurance fraud loses his  
4186 or her license and may not receive reimbursement for  
4187 personal injury protection or emergency care coverage  
4188 benefits for a specified period; defining the term



791184

4189 "insurer"; conforming provisions; amending ss.  
4190 316.065, 316.646, 318.18, 320.02, 320.0609, 320.27,  
4191 320.771, 322.251, 322.34, 324.021, 324.0221, 324.032,  
4192 324.171, 400.9935, 409.901, 409.910, 456.057, 456.072,  
4193 626.9541, 626.9894, 627.06501, 627.0652, 627.0653,  
4194 627.4132, 627.6482, 627.7263, 627.727, 627.7275,  
4195 627.728, 627.7295, 627.737, 627.8405, 627.915,  
4196 628.909, 705.184, 713.78, and 817.234, F.S.;  
4197 conforming provisions; requiring that the Office of  
4198 Insurance Regulation perform a data call relating to  
4199 emergency care coverage and publish the results;  
4200 prescribing required



224150

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Gaetz) recommended the following:

1           **Senate Amendment to Amendment (791184) (with title**  
2 **amendment)**

3  
4           Delete line 2222  
5 and insert:

6           (13) ATTORNEY FEES.—With respect to any dispute under ss.  
7 627.748-627.7491 between the insured and the insurer, or between  
8 an assignee of the insured's rights and the insurer, upon the  
9 rendition of a judgment or decree by any court in this state,  
10 the trial court or, upon appeal the appellate court, shall  
11 adjudge or decree a reasonable sum as fees or compensation for  
12 attorney fees in favor of the prevailing party, except as



224150

13 provided in subsections (8) and (12). If awarded, attorney fees  
14 or compensation must be included in the judgment or decree  
15 rendered in the case.

16 (14) SECURE ELECTRONIC DATA TRANSFER.-A notice,

17  
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete line 4148

21 and insert:

22 cause is shown; providing for attorney fees;

23 authorizing the electronic



578696

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/02/2012	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Margolis) recommended the following:

**Senate Amendment to Amendment (791184)**

Delete line 1342  
and insert:  
464, or a chiropractic physician licensed under chapter 460.

A physician who renders a diagnosis that requires prescribed followup services and care under this sub-subparagraph may not accept a fee for the referral of the insured to a person or entity providing the followup services and care unless the physician rendering the diagnosis discloses in writing to the insured and the insurer that the physician has received a



578696

13 referral fee, the amount of the referral fee, and the name and  
14 business address of the person or entity that provided the  
15 referral fee.



527256

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 518 - 541.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 46 - 49

and insert:

s. 627.736, F.S.; excluding message



104666

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/02/2012	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Gaetz) recommended the following:

1           **Senate Substitute for Amendment (527256) (with title**  
2 **amendment)**

3  
4           Delete lines 1265 - 1270  
5 and insert:

6           (8) ATTORNEY APPLICABILITY OF PROVISION REGULATING  
7 ATTORNEY'S FEES.—With respect to any dispute under the  
8 provisions of ss. 627.730-627.7405 between the insured and the  
9 insurer, or between an assignee of an insured's rights and the  
10 insurer, upon the rendition of a judgment or decree by any court  
11 in this state, the trial court or, upon appeal the appellate  
12 court, shall adjudge or decree a reasonable sum as attorney fees



104666

13 or compensation for attorney fees in favor of the prevailing  
14 party ~~the provisions of s. 627.428 shall apply,~~ except as  
15 provided in subsections (10) and (15). In determining a  
16 reasonable sum as attorney fees or compensation for attorney  
17 fees for a prevailing insured or assignee of such insured's  
18 rights, the court may consider the application of a contingency  
19 risk multiplier. If awarded, attorney fees or compensation for  
20 attorney fees must be included in the judgment or decree  
21 rendered in the case.

22  
23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 Delete line 79

26 and insert:

27 claims when policy limits are reached; revising  
28 provisions relating to attorney fees; consolidating



220258

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/02/2012	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 1270  
and insert:  
apply, except as provided in subsections (10) and (15). However, notwithstanding s. 627.428, the attorney fees recovered under s. 627.748-627.7491 shall be calculated without regard to any contingency risk multiplier.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:



220258

13           Delete line 79  
14 and insert:  
15           claims when policy limits are reached; allowing fees  
16           to be calculated without a contingency risk  
17           multiplier; consolidating consolidating



760588

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/02/2012	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Gaetz) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 1265 - 1270  
and insert:

(8) ATTORNEY APPLICABILITY OF PROVISION REGULATING  
ATTORNEY'S FEES.—With respect to any dispute under the  
provisions of ss. 627.730-627.7405 between the insured and the  
insurer, or between an assignee of an insured's rights and the  
insurer, upon the rendition of a judgment or decree by any court  
in this state, the trial court or, upon appeal the appellate  
court, shall adjudge or decree a reasonable sum as attorney fees  
or compensation for attorney fees in favor of the prevailing



760588

13 party the provisions of s. 627.428 shall apply, except as  
14 provided in subsections (10) and (15). In determining a  
15 reasonable sum as attorney fees or compensation for attorney  
16 fees for a prevailing insured or assignee of such insured's  
17 rights, the court may consider the application of a contingency  
18 risk multiplier. If awarded, attorney fees or compensation for  
19 attorney fees must be included in the judgment or decree  
20 rendered in the case.

21  
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete line 79

25 and insert:

26 claims when policy limits are reached; revising  
27 provisions relating to attorney fees; consolidating

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

To Bill  
and meet  
791184

2-2-12

*Meeting Date*

Topic Acupuncture

Bill Number SB 1860

Name Pat Mixon

Amendment Barcode 791184  
*(if applicable)*

Job Title Governmental Consultant

Address 119 East Park Avenue

Phone 850-528-44

*Street*

Tallahassee FL 32301

*City*

*State*

*Zip*

E-mail pat@mixonandassociates.com

Speaking:  For  Against  Information

Representing Myself regarding personal health issues

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic PIP INSURANCE

Bill Number SB 1860

Name DAVID A. HART

Amendment Barcode 220258  
(if applicable)

Job Title EXEC V.P.

Address 136 S. BRONOUGH  
Street

Phone 850. 521-1200

TALLAHASSEE, FL 32301  
City State Zip

E-mail dhart@flchamber.com

Speaking:  For  Against  Information

Representing FL CHAMBER

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

*Bill and Amendment*

2-2-12

*Meeting Date*

Topic Acupuncture

Bill Number SB 1860

Name John Cerra

Amendment Barcode 79189  
*(if applicable)*  
*(if applicable)*

Job Title Governmental Consultant

Address 11441 SW 110 Lane

Phone 786-525-6233

*Street*

Miami

FL

*City*

*State*

*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Myself, discussing personal health issues.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

*Meeting Date*

Topic Acupuncture

Bill Number SB 1860

Name Juhan Mixon

Amendment Barcode 29189  
*(if applicable)*

Job Title Governmental Consultant

Address 119 East Park Avenue

Phone 850-528-4441

*Street*

Tallahassee

FL

32301

*City*

*State*

*Zip*

E-mail juhan@mixonandassociates.com

Speaking:  For  Against  Information

Representing Florida State Oriental Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic PIP AUTO INSURANCE

Bill Number 1860  
(if applicable)

Name BILL NEWTON

Amendment Barcode 791184  
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 3006 W. KENNEDY BLVD STE B  
Street

Phone 813-877-6712

TAMPA FL 33609  
City State Zip

E-mail BILLNOPEAN.ORG

Speaking:  For  Against  Information

Representing FLORIDA CONSUMER ACTION NETWORK

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP

Bill Number SB 1860  
(if applicable)

Name Russel Lazega

Amendment Barcode 527256  
(if applicable)

Job Title Attorney, Author of Leading Text on Fla. PIP

Address 45 E. Sheridan St.

Phone \_\_\_\_\_

Street  
Dania Beach, FL 33004  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Responsive Insurance Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 2, 2012

Meeting Date

Topic PIP

Bill Number 1860

Name Kim Driggers

Amendment Barcode 527256 (if applicable)

Job Title Lawyer

Address 909 E. Park Ave

Phone 850.222.2000

Tallahassee, FL 32301

E-mail kdriggers@tallahasseeattorney.com

Speaking:  For  Against  Information

Representing Florida Justice Assn Amend.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic PIP AUTO INSURANCE

Bill Number 1860  
(if applicable)

Name BILL NEWTON

Amendment Barcode 527256  
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 3006 W KENNEDY BLVD STE B

Phone 813-877-6712

Street

TAMPA, FL 33609

City

State

Zip

E-mail BILLN@FCAN.ORG

Speaking:  For  Against  Information

Representing FLORIDA CONSUMER ACTION NETWORK

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 2, 2012  
Meeting Date

Topic PIP

Bill Number 1860

Name Kim Driggers

Amendment Barcode 527256  
(if applicable)

Job Title Lawyer

Address 909 E. Park Ave

Phone 850.222.2000

Street  
Tallahassee FL 32301  
City State Zip

E-mail kdiggers@Tallahasseeattorneys.com

Speaking:  For  Against  Information

Representing Florida Justice Assn.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12  
Meeting Date

Topic PIP

Bill Number 1860  
*(if applicable)*

Name Jeff Morrison DC

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Chiropractor

Address 1609 91<sup>st</sup> St. NW.  
Street

Phone 941-739-2225

Bradenton FL 34209  
City State Zip

E-mail dr.morrison@verizon.net

Speaking:  For  Against  Information

Representing Fl. Chiropractic Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP Fraud

Bill Number SB 860  
*(if applicable)*

Name CHRIS CONNELL

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Major - Tallahassee Police Dept

Address 234 E Seventh Ave

Phone 850.891.4301

Tallahassee FL 32301  
*City State Zip*

E-mail Chris.Connell@talgar.com

Speaking:  For  Against  Information

Representing FLORIDA POLICE CHIEFS ASSN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic RIP Bill

Bill Number 1860

Name Kevin Weiss

Amendment Barcode ~~221150~~ (if applicable)

Job Title Appellate Attorney

760588 (if applicable)

Address 698 North Maitland Ave.

Phone 407-509-1539

Maitland, FL 32751  
City State Zip

E-mail WEISS@weisslegalgroup.com

Speaking:  For  Against  Information

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic PIP INSURANCE

Bill Number SB 1860  
*(if applicable)*

Name DAVID A HART

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EXEC - VP

Address 136 S. BRONOUGH

Phone 850-521-1200

Street

TALLAHASSEE FL 32301

City

State

Zip

E-mail dhart@flchamber.com

Speaking:  For  Against  Information

Representing FL CHAMBER

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP

Bill Number 1860  
*(if applicable)*

Name Tammy Perdue

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title General Counsel

Address 516 N. Adams St

Phone 850-224-7173

<sup>Street</sup>  
Tallahassee FL 32301  
City State Zip

E-mail tperdue@aif.com

Speaking:  ~~For~~  Against  Information

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/2012  
Meeting Date

Topic PIP

Bill Number SB 1860  
(if applicable)

Name Robert Heatz

Amendment Barcode 220258  
(if applicable)

Job Title Attorney

Address 423 N. Baylen St

Phone (850) 466-3888

Street  
Pensacola FL 32501  
City State Zip

E-mail  Robert@robertheatzlaw.com

Speaking:  For  Against  Information

Representing Florida Justice Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/2012  
Meeting Date

Topic PIP

Bill Number SB 1860  
(if applicable)

Name Robert Heath

Amendment Barcode 220258  
(if applicable)

Job Title attorney

Address 423 N. Baylen St.

Phone (850) 466-3888

Penstroke FL 32501  
City State Zip

E-mail Robert@robertheathlaw.com

Speaking:  For  Against  Information

Representing Florida Justice Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP

Bill Number SB 1860  
*(if applicable)*

Name Gerald Wester

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 101 E College Av

Phone \_\_\_\_\_

Street

Tall Fl

City

State

Zip

E-mail Gwester@capcityconsulting.com

Speaking:  For  Against  Information

Representing American Insurance Association AIA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP Bill

Bill Number 1860

Name Kevin Weiss

Amendment Barcode ~~21150~~ (if applicable)

Job Title Appellate Attorney

760588 (if applicable)

Address 698 North Maitland Ave.

Phone 407-509-1539

Maitland, FL 32751  
Street City State Zip

E-mail weiss@weisslegalgroup.com

Speaking:  For  Against  Information

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic PIP

Bill Number 1860  
(if applicable)

Name MICHAEL CARLSON

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Executive Director

Address 275 S. Monroe St. Ste. 835

Phone 544 9576

Street  
Tallahassee FL 32312  
City State Zip

E-mail Michael.Carlson@Piff.net

Speaking:  For  Against  Information

Representing Personal Insurance Federation of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP

Bill Number SB 1860  
(if applicable)

Name Russel Lazega

Amendment Barcode 527256  
(if applicable)

Job Title Attorney, Author of Leading Text on Fla. PIP

Address 45 E. Sheridan St.

Phone \_\_\_\_\_

Street

Dania Beach, FL 33004

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing Responsive Insurance Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic PIP AUTO INSURANCE

Bill Number 1860  
*(if applicable)*

Name BILL NEWTON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EXECUTIVE DIRECTOR

Address 3006 W KENNEDY BLVD STE B

Phone 813-877-6712

Street

TAMPA, FL 33609

City

State

Zip

E-mail BILEN@FCAN.ORG

Speaking:  For  Against  Information

Representing FLORIDA CONSUMER ACTION NETWORK

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-2-12  
Meeting Date

Topic PIP

Bill Number 1860  
*(if applicable)*

Name Janet Mabry

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Consultant

Address 2866 Bay Heather Cir  
Street

Phone 850-934-1629

Gulf Breeze FL. 32563  
City State Zip

E-mail MabryJE@CS.com

Speaking:  For  Against  Information

Representing Florida State Massage Therapy Assn.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12  
Meeting Date

Topic PIP

Bill Number SB1860  
*(if applicable)*

Name Joy Ryan

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 204 S. Monroe St  
Street

Phone 681-6710

City

State

Zip

E-mail joy@blanklaw.com

Speaking:  For  Against  Information

Representing MetLife & Nationwide

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic

PIP

Bill Number

~~1860~~ 1860

(if applicable)

Name

Cheryl Amundsen

Amendment Barcode

(if applicable)

Job Title

Concerned Citizen

Address

Street

Phone

City

State

Zip

E-mail

Speaking:

For

Against

Information

Representing

Put the Brakes on Accident Fraud Coaliti

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic PIP

Bill Number SB 1860  
*(if applicable)*

Name Dr. Chip Smith

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Chiropractor

Address 555 Ave L

Phone 863-293-4249

Street

Winter Haven FL 33881

City

State

Zip

E-mail DRHG.Smith@  
Verizon.com net

Speaking:  For  Against  Information

Representing Fla Chiropractic Assoc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic PIP

Bill Number 1560  
1080

(if applicable)

Name Verr: Rayborn

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone 850 524 2394

City

State

Zip

Speaking:  For  Against  Information

Representing Florida Sheriff's Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

\_\_\_\_\_  
*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1866  
*(if applicable)*

Name DONOVAN BROWN

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title COUNSEL, STATE GOVERNMENT RELATIONS

Address \_\_\_\_\_

Phone \_\_\_\_\_

*Street*

\_\_\_\_\_  
*City*

\_\_\_\_\_  
*State*

\_\_\_\_\_  
*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing PROPERTY & CASUALTY INSURERS ASSOCIATION OF AMERICA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2 Feb 12

Meeting Date

Topic PIP

Bill Number 1860  
*(if applicable)*

Name Rebecca O'Hara

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title VP Govt Affairs

Address 113 E College Ave  
Street

Phone 339 6211

Talla. FL 32301  
City State Zip

E-mail rohara@flmedical.org

Speaking:  For  Against  Information

Representing Fla Medical Ass'n

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

02.02.12

Date

1860

Bill Number

~~22450~~

Barcode

Name William Large

Phone 8502220170

Address 210 S. Monroe Street

E-mail william@justice.org

Street Tallahassee

FL

32301

Job Title President

City

State

Zip

Speaking:  For  Against  Information

Appearing at request of Chair

Subject motor vehicle Personal Injury Protection Insurance

Representing Florida Justice Reform Institute

Lobbyist registered with Legislature:  Yes  No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from \_\_\_\_\_ .m. to \_\_\_\_\_ .m.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP

Bill Number 1860 (if applicable)

Name Pam Langford

Amendment Barcode (if applicable)

Job Title H.E.A.L.S. of the South

Address Street

Phone

City

State

Zip

E-mail

Speaking:  For  Against  Information

Representing Put the Brakes on Accident + Fraud Coaliti

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP BILL

Bill Number 1860

(if applicable)

Name RUTLEDGE BRADFORD

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title ATTORNEY

Address 5210 S. ORANGE AVE.

Phone (407) 926-3710

Street

ORLANDO, FL 32809

E-mail rutledge1c@bradfordlaw.com

City

State

Zip

Speaking:  For  Against  Information

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/2012  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB1860  
*(if applicable)*

Name Mark Delegal

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Retained Counsel

Address 215 S. Monroe Street #200

Phone 850 222-3533

Tallahassee FL 32301  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing State Farm Mutual Automobile Insurance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic PIP

Bill Number SB1860  
*(if applicable)*

Name Russel Lazega

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney, Author of leading legal text on PIP

Address 45 E. Sheridan St.  
*Street*  
Dania Beach FL 33004  
*City State Zip*

Phone 754-263-4252

E-mail Russ@LazegaLaw.com

Speaking:  For  Against  Information

Representing Responsive Auto Insurance Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12  
Meeting Date

Topic PIP Bill

Bill Number 1860  
(if applicable)

Name Kevin Weiss

Amendment Barcode ~~760588~~  
760588  
(if applicable)

Job Title Attorney

Address 698 N. Maitland Avenue  
Street  
Maitland, FL 32751  
City State Zip

Phone 407-599-9036

E-mail weiss@weisslegalgroup.com

Speaking:  For  Against  Information

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 1860

INTRODUCER: Banking and Insurance Committee and Senator Negron

SUBJECT: Motor Vehicle Personal Injury Protection Insurance

DATE: February 02, 2012 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Senate Bill 1860 amends the Florida Motor Vehicle No-Fault Law. The bill primarily amends the laws governing Personal Injury Protection (PIP) medical benefits under the No-Fault law and laws related to motor-vehicle insurance fraud. The major changes enacted by the bill are as follows:

*PIP Medical Benefits* – Eliminates PIP medical benefit reimbursement for massage as defined in s. 480.033, F.S., and acupuncture as defined in s. 457.102, F.S.

*Payment of PIP Benefits* – Makes the following changes regarding payment of PIP benefits:

- Insurers must give priority to the payment of the \$5,000 death benefit over other PIP benefits.
- Expands the requirement to reserve \$5,000 of PIP benefits to physicians or dentists providing emergency treatment to include hospitals.
- Insurers must repay the full amount of benefits paid by the Medicaid program within 30 days after receipt of notice.
- An insurer that rejects a claim or pays only a portion of a claim due to an alleged error in the claim must include with the rejection or partial payment an itemized specification or

explanation of benefits of the specified error. The claimant then has 15 days to submit a revised claim.

- Insurers must maintain a log of PIP benefits paid by the insurer to each insured. The insurer must provide the payment log within 30 days after receiving a request for the log from the insured or an assignee.
- If there is a dispute between an insurer and an insured or assignee and policy limits are reached, the insurer must notify the insured or assignee that policy limits have been reached within 15 days.

*PIP Medical Fee Schedule* – Makes the following changes regarding the content and application of the PIP medical fee schedule:

- Specifies that the Medicare fee schedule in effect on January 1 will apply to all medical care and supplies rendered in that calendar year.
- Effective July 1, 2012, an insurer may only limit reimbursement pursuant to the PIP fee schedule if the insurer provides notice at the issuance or renewal of the auto insurance policy that the insurer will provide reimbursement pursuant to the fee schedule.
- Authorizes insurers to use Medicare coding policies and payment methodologies so long as they do not constitute a utilization limit.
- Specifies that the Medicare Part B fee schedule applies to services, supplies and care provided by ambulatory surgical centers and clinical laboratories under the PIP fee schedule.
- Specifies that durable medical equipment is reimbursed at 200 percent of the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B.

*Mandatory Clinic Licensure; Exceptions* – All entities providing health care services must be licensed clinics in order to receive PIP reimbursement except for a licensed hospital, licensed ambulatory surgical center, or entities wholly owned by hospitals, licensed physicians (ch. 458, F.S. and ch. 459, F.S.), licensed dentists, and licensed chiropractors or jointly owned by such practitioners and specified family members.

*Crash Reports* – Long form crash reports must be completed and submitted to the DFS for all crashes involving a passenger other than a driver or when any party involved complains of pain or discomfort. Both the long-form and short-form reports are modified to identify the vehicle each party was in and whether he or she was a driver or passenger. Telephone numbers will no longer be included in such reports unless a party is charged with a criminal traffic offense. The bill also authorizes the law enforcement officer who investigated a crash to testify at trial or provide an affidavit that confirms or supplements information in a completed crash report.

*Clinic Licensure Insurance Fraud* – Defines as a false and fraudulent insurance claim under s. 817.234, F.S., presenting PIP claims to an insurer that a person knows are made on behalf of a payee that knowingly submitted a false, misleading, or fraudulent document when applying for clinic licensure, a clinic licensure exemption, or demonstrating compliance with the Health Care Clinic Law. Such acts are subject to investigation by the Division of Insurance Fraud. The AHCA clinic licensure application and exemption forms will provide notice of criminal liability for committing such acts.

*Health Care Practitioner License Suspension* – A licensed health care practitioner found guilty of insurance fraud under s. 817.234, F.S., will have his or her license revoked for 5 years and may not receive PIP reimbursement for 10 years.

*Electronic Records* – Permits electronic transmission of all notices, documents, communications and transmissions required or authorized under the No-Fault law. Deletes the requirement that electronic transmission may only occur if all parties expressly agree. Effective December 1, 2012.

*Auto Insurance Fraud Direct Support Organization* – Creates a non-profit direct support organization designed to receive money from private persons that will fund state agencies, state attorneys' offices, and the statewide prosecutor for the purposes of preventing, investigating, and prosecuting motor vehicle insurance fraud. The board of directors consists of the CFO, who serves as the chair, and eight appointed members.

*PIP Data Call* – Requires the Office of Insurance Regulation to perform a comprehensive PIP data call and publish the results by January 1, 2015. The data call will analyze the impact of the act's reforms on the PIP insurance market.

The bill is effective July 1, 2012, except as otherwise expressly provided.

This bill substantially amends the following sections of the Florida Statutes: 316.066, 400.9905, 400.991, 626.989, 626.9894, 627.736, and 817.234.

This bill creates the following section of the Florida Statutes: 626.9895.

## **II. Present Situation:**

### **Florida Motor Vehicle No-Fault Law**

Under the state's no-fault law<sup>1</sup>, owners or registrants of motor vehicles are required to purchase \$10,000 of personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault. Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.<sup>2</sup> This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.<sup>3</sup> In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

Florida drivers are required to purchase both personal injury protection (PIP) and property damage liability (PD) insurance.<sup>4</sup> The personal injury protection must provide a minimum

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<sup>1</sup> Sections 627.730-627.7405, F.S.

<sup>2</sup> See s. 627.731, F.S.

<sup>3</sup> Section 627.737, F.S.

<sup>4</sup> See sections 324.022, F.S. and 627.733, F.S.

benefit of \$10,000 for bodily injury to any one person.<sup>5</sup> Personal injury protection coverage provides reimbursement for 80 percent of reasonable medical expenses,<sup>6</sup> 60 percent of loss of income,<sup>7</sup> 100 percent of replacement services,<sup>8</sup> for bodily injury sustained in a motor vehicle accident, without regard to fault. The property damage liability coverage must provide a \$10,000 minimum benefit. A \$5,000 death benefit is also provided.<sup>9</sup>

In 2007, the Legislature re-enacted and revised the Florida Motor Vehicle No-Fault Law (ss. 627.730-627.7405, F.S.) effective January 1, 2008.<sup>10</sup> The re-enactment maintained personal injury protection (PIP) coverage at 80 percent of medical expenses up to \$10,000. However, benefits are limited to services and care lawfully provided, supervised, ordered or prescribed by a licensed physician, osteopath, chiropractor or dentist; or provided by:

- A hospital or ambulatory surgical center;
- An ambulance or emergency medical technician that provides emergency transportation or treatment;
- An entity wholly owned by physicians, osteopaths, chiropractors, dentists, or such practitioners and their spouse, parent, child or sibling;
- An entity wholly owned by a hospital or hospitals; or
- Licensed health care clinics that meet specified criteria.<sup>11</sup>

### **Medical Fee Limits for PIP Reimbursement**

Section 627.736(5), F.S., authorizes insurers to limit reimbursement for benefits payable from PIP coverage to 80 percent of the following schedule of maximum charges:

- For emergency transport and treatment (ambulance and emergency medical technicians), 200 percent of Medicare;
- For emergency services and care provided by a hospital, 75 percent of the hospital's usual and customary charges;
- For emergency services and care and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;
- For hospital inpatient services, 200 percent of Medicare Part A;
- For hospital outpatient services, 200 percent of Medicare Part A;
- For all other medical services, supplies, and care, 200 percent of Medicare Part B; and
- For medical care not reimbursable under Medicare, 80 percent of the workers' compensation fee schedule. If the medical care is not reimbursable under either Medicare or workers' compensation then the insurer is not required to provide reimbursement.

The insurer may not apply any utilization limits that apply under Medicare or workers' compensation.<sup>12</sup> Also, the insurer must reimburse any health care provider rendering services

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<sup>5</sup> Section 627.736(1), F.S.

<sup>6</sup> Section 627.736(1)(a), F.S.

<sup>7</sup> Section 627.736(1)(b), F.S.

<sup>8</sup> Id.

<sup>9</sup> Section 627.736(1)(c), F.S.

<sup>10</sup> Chapter 2007-324, L.O.F.

<sup>11</sup> See sub-subparagraphs 1-5 of s. 627.736(1)(a), F.S.

<sup>12</sup> Section 627.736(5)(a)4., F.S.

under the scope of his or her license, regardless of any restriction under Medicare that restricts payments to certain types of health care providers for specified procedures. Medical providers are not allowed to bill the insured for any excess amount when an insurer limits payment as authorized in the fee schedule, except for amounts that are not covered due to the PIP coinsurance amount (the 20 percent copayment) or for amounts that exceed maximum policy limits.<sup>13</sup>

**Motor Vehicle Insurance Rates**

Motor vehicle insurance rates have increased dramatically since the 2008 re-enactment of the No-Fault law. The Office of Insurance Regulation provided committee staff a summary of the cumulative motor vehicle rate increases implemented from January 1, 2009, to February 1, 2012, by the five insurance carriers with the largest market share in the Florida marketplace.<sup>14</sup>

Coverage	State Farm Mutual	GEICO General <sup>15</sup>	Progressive American <sup>16</sup>	Progressive Select <sup>17</sup>	Allstate Insurance
<b>PIP</b>	<b>49.7%</b>	<b>87.6%</b>	<b>62.8%</b>	<b>50.2%</b>	<b>35.1%</b>
PD	40.0%	-0.9%	-3.9%	5.9%	29.6%
BI	40.0%	49.0%	33.2%	33.9%	46.3%
UM	52.4%	-3.2%	50.2%	75.4%	-7.4%
Med Pay	-3.8%	5.9%	7.9%	19.5%	23.1%
Collision	-15.9%	-22.1%	-20.7	-14.8%	-24.7%
Comp.	-7.2%	-18.0%	-28.2%	-21.7%	-26.3%
<b>TOTAL</b>	<b>26.0%</b>	<b>19.6%</b>	<b>19.2%</b>	<b>19.2%</b>	<b>11.5%</b>

These premium increases have occurred despite data obtained from the Department of Highway Safety and Motor Vehicles showing decreases in:

- The number of licensed drivers in Florida (15,579,603 in 2008 to 15,553,387 in 2010).
- The frequency of auto crashes in Florida (1.56 crashes per 100 licensed drivers in 2008 to 1.52 crashes per licensed driver in 2010).
- The number of crash-related injuries in Florida (199,658 in 2008 to 195,104 in 2010).

Though the number of drivers, crashes, and injuries decreased from 2008 to 2010, the direct incurred losses of insurers dramatically increased from approximately \$1.475 billion in 2008 to approximately \$2.298 billion in 2010, an increase of approximately 55.8 percent.

The foregoing rate increases led the Office of Insurance Regulation (OIR) to promulgate a Personal Injury Protection data call<sup>18</sup> and issue a report on its findings in April 2011.<sup>19</sup> The OIR

<sup>13</sup> Section 627.736(5)(a)5., F.S.

<sup>14</sup> Data supplied by the Office of Insurance Regulation, based on data submitted in the Rate Collection System as of February 1, 2012.

<sup>15</sup> Includes two pending filings as of February 1, 2012.

<sup>16</sup> Includes one pending filing as of February 1, 2012.

<sup>17</sup> Includes one pending filing as of February 1, 2012

<sup>18</sup> Thirty-one companies participated in the data call, constituting approximately 80 percent of the private passenger No-Fault premium market in Florida.

<sup>19</sup> OIR Report on Review of the 2011 Personal Injury Protection Data Call (April 11, 2011).

report found large increases in medical provider charges, which increased from approximately \$10,000 per claim in 2007 to \$12,000 per claim in 2010.<sup>20</sup> The average number of procedures per claim greatly increased from less than 70 per claim in 2007 to over 100 per claim in 2010.<sup>21</sup> The average provider charge per procedure showed a slight decrease during 2008-2010, which is unsurprising given the enactment of the PIP medical fee schedule. The OIR data call indicates that the large loss increases insurers have incurred from 2008-2010 are due largely to sizeable increases in the number of treatments provided per PIP claim.

In December 2011, the Insurance Consumer Advocate issued a Report on Florida Motor Vehicle No-Fault Insurance. The report was based largely on information gathered through a Personal Injury Protection Working Group (Working Group) convened in August 2011 by the Consumer Advocate at the request of the Chief Financial Officer to research and analyze the No-Fault system and why losses and premiums are rapidly increasing.

The Consumer Advocate's report found rapid growth in the number of procedures billed from 2005 to 2010. The largest increases were found for "Massage, 15 minutes" and "Therapeutic Exercise, 15 minutes" which each increased by approximately 2.6 million units from 2005 to 2010.<sup>22</sup> Specifically, "Massage, 15 minutes" increased from approximately 1.42 million units in 2005 to approximately 4.05 million units in 2010, while therapeutic exercise increased from approximately 713,000 units in 2005 to 3.36 million units in 2010. These two procedures are now the two most commonly billed procedures in the PIP system.

The Consumer Advocate's report also presented data on increases in the average charge per claimant by provider. Average charges by massage therapists saw the greatest increase, increasing from \$2,887 in 2005 to \$4,350 in 2010.<sup>23</sup> The second largest increase was by acupuncturists, whose average charge increased from \$2,754 in 2005 to \$3,674 in 2010.<sup>24</sup> In contrast, the average charge by an orthopedic surgeon only increased \$126 from 2005-2010, billing on average the comparatively smaller figure of \$2,810 in 2010.<sup>25</sup> As of 2010, massage therapists and acupuncturists issue the largest average charges of any medical provider that bill within the PIP system.<sup>26</sup>

### **Motor Vehicle Insurance Fraud**

Over the past 5 years, Florida has experienced an increase in motor vehicle related insurance fraud. The number of staged motor vehicle accidents received by the Division of Insurance Fraud (Division)<sup>27</sup> nearly doubled from fiscal year 2008/2009 (776)<sup>28</sup> to fiscal year 2010/2011 (1,416).<sup>29</sup> The Division is also reporting sizeable increases in the overall number of PIP fraud

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<sup>20</sup> See *id.* at pg. 13

<sup>21</sup> See *id.*

<sup>22</sup> Office of the Insurance Consumer Advocate Report on Florida Motor Vehicle No-Fault Insurance (Personal Injury Protection), pg. 23 (December 2011).

<sup>23</sup> See *id.* at pg. 21.

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> The Division of Insurance Fraud is the law enforcement arm of the Department of Financial Services.

<sup>28</sup> Florida Department of Financial Services Division of Insurance Fraud Statistical Report: Fiscal Year 2008/2009, pg. 12.

<sup>29</sup> Florida Department of Financial Services Division of Insurance Fraud Annual Report: Fiscal Year 2010/2011, pg. 30.

referrals, which have increased from 3,151 during fiscal year 2007/2008<sup>30</sup> to 6,699 in fiscal year 2010/2011.<sup>31</sup> Florida led the nation in staged motor vehicle accident “questionable claims”<sup>32</sup> from 2007-2009, according to the National Insurance Crime Bureau (NICB).<sup>33</sup>

Motor vehicle insurance fraud is a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled Florida’s Motor Vehicle No-Fault Law, which was a comprehensive review of Florida’s No-Fault system. The report noted that fraud was at an “all-time” high at the time, noting that there were 3,942 PIP fraud referrals received by the Division of Insurance Fraud during the 3 fiscal years beginning in 2002 and ending in 2005. That amount was easily exceeded by the over 5,500 hundred PIP fraud referrals received by the division during the 2009/2010 fiscal year. Given this fact, the following description from the 2005 report is an accurate description of the current situation regarding motor vehicle insurance fraud:

“Florida’s no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering...

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders. Representatives from the Division of Insurance Fraud have identified the following as sources of motor vehicle insurance fraud:

- Ease in obtaining exemptions from the Health Care Clinic Law.
- Failure of some law enforcement crash reports to identify all passengers involved in an accident.
- Solicitation of patients by certain unscrupulous medical providers, attorneys, and medical and legal referral services.
- The inability of local law enforcement agencies to actively pursue the large amount of motor vehicle fraud currently occurring.

### **Examinations Under Oath**

The standard motor vehicle insurance policy contains a provision requiring the insured or claimant to submit to an examination under oath (EUO) as often as the insurer may reasonably require. When an insurer seeks an EUO of an insured or claimant, it sends a written request setting forth the time, date, and location of the examination and a list of any documents that the insurer is requesting. The examination is similar to a legal deposition as the insured answers questions posed by insurance company’s attorney.

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<sup>30</sup> See fn. 25.

<sup>31</sup> See fn. 26.

<sup>32</sup> See fn. 19 at pg. 29. The NICB defines a “questionable claim” as one in which indications of the behavior associated with staged accidents are present. Such claims are not necessarily verified instances of insurance fraud.

<sup>33</sup> The National Insurance Crime Bureau is a not-for-profit organization that receives report from approximately 1,000 property and casualty insurance companies. The NICB’s self-stated mission is to partner with insurers and law enforcement agencies with law enforcement

Medical providers and insurers dispute whether an insurer may require a medical provider who has accepted an assignment of benefits to submit to an examination under oath. The Fifth District Court of Appeals ruled in *Shaw v. State Farm Fire and Cas. Co.*,<sup>34</sup> that a medical provider who was assigned PIP benefits by its insured was not required to submit to an EUO. The court stated that under Florida law, the assignment of contract rights (here, to receive reimbursement for PIP medical benefits) does not entail the transfer of contract duties (to submit to an EUO) unless the assignee agrees to accept the duty. The court noted that the assignment does not extinguish the duty to comply with the insurance contract, but stated that it is the contracting party (the insured) who must comply with contract conditions. The majority decision also found that State Farm attempted to impermissibly alter via contract the state's No-Fault Law, which provides how insurers may obtain information from health care providers. A dissent in the case stated that the policy required the medical provider to submit to an examination under oath because the State Farm policy clearly stated that the medical provider must submit to an EUO under the State Farm policy because it required each "claimant" to submit to an EUO. The dissent also stated that an assignment of benefits does not remove the assignee from the burden of compliance with contract conditions under Florida law.

### **Demand Letter**

Prior to filing a legal action to recover PIP benefits, the insured or provider must send written notice to the insurer of an intent to initiate litigation. The notice must include an itemized statement detailing the exact amount and type of treatment asserted to be due. If the insurer pays the claim within 30 days (with interest and penalty) after receiving the demand letter then no action may be brought against the insurer. A suit may not be filed to obtain benefits and potentially collect attorney's fees until the end of this 30-day period.

### **Florida Uniform Crash Reports**

Section 316.066, F.S., provides that a Florida Traffic Crash Report-Long Form must be completed and submitted to the Department within 10 days after an investigation by every law enforcement officer who, in the regular course of duty, investigates a motor vehicle crash that resulted in death or personal injury, that involved a violation of s. 316.061(1), F.S., or s. 316.193, F.S., and in which a vehicle was rendered inoperative to a degree that required a wrecker to remove it from traffic, if the action is appropriate, in the officer's discretion. For every crash for which a Florida traffic crash report long form is not required by s. 316.066, F.S., the law enforcement officer may complete a short form crash report or provide a short form crash report to be completed by each party involved in the crash.

### **Health Care Clinic Licensure**

The Health Care Clinic Licensure Act (ss. 400.990-400.995, F.S.) was enacted by the 2003 Legislature for the purpose of preventing cost and harm to consumers by providing for the licensure, establishment and enforcement of basic standards for health care clinics. The definition of a health care "clinic" is expansive: "an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services,

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<sup>34</sup> *Shaw v. State Farm Fire and Casualty Company*, 37 So.3d 329 (Fla. 5<sup>th</sup> DCA 2010).

including a mobile clinic and a portable equipment provider.”<sup>35</sup> However, the statute contains a multitude of exemptions from licensure. For instance, an entity owned by a Florida-licensed health care practitioner or by a Florida-licensed health care facility is exempt from the clinic licensure requirements. Furthermore, clinic exemptions are voluntary and the Agency for Health Care Administration (AHCA) has no statutory authority to verify that an entity qualifies for an exemption as claimed.

An applicant<sup>36</sup> for clinic licensure must submit to and pass a level 2 background screening pursuant to s. 435.04, F.S., which requires taking fingerprints of each applicant and conducting a statewide criminal history check through the Department of Law Enforcement (FDLE) and national criminal history check through the Federal Bureau of Investigation (FBI). AHCA also reviews the finances of the proposed clinic and inspects the facility to verify that the proposed clinic complies with licensure requirements.

### **Direct Support Organizations**

A direct service organization (DSO) collects funds through grants, donations and other sources, and distributes them to entities that will use the funds to further a legislative purpose. Florida’s nondelegation doctrine derives from Article II, Section 3 of the Florida Constitution and prohibits one branch of government from encroaching on another branch’s power and also prohibits any branch from delegating its constitutionally assigned powers to another branch.<sup>37</sup> Accordingly, a DSO cannot exceed its grant of statutory authority. Additionally, as a statutorily created organization, the DSO is subject to the Government in the Sunshine law under ch. 119, F.S.<sup>38</sup> Furthermore, DSOs are required to submit an audit, conducted by an independent certified public accountant, to the Auditor General within 5 months after the end of the fiscal year.<sup>39</sup>

## **III. Effect of Proposed Changes:**

### **Traffic Crash Reports**

**Section 1.** Amends s. 316.066, F.S., to require that Long-Form crash reports be completed and submitted to the DFS for all crashes involving a passenger or when any party complains of pain or discomfort. All crash reports are modified to identify the vehicle each driver or passenger was in. Telephone numbers will not be included in such reports unless a party is charged with a criminal traffic offense. The bill also authorizes the law enforcement officer who investigated the crash to testify at trial or provide an affidavit that confirms or supplements information in a completed crash report.

<sup>35</sup> Section 400.9905(4), F.S.

<sup>36</sup> An applicant is any person with a 5 percent or more ownership interest in the clinic. See s. 400.9905(2), F.S.

<sup>37</sup> See *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So.2d 763, 769 (Fla. 2005)

<sup>38</sup> See s. 119.011(2), F.S. (defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”) (emphasis added). See also *Crespo v. Florida Entertainment Direct Support Organization, Inc.*, 674 So.2d 154 (Fla. 3<sup>rd</sup> DCA 1996).

<sup>39</sup> See ss. 11.45, 215.981, F.S.

**Section 10.** Technical conforming change to s. 316.065, F.S., necessitated by the substantive amendment to s. 316.066, F.S.

### **Health Care Clinic Related Insurance Fraud**

#### Submitting PIP Claims on Behalf of Fraudulent Clinics

**Section 9.** Amends s. 817.234(1)(a), F.S., to define as insurance fraud presenting a claim for PIP benefits on behalf of an entity while knowing that the entity knowingly submitted a false, misleading, or fraudulent application or document when applying for health care clinic licensure, licensure exemption, or demonstrating compliance with the Health Care Clinic Law. Insurance fraud under s. 817.234, F.S., is a felony offense and fraud related to motor vehicle insurance is also subject to monetary civil penalties.

#### Notice of Health Care Clinic Licensure Insurance Fraud

**Section 3.** Amends s. 400.991, F.S., to require all AHCA forms for clinic licensure or exemption to include a notice of criminal liability. The notice states that submitting a false, misleading, or fraudulent document when applying for clinic licensure, clinic licensure exemption, or demonstrating compliance with the Health Care Clinic Law (part X, ch. 400, F.S.), with the intent to provide services or seek reimbursement under the No-Fault law is a fraudulent insurance act subject to investigation by the Division of Insurance Fraud pursuant to s. 626.989, F.S. The notice also states that presenting a claim for PIP benefits knowing that the payee knowingly submitted a fraudulent clinic application or document commits insurance fraud pursuant to s. 817.234, F.S.

#### Clinic-Related Insurance Fraud Subject to Investigation by Division of Insurance Fraud

**Section 4.** Amends s. 626.989, F.S., which defines acts that are subject to investigation by the Division of Insurance Fraud as a “fraudulent insurance act.” Expansion of the definition is intended to expand the ability of the Division of Insurance Fraud to investigate health care clinic fraud. A “fraudulent insurance act” is:

- The knowing submission of a false, misleading, or fraudulent application or document when applying for health care clinic licensure, a licensure exemption, or demonstrating compliance with the Health Care Clinic Law with the intent to use the license, exemption, or compliance to provide services or seek PIP reimbursement; or
- Presenting a claim for payment or benefits under a PIP insurance policy while knowing the payee knowingly submitted a false, misleading, or fraudulent application or document when applying for a clinic license, exemption, or demonstrating compliance with the Health Care Clinic Law.

### **Clinic Licensure Required to Receive PIP Reimbursement**

**Section 2.** Amends s. 400.9905, F.S., to require that all entities providing health care services be licensed clinics in order to receive PIP reimbursement except for a licensed hospital, licensed ambulatory surgical center, or entities wholly owned by hospitals, licensed physicians (ch. 458,

F.S. and ch. 459, F.S.), licensed dentists, and licensed chiropractors or jointly owned by such practitioners and specified family members.

### **Motor Vehicle Fraud Direct Support Organization**

**Section 5.** Amends s. 626.9894, F.S., to specify that the balance of monies deposited in the Insurance Regulatory Trust Fund from the DSO at the end of a fiscal year may be used to fund the Division of Insurance Fraud. The DFS may also request the appropriation of such funds for insurance anti-fraud purposes.

**Section 6.** Creates s. 626.9895, F.S., which establishes a non-profit direct support organization (DSO) designed to receive money from private persons and entities for the purposes of preventing, investigating, and prosecuting motor vehicle insurance fraud. The DSO is authorized to conduct programs and activities, raise money and invest such monies, and make grants and expenditures that directly or indirectly benefit specified governmental entities to exclusively advance the DSO's purposes.

Grants and expenditures made by the DSO may fund the salaries and benefits of motor vehicle insurance fraud investigators, prosecutors, and support personnel. Such monies and expenditures cannot interfere with prosecutorial independence or create conflicts of interest which threaten the success of prosecutions, nor may they be used for lobbying. Contributions from insurers shall be allowed as an appropriate business expense for regulatory purposes. The DSO is subject to an annual financial audit pursuant to s. 215.981, F.S.

The DSO is governed by an eleven member board of directors, made up as follows:

- The Chief Financial Officer (or designee) who serves as chair.
- Two state attorneys. The CFO and Attorney General each have one appointment.
- Two representatives of motor vehicle insurers appointed by the CFO.
- Two representatives of local law enforcement agencies. The CFO and Attorney General each have one appointment.
- Two representatives of health care providers who regularly make PIP claims. The President of the Senate and Speaker of the House of Representatives each has one appointment.
- A private attorney with experience representing PIP claimants, appointed by the President of the Senate.
- A private attorney with experience representing PIP insurers, appointed by the Speaker of the House of Representatives.

The DSO will operate under a written contract with the Division of Insurance Fraud (DIF). The Division will have approval authority of the DSO's articles of incorporation and bylaws. The DSO must submit an annual budget to the division for its approval. The DSO will also be required to obtain an annual certification from the division that it is complying with the terms of the contract and operating in accordance with the DSO's purposes. The DFS may authorize the DSO to use DIF facilities without charge.

## **Personal Injury Protection Benefits**

**Section 7.** Amends s. 627.736, F.S., regarding Personal Injury Protection (PIP) No-Fault insurance in the following ways:

### PIP Required Benefits [s. 627.736(1), F.S.]

Under current law, subsection (1) of s. 627.736, F.S., details the required personal injury protection benefits, which must include at least \$10,000 in medical, disability, and death benefits (the latter of which can be up to \$5,000 of the total \$10,000 benefit). The bill amends this subsection in the following ways:

*Massage and Acupuncture Not Reimbursable* – Eliminates PIP medical benefit reimbursement for massage as defined in s. 480.033, F.S., and acupuncture as defined in s. 457.102, F.S.

*Death Benefits* – Insurers must give priority to the payment of the \$5,000 death benefit over other PIP benefits.

### Payment of Benefits [s. 627.736(4), F.S.]

Under current law, subsection (4) of s. 627.736(4), F.S., contains requirements related to the payment of No-Fault benefits that insurers and claimants must comply with. Paragraph (b) of this subsection requires insurers to pay personal injury protection benefits within 30 days after receiving written notice of a covered loss. The bill makes the following changes related to the payment of benefits:

*Reimbursement to Medicaid* – Insurers must repay the full amount of benefits paid by the Medicaid program within 30 days after receipt of notice.

*Claims Rejected Due to Claimant Errors* – An insurer that rejects a claim or pays only a portion of a claim due to an alleged error in the claim must include with the rejection or partial payment an itemized specification or explanation of benefits of the specified error. The claimant then has 15 days to submit a revised claim and may do so without waiving other legal remedies for payment.

*Reservation of PIP Benefits* – Expands the requirement to reserve \$5,000 of PIP benefits to physicians or dentists providing emergency treatment to include hospitals.

*Log of PIP Benefits Provided* – Requires insurers to maintain a log of PIP benefits paid by the insurer to each insured. The insurer must provide a copy of the payment log within 30 days after receiving a request for the log from the insured or an assignee.

### Medical Fee Schedule [s. 627.736(5)(a), F.S.]

The bill enacts the following changes to the PIP medical fee schedule:

*Ambulatory Surgical Centers and Clinical Laboratories* – Specifies that the Medicare Part B fee schedule applies to services, supplies and care provided ambulatory surgical centers and clinical laboratories under the PIP fee schedule.

*Durable Medical Equipment* – Specifies that durable medical equipment is reimbursed at 200 percent of the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B.

*Annual Update* – Specifies that the Medicare fee schedule in effect on January 1 will apply to all medical care and supplies rendered in that calendar year. The annual update remains subject to the prohibition against reducing reimbursement rates below those contained in the 2007 Medicare Part B schedule.

*Medicare Coding Policies and Payment Methodologies* – Authorizes insurers to use Medicare coding policies and payment methodologies so long as they do not constitute utilization limits.

*Notice of Fee Schedule* – Effective July 1, 2012, an insurer may only limit reimbursement pursuant to the PIP fee schedule if the insurer provides notice at the issuance or renewal of the auto insurance policy that the insurer will provide reimbursement pursuant to the fee schedule.

Patient Disclosure [s. 627.736(5)(e), F.S.]

At the initial treatment of an insured, each medical provider must require each injured person to execute a disclosure and acknowledgment form at the initiation of treatment. The executed disclosure attests that the medical services were actually performed. Current law exempts from this requirement services billed by a provider for emergency services, emergency services and care rendered in a hospital emergency department, or for transport and treatment rendered by a licensed ambulance provider. The bill deletes the exemption for "services billed by a provider for emergency services" from the requirement that providers must execute the disclosure and acknowledgement form.

Clinic Licensure Required to Receive PIP Reimbursement [s. 627.736(5)(h), F.S.]

The bill requires all entities providing health care services to be licensed clinics in order to receive PIP reimbursement. The bill provides exemptions for a licensed hospital, licensed ambulatory surgical center, or entities wholly owned by hospitals, licensed physicians (ch. 458, F.S. and ch. 459, F.S.), licensed dentists, or licensed chiropractors or jointly owned by such practitioners and specified family members.

Notice that PIP Benefits are Exhausted [s. 627.736(6), F.S.]

If there is a dispute between an insurer and an insured or assignee and policy limits are reached, the insurer must notify the insured or assignee that policy limits have been reached within 15 days of the exhaustion of benefits.

Offer of Judgment Statute Applied to No-Fault Disputes [s. 627.736(8), F.S.]

Applies the offer of judgment statute in s. 768.79, F.S., to PIP disputes. The offer of judgment statute allows a defendant to recover attorney's fees and costs from the plaintiff if the defendant makes an offer to the plaintiff and the plaintiff's ultimate recovery is either \$0 or 25 percent less than the defendant's offer. Plaintiffs may make a similar demand for judgment that requires the defendant to pay reasonable fees and costs if the plaintiff recovers a judgment that is 25 percent or more than the amount demanded. However, s. 627.428, F.S., already requires an insurer defendant to pay reasonable costs to a plaintiff upon a judgment or confession of judgment in favor of the plaintiff.

Electronic Records [s. 627.736(16), F.S.]

**Section 8.** Effective December 1, 2012, deletes that the requirement that electronic transmission of records may only occur if all parties expressly agree. The bill will allow electronic transmission of all notices, documents, communications and transmissions required or authorized under the No-Fault law.

#### **Office of Insurance Regulation Data Call**

**Section 11.** The bill requires the Office of Insurance Regulation to perform a comprehensive PIP data call and publish the results by January 1, 2015. The data call is intended to evaluate market conditions relating to the No-Fault law and measure the effects of this act.

#### **Severability Clause**

**Section 12.** Provides that if any provision of the act is held invalid, the provisions of the act are severable.

#### **Effective Date**

**Section 13.** The act is effective July 1, 2012, except as otherwise provided.

#### **Other Potential Implications:**

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Senate Bill 1860 is intended to reduce No-Fault motor vehicle insurance premiums by removing cost drivers related to certain medical treatments and fraud. Proponents of the bill assert that eliminating reimbursement for massage and acupuncture will reduce losses incurred by insurers and result in corresponding lower premiums for consumers. Providers who bill for massage and acupuncture within the PIP system will experience a negative economic impact.

Health care providers required to obtain clinic licensure to receive PIP reimbursement will be subject to additional costs. Entities obtaining clinic licensure or renewing clinic licensure must pay a \$2,000 licensure fee. The Agency for Health Care Administration estimates that new applicants will incur approximately \$5,000 in expenses associated with preparing the licensure application, an estimate that is inclusive of the licensure fee. Proponents of this requirement assert that it will help reduce PIP fraud.

The clarifications to the PIP fee schedule are designed to reduce litigation that arises due to disputes over the proper fee amount to be paid under the schedule. Proponents of the allowing insurers to use Medicare coding policies and methodologies assert that their use will result in additional savings. Representatives of some medical providers and plaintiff's attorneys have argued that allowing the use of these coding policies and methodologies incorporates utilization limits into the fee schedule. However, the bill expressly prohibits their use if they constitute a utilization limit.

**C. Government Sector Impact:**

Representatives from the OIR indicate that the legislation will present a significant resource challenge as the OIR expects significant numbers of auto policy contract changes to be filed to comply with various provisions of the bill. The OIR also anticipates committing significant staff resources to conduct the data call required by the bill.

Representatives from the Division of Insurance Fraud and the Agency for Health Care Administration contend that requiring medical providers to obtain clinic licensure (with exceptions) will increase the ability of agency and division personnel to discover and track clinics engaging in insurance fraud.

The Department of Financial Services also contends that the creation of a direct support organization dedicated to motor vehicle insurance fraud will increase the resources of the Division of Insurance Fraud and other law enforcement agencies to prevent, investigate, and prosecute such fraud. The Direct Service Organization is authorized to use the monies it raises to fund insurance fraud investigators, prosecutors, and support personnel. Proponents of this provision assert this will increase the number of successful

prosecutions for motor vehicle insurance fraud in the state. Concerns have been raised that using private funds to fund these provisions may create conflicts of interest in criminal prosecutions, however, the bill expressly prohibits grants and expenditures that interfere with prosecutorial independence or create conflicts of interest that threaten the success of prosecutions.

The Agency for Health Care Administration (AHCA) estimates that 250 health care providers will obtain health care clinic licensure in Fiscal Year (FY) 2012-2013 to comply with the requirement that health care providers (with exceptions) obtain clinic licensure in order to receive PIP reimbursement. An estimated 50 new licenses are anticipated for FY 2013-2014, while in FY 2014-2015 an estimated 250 new licenses and license renewals will be attributable to the bill. A \$2,000 fee is charged to entities obtaining a new or renewal clinic license. AHCA estimates two additional staff will be required (a field surveyor and a licensure analyst) to license the additional clinics. Overall, AHCA anticipates a net gain to the Health Care Trust Fund of \$374,481 in FY 2012-2013, a loss of \$18,223 in FY 2013-2014, and a gain of \$381,777 in FY 2014-2015.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 2, 2012:**

Deletes from the bill a provision that would have prohibited insurance companies from including within their rates amounts paid to prevailing plaintiffs for attorney fees and costs.

- B. **Amendments:**

None.

By Senator Negrón

28-00905-12

20121860\_\_

1 A bill to be entitled  
 2 An act relating to motor vehicle personal injury  
 3 protection insurance; amending s. 316.066, F.S.;  
 4 revising the conditions for completing the long-form  
 5 traffic crash report; revising the information  
 6 contained in the long-form and the short-form reports;  
 7 limiting the inclusion of telephone numbers in crash  
 8 reports; authorizing an investigating officer to  
 9 testify at trial or provide an affidavit regarding a  
 10 crash; amending s. 400.9905, F.S.; providing that  
 11 certain entities exempt from licensure as a health  
 12 care clinic must nonetheless be licensed in order to  
 13 receive reimbursement for the provision of personal  
 14 injury protection benefits; amending s. 400.991, F.S.;  
 15 requiring that an application for licensure, or  
 16 exemption from licensure, as a health care clinic  
 17 include a statement regarding insurance fraud;  
 18 amending s. 626.989, F.S.; providing that knowingly  
 19 submitting false, misleading, or fraudulent documents  
 20 relating to licensure as a health care clinic, or  
 21 submitting a claim for personal injury protection  
 22 relating to clinic licensure documents, is a  
 23 fraudulent insurance act under certain conditions;  
 24 amending s. 626.9894, F.S.; conforming provisions to  
 25 changes made by act; creating s. 626.9895, F.S.;  
 26 providing definitions; authorizing the Division of  
 27 Insurance Fraud of the Department of Financial  
 28 Services to establish a direct-support organization  
 29 for the purpose of prosecuting, investigating, and

Page 1 of 53

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

28-00905-12

20121860\_\_

30 preventing motor vehicle insurance fraud; providing  
 31 requirements for, and duties of, the organization;  
 32 requiring that the organization operate pursuant to a  
 33 contract with the division; providing for the  
 34 requirements of the contract; providing for a board of  
 35 directors; authorizing the organization to use the  
 36 division's property and facilities subject to certain  
 37 requirements; requiring that the department adopt  
 38 rules relating to procedures for the organization's  
 39 governance and relating to conditions for the use of  
 40 the division's property or facilities; authorizing  
 41 contributions from insurers; authorizing any moneys  
 42 received by the organization to be held in a separate  
 43 depository account in the name of the organization;  
 44 requiring that the division deposit certain proceeds  
 45 into the Insurance Regulatory Trust Fund; amending s.  
 46 627.0651, F.S.; prohibiting attorney fees awarded to  
 47 plaintiffs in claims for benefits under the motor  
 48 vehicle no-fault law from being included in insurance  
 49 rates; amending s. 627.736, F.S.; excluding massage  
 50 and acupuncture from medical benefits that may be  
 51 reimbursed under the motor vehicle no-fault law;  
 52 requiring that an insurer give priority to the payment  
 53 of death benefits under certain conditions; requiring  
 54 that an insurer repay any benefits covered by the  
 55 Medicaid program; requiring that an insurer provide a  
 56 claimant an opportunity to revise claims that contain  
 57 errors; including hospitals within a requirement for  
 58 insurers to reserve a portion of personal injury

Page 2 of 53

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28-00905-12

20121860\_\_

59 protection benefits; requiring that an insurer create  
 60 and maintain a log of personal injury protection  
 61 benefits paid and that the insurer provide to the  
 62 insured or an assignee of the insured, upon request, a  
 63 copy of the log; revising the Medicare fee schedules  
 64 that an insurer may use as a basis for limiting  
 65 reimbursement of personal injury protection benefits;  
 66 providing that the Medicare fee schedule in effect on  
 67 a specific date applies for purposes of limiting such  
 68 reimbursement; authorizing insurers to apply certain  
 69 Medicare coding policies and payment methodologies;  
 70 requiring that an insurer that limits payments based  
 71 on the statutory fee schedule include a notice in  
 72 insurance policies at the time of issuance or renewal;  
 73 deleting obsolete provisions; providing that certain  
 74 entities exempt from licensure as a clinic must  
 75 nonetheless be licensed to receive reimbursement for  
 76 the provision of personal injury protection benefits;  
 77 providing exceptions; requiring that an insurer notify  
 78 parties in disputes over personal injury protection  
 79 claims when policy limits are reached; consolidating  
 80 provisions relating to unfair or deceptive practices  
 81 under certain conditions; eliminating a requirement  
 82 that all parties mutually and expressly agree for the  
 83 use of electronic transmission of data; amending s.  
 84 817.234, F.S.; providing that it is insurance fraud to  
 85 present a claim for personal injury protection  
 86 benefits payable to a person or entity that knowingly  
 87 submitted false, misleading, or fraudulent documents

Page 3 of 53

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28-00905-12

20121860\_\_

88 relating to licensure as a health care clinic;  
 89 providing that a licensed health care practitioner  
 90 guilty of certain insurance fraud loses his or her  
 91 license and may not receive personal injury protection  
 92 benefits for a specified period; defining the term  
 93 "insurer"; amending s. 316.065, F.S.; conforming a  
 94 cross-reference; requiring that the Office of  
 95 Insurance Regulation perform a data call relating to  
 96 personal injury protection; prescribing required  
 97 elements of the data call; providing for severability;  
 98 providing effective dates.  
 99

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

101  
 102 Section 1. Subsection (1) of section 316.066, Florida  
 103 Statutes, is amended to read:

104 316.066 Written reports of crashes.-

105 (1) (a) A Florida Traffic Crash Report, Long Form, must ~~is~~  
 106 ~~required to~~ be completed and submitted to the department within  
 107 10 days after ~~completing~~ is completed by the  
 108 ~~every~~ law enforcement officer who in the regular course of duty  
 109 investigates a motor vehicle crash that:

110 1. Resulted in death, ~~or~~ personal injury, or any complaint  
 111 of pain or discomfort by any of the parties or passengers  
 112 involved in the crash;-

113 2. Involved one or more passengers in any vehicle involved  
 114 in the crash, other than the driver of the vehicle; or

115 3. ~~2.~~ Involved a violation of s. 316.061(1) or s. 316.193.

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

Page 4 of 53

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28-00905-12 20121860  
 117 Report, Long Form, is not required ~~by this section~~, the law  
 118 enforcement officer may complete a short-form crash report or  
 119 provide a driver exchange-of-information form to be completed by  
 120 each party involved in the crash. The agency that employs the  
 121 law enforcement officer who prepares the short-form crash report  
 122 shall maintain the report.

123 (c) The long-form and the short-form reports ~~report~~ must  
 124 include:

- 125 1. The date, time, and location of the crash.
- 126 2. A description of the vehicles involved.
- 127 3. The names and addresses of the parties involved,  
 128 including all drivers and passengers, with each party clearly  
 129 identified as a driver or passenger and the vehicle that he or  
 130 she occupied.
- 131 4. The names and addresses of witnesses.
- 132 5. The name, badge number, and law enforcement agency of  
 133 the officer investigating the crash.
- 134 6. The names of the insurance companies for the respective  
 135 parties involved in the crash.

136  
 137 Except for a crash in which a party is charged with a criminal  
 138 traffic offense, a long-form or short-form crash report may not  
 139 include the telephone number of a party involved in the crash.

140 ~~(d)(e)~~ Each party to the crash must provide the law  
 141 enforcement officer with proof of insurance, which must be  
 142 documented in the crash report. If a law enforcement officer  
 143 submits a report on the crash, proof of insurance must be  
 144 provided to the officer by each party involved in the crash. Any  
 145 party who fails to provide the required information commits a

28-00905-12 20121860  
 146 noncriminal traffic infraction, punishable as a nonmoving  
 147 violation as provided in chapter 318, unless the officer  
 148 determines that due to injuries or other special circumstances  
 149 such insurance information cannot be provided immediately. If,  
 150 within 24 hours after the crash, the person provides the law  
 151 enforcement agency ~~with, within 24 hours after the crash~~, proof  
 152 of insurance that was valid at the time of the crash, the law  
 153 enforcement agency may void the citation.

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

164 (f) The law enforcement officer who investigates a crash  
 165 may testify at trial, provide a deposition for use at trial, or  
 166 provide a signed affidavit to confirm or supplement information  
 167 included in the long-form or short-form crash report.

168 ~~(e) Short-form crash reports prepared by law enforcement~~  
 169 ~~shall be maintained by the law enforcement officer's agency.~~

170 Section 2. Subsection (4) of section 400.9905, Florida  
 171 Statutes, is amended to read:

172 400.9905 Definitions.—

173 (4) "Clinic" means an entity where ~~at which~~ health care  
 174 services are provided to individuals and which tenders charges

28-00905-12 20121860  
 175 for reimbursement for such services, including a mobile clinic  
 176 and a portable equipment provider. As used in ~~For purposes of~~  
 177 this part, the term does not include and the licensure  
 178 requirements of this part do not apply to:

179 (a) Entities licensed or registered by the state under  
 180 chapter 395; ~~or~~ entities licensed or registered by the state and  
 181 providing only health care services within the scope of services  
 182 authorized under their respective licenses ~~granted~~ under ss.  
 183 383.30-383.335, chapter 390, chapter 394, chapter 397, this  
 184 chapter except part X, chapter 429, chapter 463, chapter 465,  
 185 chapter 466, chapter 478, part I of chapter 483, chapter 484, or  
 186 chapter 651; end-stage renal disease providers authorized under  
 187 42 C.F.R. part 405, subpart U; ~~or~~ providers certified under 42  
 188 C.F.R. part 485, subpart B or subpart H; or any entity that  
 189 provides neonatal or pediatric hospital-based health care  
 190 services or other health care services by licensed practitioners  
 191 solely within a hospital licensed under chapter 395.

192 (b) Entities that own, directly or indirectly, entities  
 193 licensed or registered by the state pursuant to chapter 395; ~~or~~  
 194 entities that own, directly or indirectly, entities licensed or  
 195 registered by the state and providing only health care services  
 196 within the scope of services authorized pursuant to their  
 197 respective licenses ~~granted~~ under ss. 383.30-383.335, chapter  
 198 390, chapter 394, chapter 397, this chapter except part X,  
 199 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,  
 200 part I of chapter 483, chapter 484, chapter 651; end-stage renal  
 201 disease providers authorized under 42 C.F.R. part 405, subpart  
 202 U; ~~or~~ providers certified under 42 C.F.R. part 485, subpart B or  
 203 subpart H; or any entity that provides neonatal or pediatric

28-00905-12 20121860  
 204 hospital-based health care services by licensed practitioners  
 205 solely within a hospital licensed under chapter 395.

206 (c) Entities that are owned, directly or indirectly, by an  
 207 entity licensed or registered by the state pursuant to chapter  
 208 395; ~~or~~ entities that are owned, directly or indirectly, by an  
 209 entity licensed or registered by the state and providing only  
 210 health care services within the scope of services authorized  
 211 pursuant to their respective licenses ~~granted~~ under ss. 383.30-  
 212 383.335, chapter 390, chapter 394, chapter 397, this chapter  
 213 except part X, chapter 429, chapter 463, chapter 465, chapter  
 214 466, chapter 478, part I of chapter 483, chapter 484, or chapter  
 215 651; end-stage renal disease providers authorized under 42  
 216 C.F.R. part 405, subpart U; ~~or~~ providers certified under 42  
 217 C.F.R. part 485, subpart B or subpart H; or any entity that  
 218 provides neonatal or pediatric hospital-based health care  
 219 services by licensed practitioners solely within a hospital  
 220 under chapter 395.

221 (d) Entities that are under common ownership, directly or  
 222 indirectly, with an entity licensed or registered by the state  
 223 pursuant to chapter 395; ~~or~~ entities that are under common  
 224 ownership, directly or indirectly, with an entity licensed or  
 225 registered by the state and providing only health care services  
 226 within the scope of services authorized pursuant to their  
 227 respective licenses ~~granted~~ under ss. 383.30-383.335, chapter  
 228 390, chapter 394, chapter 397, this chapter except part X,  
 229 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,  
 230 part I of chapter 483, chapter 484, or chapter 651; end-stage  
 231 renal disease providers authorized under 42 C.F.R. part 405,  
 232 subpart U; ~~or~~ providers certified under 42 C.F.R. part 485,

28-00905-12 20121860  
 233 subpart B or subpart H; or any entity that provides neonatal or  
 234 pediatric hospital-based health care services by licensed  
 235 practitioners solely within a hospital licensed under chapter  
 236 395.

237 (e) An entity that is exempt from federal taxation under 26  
 238 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan  
 239 under 26 U.S.C. s. 409 that has a board of trustees at least not  
 240 ~~less than~~ two-thirds of which are Florida-licensed health care  
 241 practitioners and provides only physical therapy services under  
 242 physician orders, any community college or university clinic,  
 243 and any entity owned or operated by the federal or state  
 244 government, including agencies, subdivisions, or municipalities  
 245 thereof.

246 (f) A sole proprietorship, group practice, partnership, or  
 247 corporation that provides health care services by physicians  
 248 covered by s. 627.419, that is directly supervised by one or  
 249 more of such physicians, and that is wholly owned by one or more  
 250 of those physicians or by a physician and the spouse, parent,  
 251 child, or sibling of that physician.

252 (g) A sole proprietorship, group practice, partnership, or  
 253 corporation that provides health care services by licensed  
 254 health care practitioners under chapter 457, chapter 458,  
 255 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,  
 256 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,  
 257 chapter 490, chapter 491, or part I, part III, part X, part  
 258 XIII, or part XIV of chapter 468, or s. 464.012, and that is  
 259 ~~which are~~ wholly owned by one or more licensed health care  
 260 practitioners, or the licensed health care practitioners set  
 261 forth in this paragraph and the spouse, parent, child, or

28-00905-12 20121860  
 262 sibling of a licensed health care practitioner if, so long as  
 263 one of the owners who is a licensed health care practitioner is  
 264 supervising the business activities and is legally responsible  
 265 for the entity's compliance with all federal and state laws.  
 266 However, a health care practitioner may not supervise services  
 267 beyond the scope of the practitioner's license, except that, for  
 268 the purposes of this part, a clinic owned by a licensee in s.  
 269 456.053(3)(b) which ~~that~~ provides only services authorized  
 270 pursuant to s. 456.053(3)(b) may be supervised by a licensee  
 271 specified in s. 456.053(3)(b).

272 (h) Clinical facilities affiliated with an accredited  
 273 medical school at which training is provided for medical  
 274 students, residents, or fellows.

275 (i) Entities that provide only oncology or radiation  
 276 therapy services by physicians licensed under chapter 458 or  
 277 chapter 459 or entities that provide oncology or radiation  
 278 therapy services by physicians licensed under chapter 458 or  
 279 chapter 459 which are owned by a corporation whose shares are  
 280 publicly traded on a recognized stock exchange.

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

284 (k) Entities that provide licensed practitioners to staff  
 285 emergency departments or to deliver anesthesia services in  
 286 facilities licensed under chapter 395 and that derive at least  
 287 90 percent of their gross annual revenues from the provision of  
 288 such services. Entities claiming an exemption from licensure  
 289 under this paragraph must provide documentation demonstrating  
 290 compliance.

28-00905-12

20121860

291 (1) Orthotic or prosthetic clinical facilities that are a  
 292 publicly traded corporation or that are wholly owned, directly  
 293 or indirectly, by a publicly traded corporation. As used in this  
 294 paragraph, a publicly traded corporation is a corporation that  
 295 issues securities traded on an exchange registered with the  
 296 United States Securities and Exchange Commission as a national  
 297 securities exchange.

298  
 299 Notwithstanding this subsection, an entity shall be deemed a  
 300 clinic and must be licensed under this part in order to receive  
 301 reimbursement under the Florida Motor Vehicle No-Fault Law, ss.  
 302 627.730-627.7405, unless exempted under s. 627.736(5)(h).

303 Section 3. Subsection (6) is added to section 400.991,  
 304 Florida Statutes, to read:

305 400.991 License requirements; background screenings;  
 306 prohibitions.—

307 (6) All agency forms for licensure application or exemption  
 308 from licensure under this part must contain the following  
 309 statement:

310  
 311 INSURANCE FRAUD NOTICE.—A person who knowingly submits  
 312 a false, misleading, or fraudulent application or  
 313 other document when applying for licensure as a health  
 314 care clinic, seeking an exemption from licensure as a  
 315 health care clinic, or demonstrating compliance with  
 316 part X of chapter 400, Florida Statutes, with the  
 317 intent to use the license, exemption from licensure,  
 318 or demonstration of compliance to provide services or  
 319 seek reimbursement under the Florida Motor Vehicle No-

28-00905-12

20121860

320 Fault Law, commits a fraudulent insurance act, as  
 321 defined in s. 626.989, Florida Statutes. A person who  
 322 presents a claim for personal injury protection  
 323 benefits knowing that the payee knowingly submitted  
 324 such health care clinic application or document,  
 325 commits insurance fraud, as defined in s. 817.234,  
 326 Florida Statutes.

327 Section 4. Subsection (1) of section 626.989, Florida  
 328 Statutes, is amended to read:

329 626.989 Investigation by department or Division of  
 330 Insurance Fraud; compliance; immunity; confidential information;  
 331 reports to division; division investigator's power of arrest.—

332 (1) For the purposes of this section:—

333 (a) A person commits a "fraudulent insurance act" if the  
 334 person:

335 1. Knowingly and with intent to defraud presents, causes to  
 336 be presented, or prepares with knowledge or belief that it will  
 337 be presented, to or by an insurer, self-insurer, self-insurance  
 338 fund, servicing corporation, purported insurer, broker, or any  
 339 agent thereof, any written statement as part of, or in support  
 340 of, an application for the issuance of, or the rating of, any  
 341 insurance policy, or a claim for payment or other benefit  
 342 pursuant to any insurance policy, which the person knows to  
 343 contain materially false information concerning any fact  
 344 material thereto or if the person conceals, for the purpose of  
 345 misleading another, information concerning any fact material  
 346 thereto.

347 2. Knowingly submits:

348 a. A false, misleading, or fraudulent application or other

28-00905-12 20121860  
 349 document when applying for licensure as a health care clinic,  
 350 seeking an exemption from licensure as a health care clinic, or  
 351 demonstrating compliance with part X of chapter 400 with an  
 352 intent to use the license, exemption from licensure, or  
 353 demonstration of compliance to provide services or seek  
 354 reimbursement under the Florida Motor Vehicle No-Fault Law.

355 b. A claim for payment or other benefit pursuant to a  
 356 personal injury protection insurance policy under the Florida  
 357 Motor Vehicle No-Fault Law if the person knows that the payee  
 358 knowingly submitted a false, misleading, or fraudulent  
 359 application or other document when applying for licensure as a  
 360 health care clinic, seeking an exemption from licensure as a  
 361 health care clinic, or demonstrating compliance with part X of  
 362 chapter 400. For the purposes of this section,

363 (b) The term "insurer" also includes a ~~any~~ health  
 364 maintenance organization, and the term "insurance policy" also  
 365 includes a health maintenance organization subscriber contract.

366 Section 5. Subsection (5) of section 626.9894, Florida  
 367 Statutes, is amended to read:

368 626.9894 Gifts and grants.—

369 (5) Notwithstanding ~~the provisions of~~ s. 216.301 and  
 370 pursuant to s. 216.351, any balance of moneys deposited into the  
 371 Insurance Regulatory Trust Fund pursuant to this section or s.  
 372 626.9895 remaining at the end of any fiscal year ~~is shall be~~  
 373 available for carrying out the duties and responsibilities of  
 374 the division. The department may request annual appropriations  
 375 from the grants and donations received pursuant to this section  
 376 or s. 626.9895 and cash balances in the Insurance Regulatory  
 377 Trust Fund for the purpose of carrying out its duties and

28-00905-12 20121860  
 378 responsibilities related to the division's anti-fraud efforts,  
 379 including the funding of dedicated prosecutors and related  
 380 personnel.

381 Section 6. Section 626.9895, Florida Statutes, is created  
 382 to read:

383 626.9895 Motor vehicle insurance fraud direct-support  
 384 organization.—

385 (1) DEFINITIONS.—As used in this section, the term:

386 (a) "Division" means the Division of Insurance Fraud of the  
 387 Department of Financial Services.

388 (b) "Motor vehicle insurance fraud" means any act defined  
 389 as a "fraudulent insurance act" under s. 626.989, which relates  
 390 to the coverage of motor vehicle insurance as described in part  
 391 XI of chapter 627.

392 (c) "Organization" means the direct-support organization  
 393 established under this section.

394 (2) ORGANIZATION ESTABLISHED.—The division may establish a  
 395 direct-support organization, to be known as the "Automobile  
 396 Insurance Fraud Strike Force," whose sole purpose is to support  
 397 the prosecution, investigation, and prevention of motor vehicle  
 398 insurance fraud. The organization shall:

399 (a) Be a not-for-profit corporation incorporated under  
 400 chapter 617 and approved by the Department of State.

401 (b) Be organized and operated to conduct programs and  
 402 activities; raise funds; request and receive grants, gifts, and  
 403 bequests of money; acquire, receive, hold, invest, and  
 404 administer, in its own name, securities, funds, objects of  
 405 value, or other property, real or personal; and make grants and  
 406 expenditures to or for the direct or indirect benefit of the

28-00905-12 20121860  
 407 division, state attorneys' offices, the statewide prosecutor,  
 408 the Agency for Health Care Administration, and the Department of  
 409 Health to the extent that such grants and expenditures are used  
 410 exclusively to advance the prosecution, investigation, or  
 411 prevention of motor vehicle insurance fraud. Grants and  
 412 expenditures may include the cost of salaries or benefits of  
 413 motor vehicle insurance fraud investigators, prosecutors, or  
 414 support personnel if such grants and expenditures do not  
 415 interfere with prosecutorial independence or otherwise create  
 416 conflicts of interest which threaten the success of  
 417 prosecutions.

418 (c) Be determined by the division to operate in a manner  
 419 that promotes the goals of laws relating to motor vehicle  
 420 insurance fraud, that is in the best interest of the state, and  
 421 that is in accordance with the adopted goals and mission of the  
 422 division.

423 (d) Use all of its grants and expenditures solely for the  
 424 purpose of preventing and decreasing motor vehicle insurance  
 425 fraud, and not for the purpose of lobbying as defined in s.  
 426 11.045.

427 (e) Be subject to an annual financial audit in accordance  
 428 with s. 215.981.

429 (3) CONTRACT.—The organization shall operate under written  
 430 contract with the division. The contract must provide for:

431 (a) Approval of the articles of incorporation and bylaws of  
 432 the organization by the division.

433 (b) Submission of an annual budget for approval of the  
 434 division. The budget must require the organization to minimize  
 435 costs to the division and its members at all times by using

28-00905-12 20121860  
 436 existing personnel and property and allowing for telephonic  
 437 meetings if appropriate.

438 (c) Certification by the division that the organization is  
 439 complying with the terms of the contract and in a manner  
 440 consistent with the goals and purposes of the department and in  
 441 the best interest of the state. Such certification must be made  
 442 annually and reported in the official minutes of a meeting of  
 443 the organization.

444 (d) Allocation of funds to address motor vehicle insurance  
 445 fraud.

446 (e) Reversion of moneys and property held in trust by the  
 447 organization for motor vehicle insurance fraud prosecution,  
 448 investigation, and prevention to the division if the  
 449 organization is no longer approved to operate for the department  
 450 or if the organization ceases to exist, or to the state if the  
 451 division ceases to exist.

452 (f) Specific criteria to be used by the organization's  
 453 board of directors to evaluate the effectiveness of funding used  
 454 to combat motor vehicle insurance fraud.

455 (g) The fiscal year of the organization, which begins July  
 456 1 of each year and ends June 30 of the following year.

457 (h) Disclosure of the material provisions of the contract,  
 458 and distinguishing between the department and the organization  
 459 to donors of gifts, contributions, or bequests, including  
 460 providing such disclosure on all promotional and fundraising  
 461 publications.

462 (4) BOARD OF DIRECTORS.—

463 (a) The board of directors of the organization shall  
 464 consist of the following eleven members:

28-00905-12 20121860

- 465 1. The Chief Financial Officer, or designee, who shall  
 466 serve as chair.
- 467 2. Two state attorneys, one of whom shall be appointed by  
 468 the Chief Financial Officer and one of whom shall be appointed  
 469 by the Attorney General.
- 470 3. Two representatives of motor vehicle insurers appointed  
 471 by the Chief Financial Officer.
- 472 4. Two representatives of local law enforcement agencies,  
 473 one of whom shall be appointed by the Chief Financial Officer  
 474 and one of whom shall be appointed by the Attorney General.
- 475 5. Two representatives of the types of health care  
 476 providers who regularly make claims for benefits under ss.  
 477 627.730-627.7405, one of whom shall be appointed by the  
 478 President of the Senate and one of whom shall be appointed by  
 479 the Speaker of the House of Representatives. The appointees may  
 480 not represent the same type of health care provider.
- 481 6. A private attorney that has experience in representing  
 482 claimants in actions for benefits under ss. 627.730-627.7405,  
 483 who shall be appointed by the President of the Senate.
- 484 7. A private attorney who has experience in representing  
 485 insurers in actions for benefits under ss. 627.730-627.7405, who  
 486 shall be appointed by the Speaker of the House of  
 487 Representatives.
- 488 (b) The officer who appointed a member of the board may  
 489 remove that member for cause. The term of office of an appointed  
 490 member expires at the same time as the term of the officer who  
 491 appointed him or her or at such earlier time as the person  
 492 ceases to be qualified.
- 493 (5) USE OF PROPERTY.—The department may authorize, without

Page 17 of 53

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28-00905-12 20121860

- 494 charge, appropriate use of fixed property and facilities of the  
 495 division by the organization, subject to this subsection.
- 496 (a) The department may prescribe any condition with which  
 497 the organization must comply in order to use the division's  
 498 property or facilities.
- 499 (b) The department may not authorize the use of the  
 500 division's property or facilities if the organization does not  
 501 provide equal membership and employment opportunities to all  
 502 persons regardless of race, religion, sex, age, or national  
 503 origin.
- 504 (c) The department shall adopt rules prescribing the  
 505 procedures by which the organization is governed and any  
 506 conditions with which the organization must comply to use the  
 507 division's property or facilities.
- 508 (6) CONTRIBUTIONS FROM INSURERS.—Contributions from an  
 509 insurer to the organization shall be allowed as an appropriate  
 510 business expense of the insurer for all regulatory purposes.
- 511 (7) DEPOSITORY ACCOUNT.—Any moneys received by the  
 512 organization may be held in a separate depository account in the  
 513 name of the organization and subject to the contract with the  
 514 division.
- 515 (8) DIVISION'S RECEIPT OF PROCEEDS.—Proceeds received by  
 516 the division from the organization shall be deposited into the  
 517 Insurance Regulatory Trust Fund.
- 518 Section 7. Subsection (12) of section 627.0651, Florida  
 519 Statutes, is amended to read:  
 520 627.0651 Making and use of rates for motor vehicle  
 521 insurance.—  
 522 (12) (a) Any portion of a judgment entered as a result of a

Page 18 of 53

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28-00905-12 20121860  
 523 statutory or common-law bad faith action and any portion of a  
 524 judgment entered which awards punitive damages against an  
 525 insurer ~~may shall~~ not be included in the insurer's rate base,  
 526 and ~~shall not be~~ used to justify a rate or rate change. Any  
 527 portion of a settlement entered as a result of a statutory or  
 528 common-law bad faith action identified as such and any portion  
 529 of a settlement wherein an insurer agrees to pay specific  
 530 punitive damages ~~may shall~~ not be used to justify a rate or rate  
 531 change. The portion of the taxable costs and ~~attorney attorney's~~  
 532 fees which is identified as being related to the bad faith and  
 533 punitive damages in these judgments and settlements ~~may shall~~  
 534 not be included in the insurer's rate base and ~~used shall not be~~  
 535 ~~utilized~~ to justify a rate or rate change.

536 (b) Any portion of a judgment or settlement for taxable  
 537 costs and attorney fees in favor of a prevailing plaintiff  
 538 against an insurer in a claim for benefits under ss. 627.730-  
 539 627.7405, the Florida Motor Vehicle No-Fault Law, may not be  
 540 included in the insurer's rate base and used to justify a rate  
 541 or rate change.

542 Section 8. Subsections (1), (4), (5), (6), (8), (9), (10),  
 543 and (11) of section 627.736, Florida Statutes, are amended to  
 544 read:

545 627.736 Required personal injury protection benefits;  
 546 exclusions; priority; claims.-

547 (1) REQUIRED BENEFITS.-~~An Every~~ insurance policy complying  
 548 with the security requirements of s. 627.733 must shall provide  
 549 personal injury protection to the named insured, relatives  
 550 residing in the same household, persons operating the insured  
 551 motor vehicle, passengers in ~~the such~~ motor vehicle, and other

28-00905-12 20121860  
 552 persons struck by ~~the such~~ motor vehicle and suffering bodily  
 553 injury while not an occupant of a self-propelled vehicle,  
 554 subject to ~~the provisions of~~ subsection (2) and paragraph  
 555 (4) (e), to a limit of \$10,000 for loss sustained by ~~any~~ such  
 556 person as a result of bodily injury, sickness, disease, or death  
 557 arising out of the ownership, maintenance, or use of a motor  
 558 vehicle as follows:

559 (a) Medical benefits.-Eighty percent of all reasonable  
 560 expenses for medically necessary medical, surgical, X-ray,  
 561 dental, and rehabilitative services, including prosthetic  
 562 devices, and medically necessary ambulance, hospital, and  
 563 nursing services. Medical benefits do not includes massage as  
 564 defined in s. 480.033 or acupuncture as defined in s. 457.102.  
 565 ~~However,~~ The medical benefits ~~shall~~ provide reimbursement only  
 566 for ~~such~~ services and care that are lawfully provided,  
 567 supervised, ordered, or prescribed by a physician licensed under  
 568 chapter 458 or chapter 459, a dentist licensed under chapter  
 569 466, or a chiropractic physician licensed under chapter 460 or  
 570 that are provided by any of the following ~~persons or entities~~:

571 1. A hospital or ambulatory surgical center licensed under  
 572 chapter 395.

573 2. A person or entity licensed under part III of chapter  
 574 401 which ss. 401.2101-401.45 that provides emergency  
 575 transportation and treatment.

576 3. An entity wholly owned by one or more physicians  
 577 licensed under chapter 458 or chapter 459, chiropractic  
 578 physicians licensed under chapter 460, or dentists licensed  
 579 under chapter 466 or by such ~~practitioner or practitioners~~ and  
 580 the spouse, parent, child, or sibling of such that practitioner

28-00905-12

20121860\_\_

581 ~~or these~~ practitioners.

582 4. An entity wholly owned, directly or indirectly, by a  
583 hospital or hospitals.

584 5. A health care clinic licensed under part X of chapter  
585 400 which ss. 400.990-400.995 that is:

586 a. A health care clinic accredited by the Joint Commission  
587 on Accreditation of Healthcare Organizations, the American  
588 Osteopathic Association, the Commission on Accreditation of  
589 Rehabilitation Facilities, or the Accreditation Association for  
590 Ambulatory Health Care, Inc.; or

591 b. A health care clinic that:

592 (I) Has a medical director licensed under chapter 458,  
593 chapter 459, or chapter 460;

594 (II) Has been continuously licensed for more than 3 years  
595 or is a publicly traded corporation that issues securities  
596 traded on an exchange registered with the United States  
597 Securities and Exchange Commission as a national securities  
598 exchange; and

599 (III) Provides at least four of the following medical  
600 specialties:

601 (A) General medicine.

602 (B) Radiography.

603 (C) Orthopedic medicine.

604 (D) Physical medicine.

605 (E) Physical therapy.

606 (F) Physical rehabilitation.

607 (G) Prescribing or dispensing outpatient prescription  
608 medication.

609 (H) Laboratory services.

28-00905-12

20121860\_\_

610  
611 The Financial Services Commission shall adopt by rule the form  
612 that must be used by an insurer and a health care provider  
613 specified in subparagraph 3., subparagraph 4., or subparagraph  
614 5. to document that the health care provider meets the criteria  
615 of this paragraph, which rule must include a requirement for a  
616 sworn statement or affidavit.

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

626 (c) Death benefits.—Death benefits equal to the lesser of  
627 \$5,000 or the remainder of unused personal injury protection  
628 benefits per individual. The insurer shall give priority to the  
629 payment of death benefits over the payment of other benefits of  
630 the deceased and, upon learning of the death of the individual,  
631 stop paying the other benefits until the death benefits are  
632 paid. The insurer may pay death such benefits to the executor or  
633 administrator of the deceased, to any of the deceased's  
634 relatives by blood, ~~or~~ legal adoption, ~~or connection by~~  
635 marriage, or to any person appearing to the insurer to be  
636 equitably entitled ~~thereto~~.

637  
638 Only insurers writing motor vehicle liability insurance in this

28-00905-12 20121860\_\_  
 639 state may provide the required benefits of this section, and ~~ne~~  
 640 such insurer may not shall require the purchase of any other  
 641 motor vehicle coverage other than the purchase of property  
 642 damage liability coverage as required by s. 627.7275 as a  
 643 condition for providing such ~~required~~ benefits. Insurers may not  
 644 require that property damage liability insurance in an amount  
 645 greater than \$10,000 be purchased in conjunction with personal  
 646 injury protection. Such insurers shall make benefits and  
 647 required property damage liability insurance coverage available  
 648 through normal marketing channels. An Any insurer writing motor  
 649 vehicle liability insurance in this state who fails to comply  
 650 with such availability requirement as a general business  
 651 practice violates shall be deemed to have violated part IX of  
 652 chapter 626, and such violation constitutes shall constitute an  
 653 unfair method of competition or an unfair or deceptive act or  
 654 practice involving the business of insurance. An, and any such  
 655 insurer committing such violation is shall be subject to the  
 656 penalties provided under that afforded in such part, as well as  
 657 those provided which may be afforded elsewhere in the insurance  
 658 code.

659 (4) PAYMENT OF BENEFITS, WHEN DUE.—Benefits due from an  
 660 insurer under ss. 627.730-627.7405 are shall be primary, except  
 661 that benefits received under any workers' compensation law must  
 662 ~~shall~~ be credited against the benefits provided by subsection  
 663 (1) and are shall be due and payable as loss accrues, upon  
 664 receipt of reasonable proof of such loss and the amount of  
 665 expenses and loss incurred which are covered by the policy  
 666 issued under ss. 627.730-627.7405. If when the Agency for Health  
 667 Care Administration provides, pays, or becomes liable for

28-00905-12 20121860\_\_  
 668 medical assistance under the Medicaid program related to injury,  
 669 sickness, disease, or death arising out of the ownership,  
 670 maintenance, or use of a motor vehicle, the benefits under ss.  
 671 627.730-627.7405 are shall be subject to ~~the provisions of the~~  
 672 Medicaid program. However, within 30 days after receiving notice  
 673 that the Medicaid program paid such benefits, the insurer shall  
 674 repay the full amount of the benefits to the Medicaid program.

675 (a) An insurer may require written notice to be given as  
 676 soon as practicable after an accident involving a motor vehicle  
 677 with respect to which the policy affords the security required  
 678 by ss. 627.730-627.7405.

679 (b) Personal injury protection insurance benefits paid  
 680 pursuant to this section are shall be overdue if not paid within  
 681 30 days after the insurer is furnished written notice of the  
 682 fact of a covered loss and of the amount of same. However:

683 1. If such written notice of the entire claim is not  
 684 furnished to the insurer as to the entire claim, any partial  
 685 amount supported by written notice is overdue if not paid within  
 686 30 days after ~~such~~ written notice is furnished to the insurer.  
 687 Any part or all of the remainder of the claim that is  
 688 subsequently supported by written notice is overdue if not paid  
 689 within 30 days after ~~such~~ written notice is furnished to the  
 690 insurer.

691 2. If when an insurer pays only a portion of a claim or  
 692 rejects a claim, the insurer shall provide at the time of the  
 693 partial payment or rejection an itemized specification of each  
 694 item that the insurer had reduced, omitted, or declined to pay  
 695 and any information that the insurer desires the claimant to  
 696 consider related to the medical necessity of the denied

28-00905-12 20121860  
 697 treatment or to explain the reasonableness of the reduced charge  
 698 ~~if, provided that this does shall~~ not limit the introduction of  
 699 evidence at trial, ~~and~~ The insurer must also shall include the  
 700 name and address of the person to whom the claimant should  
 701 respond and a claim number to be referenced in future  
 702 correspondence.

703 3. If an insurer pays only a portion of a claim or rejects  
 704 a claim due to an alleged error in the claim, the insurer shall  
 705 provide at the time of the partial payment or rejection an  
 706 itemized specification or explanation of benefits of the  
 707 specified error. Upon receiving the specification or  
 708 explanation, the person making the claim has, at the person's  
 709 option and without waiving any other legal remedy for payment,  
 710 15 days to submit a revised claim, and the revised claim shall  
 711 be considered a timely submission of written notice of a claim.

712 4. However, Notwithstanding the fact that written notice  
 713 has been furnished to the insurer, ~~any~~ payment is shall not be  
 714 deemed overdue ~~if when~~ the insurer has reasonable proof ~~to~~  
 715 establish that the insurer is not responsible for the payment.

716 5. For the purpose of calculating the extent to which ~~any~~  
 717 benefits are overdue, payment shall be treated as being made on  
 718 the date a draft or other valid instrument ~~that which~~ is  
 719 equivalent to payment was placed in the United States mail in a  
 720 properly addressed, postpaid envelope or, if not so posted, on  
 721 the date of delivery.

722 6. This paragraph does not preclude or limit the ability of  
 723 the insurer to assert that the claim was unrelated, was not  
 724 medically necessary, or was unreasonable or that the amount of  
 725 the charge was in excess of that permitted under, or in

28-00905-12 20121860  
 726 violation of, subsection (5). Such assertion ~~by the insurer~~ may  
 727 be made at any time, including after payment of the claim or  
 728 after the 30-day ~~time~~ period for payment set forth in this  
 729 paragraph.

730 (c) Upon receiving notice of an accident that is  
 731 potentially covered by personal injury protection benefits, the  
 732 insurer must reserve \$5,000 of personal injury protection  
 733 benefits for payment to:

734 1. Physicians licensed under chapter 458 or chapter 459 or  
 735 dentists licensed under chapter 466 who provide emergency  
 736 services and care, as defined in s. 395.002(9), or who provide  
 737 hospital inpatient care.

738 2. Hospitals licensed under chapter 395.

739  
 740 The amount required to be held in reserve may be used only to  
 741 pay claims from such physicians, ~~or~~ dentists, or hospitals until  
 742 30 days after the date the insurer receives notice of the  
 743 accident. After the 30-day period, any amount of the reserve for  
 744 which the insurer has not received notice of such claims ~~a claim~~  
 745 ~~from a physician or dentist who provided emergency services and~~  
 746 ~~care or who provided hospital inpatient care~~ may then be used by  
 747 the insurer to pay other claims. The time periods specified in  
 748 paragraph (b) for ~~required~~ payment of personal injury protection  
 749 benefits are shall be tolled for the period of time that an  
 750 insurer is required ~~by this paragraph~~ to hold payment of a claim  
 751 that is not from such a physician, or dentist, or hospital ~~who~~  
 752 ~~provided emergency services and care or who provided hospital~~  
 753 ~~inpatient care~~ to the extent that the personal injury protection  
 754 benefits not held in reserve are insufficient to pay the claim.

28-00905-12 20121860

755 This paragraph does not require an insurer to establish a claim  
756 reserve for insurance accounting purposes.

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

764 (e) The insurer of the owner of a motor vehicle shall pay  
765 personal injury protection benefits for:

766 1. Accidental bodily injury sustained in this state by the  
767 owner while occupying a motor vehicle, or while not an occupant  
768 of a self-propelled vehicle if the injury is caused by physical  
769 contact with a motor vehicle.

770 2. Accidental bodily injury sustained outside this state,  
771 but within the United States of America or its territories or  
772 possessions or Canada, by the owner while occupying the owner's  
773 motor vehicle.

774 3. Accidental bodily injury sustained by a relative of the  
775 owner residing in the same household, under the circumstances  
776 described in subparagraph 1. or subparagraph 2., if provided the  
777 relative at the time of the accident is domiciled in the owner's  
778 household and is not ~~himself or herself~~ the owner of a motor  
779 vehicle with respect to which security is required under ss.  
780 627.730-627.7405.

781 4. Accidental bodily injury sustained in this state by any  
782 other person while occupying the owner's motor vehicle or, if a  
783 resident of this state, while not an occupant of a self-

28-00905-12 20121860

784 propelled vehicle, if the injury is caused by physical contact  
785 with such motor vehicle, if provided the injured person is not  
786 ~~himself or herself~~:

787 a. The owner of a motor vehicle with respect to which  
788 security is required under ss. 627.730-627.7405; or

789 b. Entitled to personal injury benefits from the insurer of  
790 the owner ~~or owners~~ of such a motor vehicle.

791 (f) If two or more insurers are liable for paying to pay  
792 personal injury protection benefits for the same injury to any  
793 one person, the maximum payable is ~~shall be~~ as specified in  
794 subsection (1), and the any insurer paying the benefits is ~~shall~~  
795 ~~be~~ entitled to recover from each of the other insurers an  
796 equitable pro rata share of the benefits paid and expenses  
797 incurred in processing the claim.

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

802 (h) Benefits are ~~shall~~ not be due or payable to or on the  
803 behalf of an insured person if that person has committed, by a  
804 material act or omission, ~~any~~ insurance fraud relating to  
805 personal injury protection coverage under his or her policy, if  
806 the fraud is admitted to in a sworn statement by the insured or  
807 ~~if it is~~ established in a court of competent jurisdiction. Any  
808 insurance fraud voids ~~shall void~~ all coverage arising from the  
809 claim related to such fraud under the personal injury protection  
810 coverage of the insured person who committed the fraud,  
811 irrespective of whether a portion of the insured person's claim  
812 may be legitimate, and any benefits paid before ~~prior to~~ the

28-00905-12 20121860  
 813 discovery of the ~~insured person's insurance~~ fraud ~~is shall be~~  
 814 recoverable by the insurer in its entirety from the person who  
 815 committed insurance fraud ~~in their entirety~~. The prevailing  
 816 party is entitled to its costs and attorney ~~attorney's~~ fees in  
 817 any action in which it prevails in an insurer's action to  
 818 enforce its right of recovery under this paragraph.

819 (i) An insurer shall create and maintain for each insured a  
 820 log of personal injury protection benefits paid by the insurer  
 821 on behalf of the insured. The insurer shall provide to the  
 822 insured, or an assignee of the insured, a copy of the log within  
 823 30 days after receiving a request for the log from the insured  
 824 or the assignee.

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

826 (a) ~~1-~~ A ~~Any~~ physician, hospital, clinic, or other person or  
 827 institution lawfully rendering treatment to an injured person  
 828 for a bodily injury covered by personal injury protection  
 829 insurance may charge the insurer and injured party only a  
 830 reasonable amount pursuant to this section for the services and  
 831 supplies rendered, and the insurer providing such coverage may  
 832 pay for such charges directly to such person or institution  
 833 lawfully rendering such treatment, ~~if the insured receiving such~~  
 834 ~~treatment or his or her guardian has countersigned the properly~~  
 835 ~~completed invoice, bill, or claim form approved by the office~~  
 836 ~~upon which such charges are to be paid for as having actually~~  
 837 ~~been rendered, to the best knowledge of the insured or his or~~  
 838 ~~her guardian. In no event,~~ However, ~~may~~ such a charge may not  
 839 exceed be in excess of the amount the person or institution  
 840 customarily charges for like services or supplies. In  
 841 determining ~~With respect to a determination of~~ whether a charge

28-00905-12 20121860  
 842 for a particular service, treatment, or otherwise is reasonable,  
 843 consideration may be given to evidence of usual and customary  
 844 charges and payments accepted by the provider involved in the  
 845 dispute, ~~and~~ reimbursement levels in the community and various  
 846 federal and state medical fee schedules applicable to motor  
 847 vehicle ~~automobile~~ and other insurance coverages, and other  
 848 information relevant to the reasonableness of the reimbursement  
 849 for the service, treatment, or supply.

850 ~~1.2-~~ The insurer may limit reimbursement to 80 percent of  
 851 the following schedule of maximum charges:

- 852 a. For emergency transport and treatment by providers  
 853 licensed under chapter 401, 200 percent of Medicare.  
 854 b. For emergency services and care provided by a hospital  
 855 licensed under chapter 395, 75 percent of the hospital's usual  
 856 and customary charges.  
 857 c. For emergency services and care as defined by s.  
 858 395.002(9) provided in a facility licensed under chapter 395  
 859 rendered by a physician or dentist, and related hospital  
 860 inpatient services rendered by a physician or dentist, the usual  
 861 and customary charges in the community.  
 862 d. For hospital inpatient services, other than emergency  
 863 services and care, 200 percent of the Medicare Part A  
 864 prospective payment applicable to the specific hospital  
 865 providing the inpatient services.  
 866 e. For hospital outpatient services, other than emergency  
 867 services and care, 200 percent of the Medicare Part A Ambulatory  
 868 Payment Classification for the specific hospital providing the  
 869 outpatient services.  
 870 f. For all other medical services, supplies, and care, 200

28-00905-12 20121860\_\_

871 percent of the allowable amount under:

872 (I) The participating physicians fee schedule of Medicare  
873 Part B, except as provided in sub-sub-paragraphs (II) and  
874 (III).

875 (II) Medicare Part B, in the case of services, supplies,  
876 and care provided by ambulatory surgical centers and clinical  
877 laboratories.

878 (III) The Durable Medical Equipment Prosthetics/Orthotics  
879 and Supplies fee schedule of Medicare Part B, in the case of  
880 durable medical equipment.

881  
882 However, if such services, supplies, or care is not reimbursable  
883 under Medicare Part B, as provided in this sub-subparagraph, the  
884 insurer may limit reimbursement to 80 percent of the maximum  
885 reimbursable allowance under workers' compensation, as  
886 determined under s. 440.13 and rules adopted thereunder which  
887 are in effect at the time such services, supplies, or care is  
888 provided. Services, supplies, or care that is not reimbursable  
889 under Medicare or workers' compensation is not required to be  
890 reimbursed by the insurer.

891 2.3- For purposes of subparagraph 1. 2-, the applicable fee  
892 schedule or payment limitation under Medicare is the fee  
893 schedule or payment limitation in effect on January 1 of the  
894 year in which at the time the services, supplies, or care is was  
895 rendered and for the area in which such services, supplies, or  
896 care is were rendered, and the applicable fee schedule or  
897 payment limitation applies throughout the remainder of that  
898 year, notwithstanding any subsequent change made to the fee  
899 schedule or payment limitation, except that it may not be less

28-00905-12 20121860\_\_

900 than the allowable amount under the applicable participating  
901 physicians schedule of Medicare Part B for 2007 for medical  
902 services, supplies, and care subject to Medicare Part B.

903 3.4- Subparagraph 1. 2- does not allow the insurer to apply  
904 any limitation on the number of treatments or other utilization  
905 limits that apply under Medicare or workers' compensation. An  
906 insurer that applies the allowable payment limitations of  
907 subparagraph 1. 2- must reimburse a provider who lawfully  
908 provided care or treatment under the scope of his or her  
909 license, regardless of whether such provider is would be  
910 entitled to reimbursement under Medicare due to restrictions or  
911 limitations on the types or discipline of health care providers  
912 who may be reimbursed for particular procedures or procedure  
913 codes. However, subparagraph 1. does not prohibit an insurer  
914 from using the Medicare coding policies and payment  
915 methodologies of the federal Centers for Medicare and Medicaid  
916 Services, including applicable modifiers, to determine the  
917 appropriate amount of reimbursement for medical services,  
918 supplies, or care if the coding policy or payment methodology  
919 does not constitute a utilization limit.

920 4.5- If an insurer limits payment as authorized by  
921 subparagraph 1. 2-, the person providing such services,  
922 supplies, or care may not bill or attempt to collect from the  
923 insured any amount in excess of such limits, except for amounts  
924 that are not covered by the insured's personal injury protection  
925 coverage due to the coinsurance amount or maximum policy limits.

926 5. Effective July 1, 2012, an insurer may limit payment as  
927 authorized by this paragraph only if the insurance policy  
928 includes a notice at the time of issuance or renewal that the

28-00905-12 20121860

929 insurer may limit payment pursuant to the schedule of charges  
 930 specified in this paragraph. A policy form approved by the  
 931 office satisfies this requirement. If a provider submits a  
 932 charge for an amount less than the amount allowed under  
 933 subparagraph 1., the insurer may pay the amount of the charge  
 934 submitted.

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

937 a. Made by a broker or by a person making a claim on behalf  
 938 of a broker;

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

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

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

945 e. For any treatment or service that is upcoded, or that is  
 946 unbundled when such treatment or services should be bundled, in  
 947 accordance with paragraph (d). To facilitate prompt payment of  
 948 lawful services, an insurer may change codes that it determines  
 949 ~~to~~ have been improperly or incorrectly upcoded or unbundled, and  
 950 may make payment based on the changed codes, without affecting  
 951 the right of the provider to dispute the change by the insurer,  
 952 if, provided that before doing so, the insurer contacts ~~must~~  
 953 ~~contact~~ the health care provider and discusses ~~discuss~~ the  
 954 reasons for the insurer's change and the health care provider's  
 955 reason for the coding, or makes ~~make~~ a reasonable good faith  
 956 effort to do so, as documented in the insurer's file; and

957 f. For medical services or treatment billed by a physician

28-00905-12 20121860

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

963 2. The Department of Health, in consultation with the  
 964 appropriate professional licensing boards, shall adopt, by rule,  
 965 a list of diagnostic tests deemed not to be medically necessary  
 966 for use in the treatment of persons sustaining bodily injury  
 967 covered by personal injury protection benefits under this  
 968 section. The ~~initial list shall be adopted by January 1, 2004,~~  
 969 ~~and~~ shall be revised from time to time as determined by the  
 970 Department of Health, in consultation with the respective  
 971 professional licensing boards. Inclusion of a test on the list  
 972 ~~of invalid diagnostic tests~~ shall be based on lack of  
 973 demonstrated medical value and a level of general acceptance by  
 974 the relevant provider community and may ~~shall~~ not be dependent  
 975 for results entirely upon subjective patient response.  
 976 Notwithstanding its inclusion on a fee schedule in this  
 977 subsection, an insurer or insured is not required to pay any  
 978 charges or reimburse claims for an ~~any~~ invalid diagnostic test  
 979 as determined by the Department of Health.

980 (c)~~1~~. With respect to any treatment or service, other than  
 981 medical services billed by a hospital or other provider for  
 982 emergency services and care as defined in s. 395.002 or  
 983 inpatient services rendered at a hospital-owned facility, the  
 984 statement of charges must be furnished to the insurer by the  
 985 provider and may not include, and the insurer is not required to  
 986 pay, charges for treatment or services rendered more than 35

28-00905-12 20121860\_\_  
 987 days before the postmark date or electronic transmission date of  
 988 the statement, except for past due amounts previously billed on  
 989 a timely basis under this paragraph, and except that, if the  
 990 provider submits to the insurer a notice of initiation of  
 991 treatment within 21 days after its first examination or  
 992 treatment of the claimant, the statement may include charges for  
 993 treatment or services rendered up to, but not more than, 75 days  
 994 before the postmark date of the statement. The injured party is  
 995 not liable for, and the provider may ~~shall~~ not bill the injured  
 996 party for, charges that are unpaid because of the provider's  
 997 failure to comply with this paragraph. Any agreement requiring  
 998 the injured person or insured to pay for such charges is  
 999 unenforceable.

1000 ~~1.2.~~ If, ~~however,~~ the insured fails to furnish the provider  
 1001 with the correct name and address of the insured's personal  
 1002 injury protection insurer, the provider has 35 days from the  
 1003 date the provider obtains the correct information to furnish the  
 1004 insurer with a statement of the charges. The insurer is not  
 1005 required to pay for such charges unless the provider includes  
 1006 with the statement documentary evidence that was provided by the  
 1007 insured during the 35-day period demonstrating that the provider  
 1008 reasonably relied on erroneous information from the insured and  
 1009 either:

- 1010 a. A denial letter from the incorrect insurer; or
- 1011 b. Proof of mailing, which may include an affidavit under
- 1012 penalty of perjury, reflecting timely mailing to the incorrect
- 1013 address or insurer.

1014 ~~2.3.~~ For emergency services and care ~~as defined in s.~~  
 1015 ~~395.002~~ rendered in a hospital emergency department or for

28-00905-12 20121860\_\_  
 1016 transport and treatment rendered by an ambulance provider  
 1017 licensed pursuant to part III of chapter 401, the provider is  
 1018 not required to furnish the statement of charges within the time  
 1019 periods established by this paragraph, ~~+~~ and the insurer is ~~shall~~  
 1020 not ~~be~~ considered to have been furnished with notice of the  
 1021 amount of covered loss for purposes of paragraph (4) (b) until it  
 1022 receives a statement complying with paragraph (d), or copy  
 1023 thereof, which specifically identifies the place of service to  
 1024 be a hospital emergency department or an ambulance in accordance  
 1025 with billing standards recognized by the federal Centers for  
 1026 Medicare and Medicaid Services Health Care Finance  
 1027 Administration.

1028 ~~3.4.~~ Each notice of the insured's rights under s. 627.7401  
 1029 must include the following statement in at least 12-point type  
 1030 in type no smaller than 12 points:

1031  
 1032 BILLING REQUIREMENTS.—Florida law provides ~~Statutes~~  
 1033 ~~provide~~ that with respect to any treatment or  
 1034 services, other than certain hospital and emergency  
 1035 services, the statement of charges furnished to the  
 1036 insurer by the provider may not include, and the  
 1037 insurer and the injured party are not required to pay,  
 1038 charges for treatment or services rendered more than  
 1039 35 days before the postmark date of the statement,  
 1040 except for past due amounts previously billed on a  
 1041 timely basis, and except that, if the provider submits  
 1042 to the insurer a notice of initiation of treatment  
 1043 within 21 days after its first examination or  
 1044 treatment of the claimant, the statement may include

28-00905-12 20121860\_\_

1045 charges for treatment or services rendered up to, but  
1046 not more than, 75 days before the postmark date of the  
1047 statement.

1048  
1049 (d) All statements and bills for medical services rendered  
1050 by a any physician, hospital, clinic, or other person or  
1051 institution shall be submitted to the insurer on a properly  
1052 completed Centers for Medicare and Medicaid Services (CMS) 1500  
1053 form, UB 92 forms, or any other standard form approved by the  
1054 office or adopted by the commission for purposes of this  
1055 paragraph. All billings for such services rendered by providers  
1056 must shall, to the extent applicable, follow the Physicians'  
1057 Current Procedural Terminology (CPT) or Healthcare Correct  
1058 Procedural Coding System (HCPCS), or ICD-9 in effect for the  
1059 year in which services are rendered and comply with the ~~Centers~~  
1060 ~~for Medicare and Medicaid Services (CMS) 1500 form instructions,~~  
1061 ~~and the American Medical Association Current Procedural~~  
1062 ~~Terminology (CPT) Editorial Panel, and the Healthcare Correct~~  
1063 ~~Procedural Coding System (HCPCS).~~ All providers, other than  
1064 hospitals, must shall include on the applicable claim form the  
1065 professional license number of the provider in the line or space  
1066 provided for "Signature of Physician or Supplier, Including  
1067 Degrees or Credentials." In determining compliance with  
1068 applicable CPT and HCPCS coding, guidance shall be provided by  
1069 the Physicians' Current Procedural Terminology (CPT) or the  
1070 Healthcare Correct Procedural Coding System (HCPCS) in effect  
1071 for the year in which services were rendered, the Office of the  
1072 Inspector General ~~(OIG)~~, Physicians Compliance Guidelines, and  
1073 other authoritative treatises designated by rule by the Agency

28-00905-12 20121860\_\_

1074 for Health Care Administration. A ~~No~~ statement of medical  
1075 services may not include charges for medical services of a  
1076 person or entity that performed such services without possessing  
1077 the valid licenses required to perform such services. For  
1078 purposes of paragraph (4) (b), an insurer is shall not ~~be~~  
1079 considered to have been furnished with notice of the amount of  
1080 covered loss or medical bills due unless the statements or bills  
1081 comply with this paragraph, ~~and unless the statements or bills~~  
1082 ~~are properly completed in their entirety as to all material~~  
1083 ~~provisions, with all relevant information being provided~~  
1084 ~~therein.~~

1085 (e)1. At the initial treatment or service provided, each  
1086 physician, other licensed professional, clinic, or other medical  
1087 institution providing medical services upon which a claim for  
1088 personal injury protection benefits is based shall require an  
1089 insured person, or his or her guardian, to execute a disclosure  
1090 and acknowledgment form, which reflects at a minimum that:

1091 a. The insured, or his or her guardian, must countersign  
1092 the form attesting to the fact that the services set forth  
1093 therein were actually rendered;

1094 b. The insured, or his or her guardian, has both the right  
1095 and affirmative duty to confirm that the services were actually  
1096 rendered;

1097 c. The insured, or his or her guardian, was not solicited  
1098 by any person to seek any services from the medical provider;

1099 d. The physician, other licensed professional, clinic, or  
1100 other medical institution rendering services for which payment  
1101 is being claimed explained the services to the insured or his or  
1102 her guardian; and

28-00905-12 20121860

1103 e. If the insured notifies the insurer in writing of a  
1104 billing error, the insured may be entitled to a certain  
1105 percentage of a reduction in the amounts paid by the insured's  
1106 motor vehicle insurer.

1107 2. The physician, other licensed professional, clinic, or  
1108 other medical institution rendering services for which payment  
1109 is being claimed has the affirmative duty to explain the  
1110 services rendered to the insured, or his or her guardian, so  
1111 that the insured, or his or her guardian, countersigns the form  
1112 with informed consent.

1113 3. Countersignature by the insured, or his or her guardian,  
1114 is not required for the reading of diagnostic tests or other  
1115 services that are of such a nature that they are not required to  
1116 be performed in the presence of the insured.

1117 4. The licensed medical professional rendering treatment  
1118 for which payment is being claimed must sign, by his or her own  
1119 hand, the form complying with this paragraph.

1120 5. The original completed disclosure and acknowledgment  
1121 form shall be furnished to the insurer pursuant to paragraph  
1122 (4) (b) and may not be electronically furnished.

1123 6. This disclosure and acknowledgment form is not  
1124 required for services billed by a provider ~~for emergency~~  
1125 ~~services as defined in s. 395.002~~, for emergency services and  
1126 care as defined in s. 395.002 rendered in a hospital emergency  
1127 department, or for transport and treatment rendered by an  
1128 ambulance provider licensed pursuant to part III of chapter 401.

1129 7. The Financial Services Commission shall adopt, by rule,  
1130 a standard disclosure and acknowledgment form to that shall be  
1131 used to fulfill the requirements of this paragraph, ~~effective 90~~

28-00905-12 20121860

1132 ~~days after such form is adopted and becomes final. The~~  
1133 ~~commission shall adopt a proposed rule by October 1, 2003. Until~~  
1134 ~~the rule is final, the provider may use a form of its own which~~  
1135 ~~otherwise complies with the requirements of this paragraph.~~

1136 8. As used in this paragraph, the term "countersign" or  
1137 "countersignature" "countersigned" means a second or verifying  
1138 signature, as on a previously signed document, and is not  
1139 satisfied by the statement "signature on file" or any similar  
1140 statement.

1141 9. The requirements of this paragraph apply only with  
1142 respect to the initial treatment or service of the insured by a  
1143 provider. For subsequent treatments or service, the provider  
1144 must maintain a patient log signed by the patient, in  
1145 chronological order by date of service, which that is consistent  
1146 with the services being rendered to the patient as claimed. The  
1147 requirement to maintain requirements of this subparagraph for  
1148 ~~maintaining~~ a patient log signed by the patient may be met by a  
1149 hospital that maintains medical records as required by s.  
1150 395.3025 and applicable rules and makes such records available  
1151 to the insurer upon request.

1152 (f) Upon written notification by any person, an insurer  
1153 shall investigate any claim of improper billing by a physician  
1154 or other medical provider. The insurer shall determine if the  
1155 insured was properly billed for only those services and  
1156 treatments that the insured actually received. If the insurer  
1157 determines that the insured has been improperly billed, the  
1158 insurer shall notify the insured, the person making the written  
1159 notification, and the provider of its findings and ~~shall~~ reduce  
1160 the amount of payment to the provider by the amount determined

28-00905-12

20121860

1161 to be improperly billed. If a reduction is made due to ~~a such~~  
 1162 written notification by any person, the insurer shall pay to the  
 1163 person 20 percent of the amount of the reduction, up to \$500. If  
 1164 the provider is arrested due to the improper billing, ~~then~~ the  
 1165 insurer shall pay to the person 40 percent of the amount of the  
 1166 reduction, up to \$500.

1167 (g) An insurer may not systematically downcode with the  
 1168 intent to deny reimbursement otherwise due. Such action  
 1169 constitutes a material misrepresentation under s.  
 1170 626.9541(1)(i)2.

1171 (h) As provided in s. 400.9905, an entity excluded from the  
 1172 definition of a clinic shall be deemed a clinic and must be  
 1173 licensed under part X of chapter 400 in order to receive  
 1174 reimbursement under ss. 627.730-627.7405. However, this  
 1175 licensing requirement does not apply to:

1176 1. An entity wholly owned by a physician licensed under  
 1177 chapter 458 or chapter 459, or by the physician and the spouse,  
 1178 parent, child, or sibling of the physician;

1179 2. An entity wholly owned by a dentist licensed under  
 1180 chapter 466, or by the dentist and the spouse, parent, child, or  
 1181 sibling of the dentist;

1182 3. An entity wholly owned by a chiropractic physician  
 1183 licensed under chapter 460, or by the chiropractic physician and  
 1184 the spouse, parent, child, or sibling of the chiropractic  
 1185 physician;

1186 4. A hospital or ambulatory surgical center licensed under  
 1187 chapter 395; or

1188 5. An entity wholly owned, directly or indirectly, by a  
 1189 hospital or hospitals licensed under chapter 395.

Page 41 of 53

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

28-00905-12

20121860

1190 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.-  
 1191 (a) ~~Every employer shall,~~ If a request is made by an  
 1192 insurer providing personal injury protection benefits under ss.  
 1193 627.730-627.7405 against whom a claim has been made, an employer  
 1194 must furnish forthwith, in a form approved by the office, a  
 1195 sworn statement of the earnings, since the time of the bodily  
 1196 injury and for a reasonable period before the injury, of the  
 1197 person upon whose injury the claim is based.

1198 (b) Every physician, hospital, clinic, or other medical  
 1199 institution providing, before or after bodily injury upon which  
 1200 a claim for personal injury protection insurance benefits is  
 1201 based, any products, services, or accommodations in relation to  
 1202 that or any other injury, or in relation to a condition claimed  
 1203 to be connected with that or any other injury, shall, if  
 1204 requested ~~to do so~~ by the insurer against whom the claim has  
 1205 been made, furnish ~~forthwith~~ a written report of the history,  
 1206 condition, treatment, dates, and costs of such treatment of the  
 1207 injured person and why the items identified by the insurer were  
 1208 reasonable in amount and medically necessary, together with a  
 1209 sworn statement that the treatment or services rendered were  
 1210 reasonable and necessary with respect to the bodily injury  
 1211 sustained and identifying which portion of the expenses for such  
 1212 treatment or services was incurred as a result of such bodily  
 1213 injury, and produce ~~forthwith~~, and allow permit the inspection  
 1214 and copying of, his or her or its records regarding such  
 1215 history, condition, treatment, dates, and costs of treatment ~~if~~  
 1216 ~~provided that~~ this does shall not limit the introduction of  
 1217 evidence at trial. Such sworn statement must shall read as  
 1218 follows: "Under penalty of perjury, I declare that I have read

Page 42 of 53

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28-00905-12

20121860

1219 the foregoing, and the facts alleged are true, to the best of my  
 1220 knowledge and belief." ~~A~~ ~~No~~ cause of action for violation of the  
 1221 physician-patient privilege or invasion of the right of privacy  
 1222 ~~may not be brought shall be permitted~~ against any physician,  
 1223 hospital, clinic, or other medical institution complying with  
 1224 ~~the provisions of~~ this section. The person requesting such  
 1225 records and such sworn statement shall pay all reasonable costs  
 1226 connected therewith. If an insurer makes a written request for  
 1227 documentation or information under this paragraph within 30 days  
 1228 after having received notice of the amount of a covered loss  
 1229 under paragraph (4) (a), the amount or the partial amount that  
 1230 ~~which~~ is the subject of the insurer's inquiry is ~~shall become~~  
 1231 overdue if the insurer does not pay in accordance with paragraph  
 1232 (4) (b) or within 10 days after the insurer's receipt of the  
 1233 requested documentation or information, whichever occurs later.  
 1234 As used in ~~For purposes of~~ this paragraph, the term "receipt"  
 1235 includes, but is not limited to, inspection and copying pursuant  
 1236 to this paragraph. An ~~Any~~ insurer that requests documentation or  
 1237 information pertaining to reasonableness of charges or medical  
 1238 necessity under this paragraph without a reasonable basis for  
 1239 such requests as a general business practice is engaging in an  
 1240 unfair trade practice under the insurance code.

1241 (c) In the event of a ~~any~~ dispute regarding an insurer's  
 1242 right to discovery of facts under this section, the insurer may  
 1243 petition a court of competent jurisdiction to enter an order  
 1244 permitting such discovery. The order may be made only on motion  
 1245 for good cause shown and upon notice to all persons having an  
 1246 interest, and must it shall specify the time, place, manner,  
 1247 conditions, and scope of the discovery. ~~Such court may,~~ In order

Page 43 of 53

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28-00905-12

20121860

1248 to protect against annoyance, embarrassment, or oppression, as  
 1249 justice requires, the court may enter an order refusing  
 1250 discovery or specifying conditions of discovery and may order  
 1251 payments of costs and expenses of the proceeding, including  
 1252 reasonable fees for the appearance of attorneys at the  
 1253 proceedings, as justice requires.

1254 (d) The injured person shall be furnished, upon request, a  
 1255 copy of all information obtained by the insurer under ~~the~~  
 1256 ~~provisions of~~ this section, and ~~shall~~ pay a reasonable charge,  
 1257 if required by the insurer.

1258 (e) Notice to an insurer of the existence of a claim may  
 1259 ~~shall~~ not be unreasonably withheld by an insured.

1260 (f) In a dispute between the insured and the insurer, or  
 1261 between an assignee of the insured's rights and the insurer, the  
 1262 insurer must notify the insured or the assignee that the policy  
 1263 limits under this section have been reached within 15 days after  
 1264 the limits have been reached.

1265 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY  
 1266 ATTORNEY'S FEES.—With respect to any dispute under the  
 1267 provisions of ss. 627.730-627.7405 between the insured and the  
 1268 insurer, or between an assignee of an insured's rights and the  
 1269 insurer, the provisions of ~~ss. 627.428 and 768.79 shall~~  
 1270 apply, except as provided in subsections (10) and (15).

1271 (9) PREFERRED PROVIDERS.—An insurer may negotiate and  
 1272 contract enter into contracts with preferred licensed health  
 1273 care providers for the benefits described in this section,  
 1274 referred to in this section as "preferred providers," which  
 1275 shall include health care providers licensed under chapter  
 1276 chapters 458, chapter 459, chapter 460, chapter 461, or chapter

Page 44 of 53

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28-00905-12 20121860  
 1277 ~~and~~ 463. The insurer may provide an option to an insured to use  
 1278 a preferred provider at the time of purchasing ~~purchase of~~ the  
 1279 policy for personal injury protection benefits, if the  
 1280 requirements of this subsection are met. If the insured elects  
 1281 to use a provider who is not a preferred provider, whether the  
 1282 insured purchased a preferred provider policy or a nonpreferred  
 1283 provider policy, the medical benefits provided by the insurer  
 1284 shall be as required by this section. If the insured elects to  
 1285 use a provider who is a preferred provider, the insurer may pay  
 1286 medical benefits in excess of the benefits required by this  
 1287 section and may waive or lower the amount of any deductible that  
 1288 applies to such medical benefits. If the insurer offers a  
 1289 preferred provider policy to a policyholder or applicant, it  
 1290 must also offer a nonpreferred provider policy. The insurer  
 1291 shall provide each insured ~~policyholder~~ with a current roster of  
 1292 preferred providers in the county in which the insured resides  
 1293 at the time of purchase of such policy, and shall make such list  
 1294 available for public inspection during regular business hours at  
 1295 the insurer's principal office ~~of the insurer~~ within the state.

1296 (10) DEMAND LETTER.—

1297 (a) As a condition precedent to filing any action for  
 1298 benefits under this section, ~~the insurer must be provided with~~  
 1299 written notice of an intent to initiate litigation must be  
 1300 provided to the insurer. Such notice may not be sent until the  
 1301 claim is overdue, including any additional time the insurer has  
 1302 to pay the claim pursuant to paragraph (4) (b).

1303 (b) The notice must ~~required shall~~ state that it is a  
 1304 "demand letter under s. 627.736(10)" and ~~shall~~ state with  
 1305 specificity:

28-00905-12 20121860  
 1306 1. The name of the insured upon which such benefits are  
 1307 being sought, including a copy of the assignment giving rights  
 1308 to the claimant if the claimant is not the insured.  
 1309 2. The claim number or policy number upon which such claim  
 1310 was originally submitted to the insurer.  
 1311 3. To the extent applicable, the name of any medical  
 1312 provider who rendered to an insured the treatment, services,  
 1313 accommodations, or supplies that form the basis of such claim;  
 1314 and an itemized statement specifying each exact amount, the date  
 1315 of treatment, service, or accommodation, and the type of benefit  
 1316 claimed to be due. A completed form satisfying the requirements  
 1317 of paragraph (5) (d) or the lost-wage statement previously  
 1318 submitted may be used as the itemized statement. To the extent  
 1319 that the demand involves an insurer's withdrawal of payment  
 1320 under paragraph (7) (a) for future treatment not yet rendered,  
 1321 the claimant shall attach a copy of the insurer's notice  
 1322 withdrawing such payment and an itemized statement of the type,  
 1323 frequency, and duration of future treatment claimed to be  
 1324 reasonable and medically necessary.  
 1325 (c) Each notice required by this subsection must be  
 1326 delivered to the insurer by United States certified or  
 1327 registered mail, return receipt requested. Such postal costs  
 1328 shall be reimbursed by the insurer if ~~so~~ requested by the  
 1329 claimant in the notice, when the insurer pays the claim. Such  
 1330 notice must be sent to the person and address specified by the  
 1331 insurer for the purposes of receiving notices under this  
 1332 subsection. Each licensed insurer, whether domestic, foreign, or  
 1333 alien, shall file with the office designation of the name and  
 1334 address of the person to whom notices must ~~pursuant to this~~

28-00905-12 20121860

1335 ~~subsection shall~~ be sent which the office shall make available  
 1336 on its Internet website. The name and address on file with the  
 1337 office pursuant to s. 624.422 ~~are shall be~~ deemed the authorized  
 1338 representative to accept notice pursuant to this subsection if  
 1339 ~~in the event~~ no other designation has been made.

1340 (d) If, within 30 days after receipt of notice by the  
 1341 insurer, the overdue claim specified in the notice is paid by  
 1342 the insurer together with applicable interest and a penalty of  
 1343 10 percent of the overdue amount paid by the insurer, subject to  
 1344 a maximum penalty of \$250, no action may be brought against the  
 1345 insurer. If the demand involves an insurer's withdrawal of  
 1346 payment under paragraph (7) (a) for future treatment not yet  
 1347 rendered, no action may be brought against the insurer if,  
 1348 within 30 days after its receipt of the notice, the insurer  
 1349 mails to the person filing the notice a written statement of the  
 1350 insurer's agreement to pay for such treatment in accordance with  
 1351 the notice and to pay a penalty of 10 percent, subject to a  
 1352 maximum penalty of \$250, when it pays for such future treatment  
 1353 in accordance with the requirements of this section. To the  
 1354 extent the insurer determines not to pay any amount demanded,  
 1355 the penalty is shall not be payable in any subsequent action.  
 1356 For purposes of this subsection, payment or the insurer's  
 1357 agreement shall be treated as being made on the date a draft or  
 1358 other valid instrument that is equivalent to payment, or the  
 1359 insurer's written statement of agreement, is placed in the  
 1360 United States mail in a properly addressed, postpaid envelope,  
 1361 or if not so posted, on the date of delivery. The insurer is not  
 1362 obligated to pay any attorney ~~attorney's~~ fees if the insurer  
 1363 pays the claim or mails its agreement to pay for future

28-00905-12 20121860

1364 treatment within the time prescribed by this subsection.

1365 (e) The applicable statute of limitation for an action  
 1366 under this section shall be tolled for a ~~period of~~ 30 business  
 1367 days by the mailing of the notice required by this subsection.

1368 ~~(f) Any insurer making a general business practice of not~~  
 1369 ~~paying valid claims until receipt of the notice required by this~~  
 1370 ~~subsection is engaging in an unfair trade practice under the~~  
 1371 ~~insurance code.~~

1372 (11) FAILURE TO PAY VALID CLAIMS; UNFAIR OR DECEPTIVE  
 1373 PRACTICE.—

1374 (a) ~~If An insurer fails to pay valid claims for personal~~  
 1375 ~~injury protection with such frequency so as to indicate a~~  
 1376 ~~general business practice, the insurer is engaging in a~~  
 1377 ~~prohibited unfair or deceptive practice that is subject to the~~  
 1378 ~~penalties provided in s. 626.9521 and the office has the powers~~  
 1379 ~~and duties specified in ss. 626.9561-626.9601 if the insurer,~~  
 1380 ~~with such frequency so as to indicate a general business~~  
 1381 ~~practice: with respect thereto~~

1382 1. Fails to pay valid claims for personal injury  
 1383 protection; or

1384 2. Fails to pay valid claims until receipt of the notice  
 1385 required by subsection (10).

1386 (b) Notwithstanding s. 501.212, the Department of Legal  
 1387 Affairs may investigate and initiate actions for a violation of  
 1388 this subsection, including, but not limited to, the powers and  
 1389 duties specified in part II of chapter 501.

1390 Section 9. Effective December 1, 2012, subsection (16) of  
 1391 section 627.736, Florida Statutes, is amended to read:

1392 627.736 Required personal injury protection benefits;

28-00905-12 20121860\_\_

1393 exclusions; priority; claims.-

1394 (16) SECURE ELECTRONIC DATA TRANSFER. ~~If all parties~~  
 1395 ~~mutually and expressly agree,~~ A notice, documentation,  
 1396 transmission, or communication of any kind required or  
 1397 authorized under ss. 627.730-627.7405 may be transmitted  
 1398 electronically if it is transmitted by secure electronic data  
 1399 transfer that is consistent with state and federal privacy and  
 1400 security laws.

1401 Section 10. Subsections (1), (10), and (13) of section  
 1402 817.234, Florida Statutes, are amended to read:

1403 817.234 False and fraudulent insurance claims.-

1404 (1) (a) A person commits insurance fraud punishable as  
 1405 provided in subsection (11) if that person, with the intent to  
 1406 injure, defraud, or deceive any insurer:

1407 1. Presents or causes to be presented any written or oral  
 1408 statement as part of, or in support of, a claim for payment or  
 1409 other benefit pursuant to an insurance policy or a health  
 1410 maintenance organization subscriber or provider contract,  
 1411 knowing that such statement contains any false, incomplete, or  
 1412 misleading information concerning any fact or thing material to  
 1413 such claim;

1414 2. Prepares or makes any written or oral statement that is  
 1415 intended to be presented to any insurer in connection with, or  
 1416 in support of, any claim for payment or other benefit pursuant  
 1417 to an insurance policy or a health maintenance organization  
 1418 subscriber or provider contract, knowing that such statement  
 1419 contains any false, incomplete, or misleading information  
 1420 concerning any fact or thing material to such claim; ~~or~~

1421 3.a. Knowingly presents, causes to be presented, or

28-00905-12 20121860\_\_

1422 prepares or makes with knowledge or belief that it will be  
 1423 presented to any insurer, purported insurer, servicing  
 1424 corporation, insurance broker, or insurance agent, or any  
 1425 employee or agent thereof, any false, incomplete, or misleading  
 1426 information or written or oral statement as part of, or in  
 1427 support of, an application for the issuance of, or the rating  
 1428 of, any insurance policy, or a health maintenance organization  
 1429 subscriber or provider contract; or

1430 b. ~~Who~~ Knowingly conceals information concerning any fact  
 1431 material to such application; ~~or-~~

1432 4. Knowingly presents, causes to be presented, or prepares  
 1433 or makes with knowledge or belief that it will be presented to  
 1434 any insurer a claim for payment or other benefit under a  
 1435 personal injury protection insurance policy if the person knows  
 1436 that the payee knowingly submitted a false, misleading, or  
 1437 fraudulent application or other document when applying for  
 1438 licensure as a health care clinic, seeking an exemption from  
 1439 licensure as a health care clinic, or demonstrating compliance  
 1440 with part X of chapter 400.

1441 (b) All claims and application forms must ~~shall~~ contain a  
 1442 statement that is approved by the Office of Insurance Regulation  
 1443 of the Financial Services Commission which clearly states in  
 1444 substance the following: "Any person who knowingly and with  
 1445 intent to injure, defraud, or deceive any insurer files a  
 1446 statement of claim or an application containing any false,  
 1447 incomplete, or misleading information is guilty of a felony of  
 1448 the third degree." This paragraph does ~~shall~~ not apply to  
 1449 reinsurance contracts, reinsurance agreements, or reinsurance  
 1450 claims transactions.

28-00905-12 20121860\_\_

1451 (10) A licensed health care practitioner who is found  
 1452 guilty of insurance fraud under this section for an act relating  
 1453 to a personal injury protection insurance policy loses his or  
 1454 her license to practice for 5 years and may not receive  
 1455 reimbursement for personal injury protection benefits for 10  
 1456 years. As used in this section, the term "insurer" means any  
 1457 insurer, health maintenance organization, self-insurer, self-  
 1458 insurance fund, or other similar entity or person regulated  
 1459 under chapter 440 or chapter 641 or by the Office of Insurance  
 1460 Regulation under the Florida Insurance Code.

1461 (13) As used in this section, the term:

1462 (a) "Insurer" means any insurer, health maintenance  
 1463 organization, self-insurer, self-insurance fund, or similar  
 1464 entity or person regulated under chapter 440 or chapter 641 or  
 1465 by the Office of Insurance Regulation under the Florida  
 1466 Insurance Code.

1467 (b) ~~(a)~~ "Property" means property as defined in s. 812.012.  
 1468 (c) ~~(b)~~ "Value" means value as defined in s. 812.012.

1469 Section 11. Subsection (4) of section 316.065, Florida  
 1470 Statutes, is amended to read:

1471 316.065 Crashes; reports; penalties.—

1472 (4) Any person who knowingly repairs a motor vehicle  
 1473 without having made a report as required by subsection (3) is  
 1474 guilty of a misdemeanor of the first degree, punishable as  
 1475 provided in s. 775.082 or s. 775.083. The owner and driver of a  
 1476 vehicle involved in a crash who makes a report thereof in  
 1477 accordance with subsection (1) ~~or s. 316.066(1)~~ is not liable  
 1478 under this section.

1479 Section 12. The Office of Insurance Regulation shall

28-00905-12 20121860\_\_

1480 perform a comprehensive personal injury protection data call and  
 1481 publish the results by January 1, 2015. It is the intent of the  
 1482 Legislature that the office design the data call with the  
 1483 expectation that the Legislature will use the data to help  
 1484 evaluate market conditions relating to the Florida Motor Vehicle  
 1485 No-Fault Law and the impact on the market of reforms to the law  
 1486 made by this act. The elements of the data call must address,  
 1487 but need not be limited to, the following components of the  
 1488 Florida Motor Vehicle No-Fault Law:

1489 (1) Quantity of personal injury protection claims.  
 1490 (2) Type or nature of claimants.  
 1491 (3) Amount and type of personal injury protection benefits  
 1492 paid and expenses incurred.  
 1493 (4) Type and quantity of, and charges for, medical  
 1494 benefits.  
 1495 (5) Attorney fees related to bringing and defending actions  
 1496 for benefits.  
 1497 (6) Direct earned premiums for personal injury protection  
 1498 coverage, pure loss ratios, pure premiums, and other information  
 1499 related to premiums and losses.  
 1500 (7) Licensed drivers and accidents.  
 1501 (8) Fraud and enforcement.

1502 Section 13. If any provision of this act or its application  
 1503 to any person or circumstance is held invalid, the invalidity  
 1504 does not affect other provisions or applications of the act  
 1505 which can be given effect without the invalid provision or  
 1506 application, and to this end the provisions of this act are  
 1507 severable.

1508 Section 14. Except as otherwise expressly provided in this

28-00905-12

20121860\_\_

1509 | act, this act shall take effect July 1, 2012.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Banking and Insurance Committee

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BILL: SB 1862

INTRODUCER: Senator Negrón

SUBJECT: Public Records/Donor Identifying Information/Division of Insurance Fraud

DATE: January 31, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	<b>Favorable</b>
2.			GO	
3.				
4.				
5.				
6.				

---

**I. Summary:**

The bill creates a public records exemption for all identifying information of donors or prospective donors to the Automobile Insurance Fraud Strike Force a direct-support organization of the Division of Insurance Fraud.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.<sup>1</sup>

This bill amends the following section of the Florida Statutes: 626.9895

**II. Present Situation:**

**Public Records Law**

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an

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<sup>1</sup> Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.

existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>2</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

#### **Insurance Fraud Strike Force**

Legislation proposed during the 2012 Legislative Session<sup>4</sup> creates the Automobile Insurance Fraud Strike Force a direct-support organization of the Division of Insurance Fraud. The strike force's sole purpose is to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The strike force is to be set up as a not-for-profit and shall be allowed to raise funds by requesting and receiving grants, gifts, and bequests of money.

### **III. Effect of Proposed Changes:**

The bill creates a public records exemption for all identifying information of donors or prospective donors to the Automobile Insurance Fraud Strike Force a direct-support organization of the Division of Insurance Fraud.

The bill sets forth legislative findings of public necessity as the exemption is viewed as an essential component for the program to attract and receive donations from private funds. These funds shall be specifically used to prosecute, investigate and prevent motor vehicle insurance fraud.

The bill takes effect on the date that SB 1860, or similar legislation adopted by the Legislature during the 2012 Regular Legislative Session and subsequently enacted into law, takes effect.

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<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> 2012 – SB 1860

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

## B. Amendments:

None.

By Senator Negrón

28-01433-12

20121862\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 626.9895, F.S., as created by Senate Bill \_\_\_\_;  
 4 exempting from public record requirements all  
 5 identifying information of a donor or prospective  
 6 donor to the motor vehicle insurance fraud direct-  
 7 support organization of the Division of Insurance  
 8 Fraud; providing for future repeal and legislative  
 9 review of the exemption under the Open Government  
 10 Sunset Review Act; providing a statement of public  
 11 necessity; providing a contingent effective date.  
 12

13 Be It Enacted by the Legislature of the State of Florida:  
 14

15 Section 1. Subsection (9) is added to section 626.9895,  
 16 Florida Statutes, as created by Senate Bill \_\_\_\_, to read:  
 17 626.9895 Motor vehicle insurance fraud direct-support  
 18 organization.—

19 (9) DONOR CONFIDENTIALITY.—

20 (a) The identity of a donor or prospective donor to the  
 21 organization who desires to remain anonymous and all other  
 22 information identifying such donor or prospective donor are  
 23 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 24 of the State Constitution. Such anonymity shall be maintained in  
 25 the annual financial audit created pursuant to subsection (2).

26 (b) This subsection is subject to the Open Government  
 27 Sunset Review Act in accordance with s. 119.15 and shall stand  
 28 repealed on October 2, 2017, unless reviewed and saved from  
 29 repeal through reenactment by the Legislature.

Page 1 of 3

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28-01433-12

20121862\_\_

30 Section 2. The Legislature finds that it is a public  
 31 necessity that information identifying a donor or prospective  
 32 donor to the Automobile Insurance Fraud Strike Force direct-  
 33 support organization of the Division of Insurance Fraud be made  
 34 confidential and exempt from public records requirements if such  
 35 donor or prospective donor desires to remain anonymous.  
 36 Fraudulent activity in the personal injury protection insurance  
 37 system in this state has reached unprecedented levels. The  
 38 direct-support organization is created for the purpose of  
 39 supporting efforts by the Division of Insurance Fraud to  
 40 investigate, prosecute, and prevent motor vehicle insurance  
 41 fraud. In order to obtain support for the organization and its  
 42 mission, it is necessary to promote the raising of private funds  
 43 for these anti-fraud efforts. An essential element of such  
 44 support is the need to protect the identity of prospective and  
 45 actual donors who desire to remain anonymous. There is a  
 46 chilling effect on donations when the identity of individual  
 47 donors is subject to disclosure because donors are concerned  
 48 about the disclosure of sensitive personal information, which  
 49 can lead to theft, including identity theft, and jeopardize the  
 50 personal safety and security of such individuals. The disclosure  
 51 of the identity of an entity that is a prospective or actual  
 52 donor can also provide competitors in the marketplace with  
 53 insights into the finances of that entity and thereby cause  
 54 injury to the entity. The chilling effect on donations would, in  
 55 turn, impede the efforts of the state to combat motor vehicle  
 56 insurance fraud. Therefore, the Legislature finds that it is a  
 57 public necessity to make confidential and exempt from public  
 58 records requirements information that would identify a donor or

Page 2 of 3

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28-01433-12

20121862\_\_

59 prospective donor to the motor vehicle insurance fraud direct-  
60 support organization if such donor or prospective donor wishes  
61 to remain anonymous.

62 Section 3. This act shall take effect on the same date that  
63 Senate Bill \_\_\_ or similar legislation takes effect, if such  
64 legislation is adopted in the same legislative session, or an  
65 extension thereof, and becomes law.



160704

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment**

Delete lines 211 - 245  
and insert:

3. To a full-time salaried employee of a licensed general lines agent or to a business entity that offers travel planning services if insurance sales activities authorized by the license are in connection with, and incidental to, travel.

a. A license issued to a business entity that offers travel planning services must encompass each office, branch office, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this



160704

13 paragraph.

14 b. The application for licensure must list the name,  
15 address, and phone number for each office, branch office, or  
16 place of business that is to be covered by the license. The  
17 licensee shall notify the department of the name, address, and  
18 phone number of any new location that is to be covered by the  
19 license before the new office, branch office, or place of  
20 business engages in the sale of insurance pursuant to this  
21 paragraph. The licensee shall notify the department within 30  
22 days after the closing or terminating of an office, branch  
23 office, or place of business. Upon receipt of the notice, the  
24 department shall delete the office, branch office, or place of  
25 business from the license.

26 c. A licensed and appointed entity is directly responsible  
27 and accountable for all acts of the licensee's employees and  
28 parties with whom the licensee has entered into a contractual  
29 agreement to offer travel insurance.

30  
31 A licensee shall require each individual employee who offers  
32 policies or certificates under subparagraph 2. or subparagraph  
33 3. ~~this subparagraph~~ to receive initial training from a general  
34 lines agent or an insurer authorized under chapter 624 to  
35 transact insurance within this state. For an entity applying for  
36 a license as a travel insurance agent, the fingerprinting  
37 requirement of this section applies only to the president,  
38 secretary, and treasurer and to any other officer or person who  
39 directs or controls the travel insurance operations of the  
40 entity.



929464

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 245 and 246  
insert:

Section 6. Present subsection (4) of section 626.753, Florida Statutes, is renumbered as subsection (6), and new subsections (4) and (5) are added to that section to read:

626.753 Sharing commissions; penalty.-

(4) Any patronage dividend or other payment, discount, or credit provided to a member of a production credit association or federal land bank association which is directly or indirectly calculated on the basis of the premium charged to that member



929464

13 for crop hail or multiple-peril crop insurance is an unlawful  
14 rebate in violation of ss. 626.572 and 626.9541(1)(h).

15 (5) An agent who engages in commission sharing with a  
16 production credit association or federal land bank association,  
17 and who has knowledge that the association provides patronage  
18 dividends or other payments, discounts, or credits that  
19 constitute unlawful rebates as described in subsection (4), is  
20 participating in a violation of this section.

21  
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete line 18

25 and insert:

26 circumstances; amending s. 626.753, F.S., relating to  
27 the sharing of commissions; prohibiting certain  
28 rebates; creating s. 626.8675, F.S.; providing



604062

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 804 - 913.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 25 - 29

and insert:

company; creating s.



377322

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment**

Delete line 919  
and insert:  
listed in s. 627.6561(5)(b)-(e), issued in any market, unless



467786

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 994

and insert:

Section 11. Effective upon this act becoming a law, subsection (4) of section 627.7295, Florida

Delete line 1030

and insert:

Section 13. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1,



467786

13 2012.

14

15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17       Delete line 40

18 and insert:

19       protection benefits; providing effective dates.



464972

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 1006

and insert:

Section 12. Effective upon this act becoming a law, paragraph (d) of subsection (4) of section

Delete line 1030

and insert:

Section 13. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1,



464972

13 2012.

14

15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17       Delete line 40

18 and insert:

19       protection benefits; providing effective dates.



227828

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Sobel) recommended the following:

**Senate Amendment**

Delete line 951  
and insert:  
counsel or any other person having relevant information is ~~shall~~  
~~be~~ permitted. Mediation under this section is

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12  
Meeting Date

Topic Insurance Omnibus

Bill Number SB 1620  
*(if applicable)*

Name Joy Ryan

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 2041 S. Monroe St.  
Street

Phone 681-6710

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail joy@blanklaw.com

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic

Omnibus Bill

Bill Number

1620

(if applicable)

Name

Steve Roddenberry

Amendment Barcode

(if applicable)

Job Title

Special Consultant

Address

215 S. Monroe St

Phone

222-3533

Street

Tallahassee FL 32301

E-mail

Speaking:

For

Against

Information

Representing

Sellers of Travel Products

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12  
Meeting Date

Topic Insurance

Bill Number 1620  
*(if applicable)*

Name Josh Aubuchon

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title ~~218 Monroe~~ attorney

Address 215 S. Monroe St.  
Street

Phone \_\_\_\_\_

Tallahassee FL 32301  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing State Farm Mutual Automobile Insurance Corp.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 1620

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Insurance

DATE: February 2, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill changes a number of provisions relating to the regulation of insurance companies, insurance agents, insurance adjusters, and insurance coverage, including:

- Specifies that a salvage motor vehicle dealer is not required to carry the \$25,000 combined single-limit liability coverage for bodily injury and property damage, or the \$10,000 PIP coverage, for vehicles that have been issued a certificate of destruction and cannot be operated legally on state roads.
- Clarifies that a current exemption from filing specified reinsurance information applies to any insurer with less than \$500,000 in direct written premiums in Florida in the preceding calendar year, as long as that insurer did not write more than \$250,000 of premium during the preceding calendar quarter, or any insurer with less than 1,000 policyholders at the end of the preceding calendar year.
- Allows the DFS to provide licensing examinations in Spanish at the expense of the applicant.
- Expands the list of entities to whom a limited license for travel insurance may be issued.
- Prohibits a patronage dividend or other payment from being paid to a production credit association or a federal land bank association, if the payment is directly or indirectly based on the premium charged to that member for crop hail or multi-peril crop insurance.

- Allows a licensed independent adjuster or a licensed agent to supervise up to 25 individuals who are not required to obtain a license to perform functions in connection with entering data into an automated claims adjudication system for portable electronics insurance claims.
- Provides that a resident of Canada cannot obtain a license as a nonresident independent adjuster for the purpose of adjusting portable electronics insurance claims, unless the individual obtains an adjuster license in another U.S. state.
- Provides that an insurer with surplus as to policyholders of \$25 million or less can qualify as an LAC for all statutory purposes.
- Provides that mandated health benefits are intended to apply only to the types of health benefit plans defined in s. 627.6699(3), F.S., unless specifically designated otherwise.
- Specifies that the alternative dispute resolution procedure for personal and commercial residential property insurance claims can be requested only by the policyholder, as a first-party claimant, or by the insurer.
- Provides that when the notice of loss is reported more than 36 months after a declaration of a state of emergency by the Governor in response to a hurricane, the alternative claim dispute resolution process is not available.
- Allows the cancellation of a private passenger motor vehicle insurance policy, regardless of whether the first 2 months of premiums need to be paid up front, within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored.
- Clarifies that when an insurer fails to meet the statutory requirements for timely payment of PIP benefits, the obligation will accrue interest at the rate established in the contract or the statutory interest rate that applies to judgments and decrees, whichever is greater, that is in effect on the date the payment became overdue.

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

This bill substantially amends the following sections of the Florida Statutes: 320.27, 624.501, 624.610, 626.261, 626.321, 626.753, 627.351, 627.7015, 627.7295, and 627.736.

This bill substantially creates the following sections of the Florida Statutes: 626.8675 and 627.6011.

## **II. Present Situation:**

### **Motor Vehicle Dealers**

Section 320.27(3), F.S., requires motor vehicle dealers licensed in Florida to be insured under a garage liability insurance policy or a general liability policy and a business automobile policy which must include a minimum of \$25,000 combined single-limit liability coverage for bodily injury and property damage, and \$10,000 of personal injury protection (PIP). Section 320.27(1)(a), F.S., defines a “motor vehicle dealer” as any person engaged in the business of buying, selling or dealing in motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles. The definition specifies five separate classifications of motor vehicle dealers, one of which is a salvage motor vehicle dealer, which purchases salvaged or wrecked motor vehicles for the purpose of reselling the vehicle or its parts.

### **Reinsurance Filing Requirements**

Section 624.610(11), F.S., establishes specified information that must be filed by domestic or commercially domiciled insurers that cede directly written risks of loss. Section 624.619(11)(c), F.S., specifies certain exemptions from the filing requirements, including any insurer with more than \$100 million in surplus as to policyholders, less than \$500,000 in direct written premiums in Florida in the preceding calendar year, or less than 1,000 policyholders at the end of the preceding calendar year. The statute then provides that any ceding insurer “otherwise subject to this section with more than \$250,000 in direct written premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection.” The placement of this last provision creates some ambiguity as to its application.

### **Agent License Examinations**

The Department of Financial Services (DFS) is responsible for licensing insurance agents, service representatives and adjusters, under Part I of ch. 626, F.S., titled the “Licensing Procedures Law.” Section 626.261, F.S., establishes requirements for conducting examinations for licensee candidates.

### **Limited Licenses**

Section 626.321, F.S., establishes categories for which the DFS will issue a license that authorizes an agent to transact a limited class of business. The following enumerated categories qualify for limited license:

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary insurance;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit life or disability insurance;
- Credit insurance;
- Credit property insurance;
- Crop hail and multi-peril crop insurance;
- In-transit and storage personal property insurance; and
- Communications equipment property insurance, communications equipment inland marine insurance, and communications equipment service warranty insurance.

Under a limited license for travel insurance, the policy or certificate of travel insurance can cover risks incidental to travel, planned travel, or accommodations while traveling, including:

- Accidental death and dismemberment;
- Trip cancellation, interruption or delay;
- Loss or damage to personal effects or travel documents;
- Baggage delay;
- Emergency medical travel or evacuation;
- Medical, surgical, or hospital expenses arising from an illness or emergency.

The travel insurance must be limited to travel or accommodations of no more than 60 days, but the policy or certificate can be issued for a term that exceeds 60 days. A limited license for travel insurance may be issued only to:

- A full-time salaried employee of a common carrier or a transportation ticket agency in connection with the sale of transportation tickets;
- An entity or individual that is a developer of a timeshare plan of an approved public offering statement;
- An entity or individual that is an exchange company operating an approved exchange program;
- An entity or individual that is a managing entity operating a timeshare plan;
- An entity or individual that is a seller of travel; or
- An entity or individual that is an affiliate of any of the listed entities.

### **Agents Sharing Commissions**

Section 626.753, F.S., provides that an agent may divide or share commissions only with other agents appointed and licensed to write the same kinds of insurance. An agent cannot share a commission with any corporation unless that corporation is an insurance agency.

Section 626.753(3), F.S., provides that a general lines agent may share commissions from the sale of crop hail or multi-peril crop insurance with a production credit association or a federal land bank association, if the association has approved the insurance activity by its employees.

### **Insurance Adjusters**

Insurance adjusters are regulated by the DFS under part VI of ch. 626, F.S., entitled the “Insurance Adjusters Law.”<sup>1</sup> Section 626.852, F.S., explicitly provides that the Insurance Adjusters Law does not apply to:

- Life insurance or annuity contracts;
- Third party administrators with a certificate of authority, or individuals employed by third party administrators;
- Any employee or agent of a state university board of trustees providing services for a self-insurance program; or
- Any person who adjusts only multi-peril crop insurance or crop hail insurance.

Section 626.862, F.S., provides that a licensed and appointed insurance agent is authorized to adjust claims for the insurers for which the agent is appointed, without obtaining a license as an adjuster.

The Insurance Adjusters Law provides separate definitions and separate requirements for public adjusters,<sup>2</sup> independent adjusters,<sup>3</sup> company employee adjusters,<sup>4</sup> nonresident company

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<sup>1</sup> Section 626.851, F.S.

<sup>2</sup> Section 626.854, F.S.

<sup>3</sup> Section 626.855, F.S.

<sup>4</sup> Section 626.856, F.S.

employee adjusters,<sup>5</sup> nonresident public adjusters,<sup>6</sup> and nonresident independent adjusters.<sup>7</sup> A nonresident independent adjuster is defined as a person who:

- Is a resident of Florida;
- Is a licensed independent adjuster in the state of residence, or if the state of residence does not license independent adjusters, the nonresident must have passed the relevant Florida examination for licensure; and
- Is a self-employed independent adjuster or is associated with or employed by an independent adjuster firm or other independent adjuster.

Additional requirements for nonresident independent adjusters are contained in s. 626.8734, F.S.

### **Limited Apportionment Companies**

A limited apportionment company (LAC) is a company with surplus as to policyholders below a certain prescribed level. Four separate sections in current law have established apparently conflicting requirements necessary to qualify as an LAC. Section 627.351(2)(b)3., F.S., provides a threshold of \$20 million or less of surplus as to policyholders to qualify as an LAC. Section 627.351(6)(c)13., F.S., provides a threshold of \$25 million or less of surplus as to policyholders to qualify as an LAC. Further, s. 215.555(4)(e)3., F.S., specifically references the \$20 million definition of LAC under s. 627.351(2)(b)3., F.S.; however, s. 215.555(4)(b)4., F.S., specifically references the \$25 million definition of LAC under s. 627.351(6)(c), F.S.

Section 627.351(2)(b)3., F.S., established the Windstorm Insurance Risk Apportionment plan, and authorized the OIR to adopt a plan for the equitable apportionment of windstorm coverage among insurers authorized to transact property insurance on a direct basis in Florida.<sup>8</sup> Section 627.351(2)(b)3., F.S., requires that the plan provide that any member insurer with \$20 million or less of surplus as to policyholders can apply with OIR to qualify as an LAC. The section specifies that the apportionment of windstorm loss to an LAC cannot exceed that LAC's gross participation, and the LAC cannot be required to participate in marketwide aggregate windstorm losses exceeding \$50 million. Further, if the OIR determines that any regular assessment will result in the impairment of surplus of an LAC, the OIR must direct that LAC's share of the assessment to be deferred.

Because all residual market windstorm risk is now covered by Citizens Property Insurance Corporation (Citizens) under s. 627.351(6), F.S., the Windstorm Insurance Risk Apportionment plan created by s. 627.351(2), F.S., is no longer active. Nevertheless, the \$20 million threshold that it establishes to qualify as an LAC is still in effect through a cross-reference from legislation regulating the Florida Hurricane Catastrophe Fund (FCHF) under ch. 215, F.S.

Section 215.555(4)(e)3., F.S., specifically references the definition of limited apportionment companies under s. 627.351(2)(b)3., F.S., for the purpose of allowing the FCHF to advance the amount of estimated reimbursement payable to an LAC under the FCHF contract. Accordingly,

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<sup>5</sup> Section 262.858, F.S.

<sup>6</sup> Section 626.8582, F.S.

<sup>7</sup> Section 626.8584, F.S.

<sup>8</sup> Section 627.351(2)(b), F.S.

only those companies with surplus at or below \$20 million could qualify to receive the advance from the FHCF.

Section 627.351(6), F.S., establishes Citizens Property Insurance Corporation, and s. 627.351(6)(c)13., F.S., specifies that the Citizens' plan of operation must provide that any assessable insurer with surplus as to policyholders of \$25 million or less may petition the OIR to qualify as an LAC, for the purpose of allowing the LAC to pay any regular assessment on a monthly basis as the assessments are collected by the LAC from its policyholders. Further, if the OIR determines that any regular assessment will result in the impairment of surplus of an LAC, the OIR must direct that LAC's share of the assessment be deferred.

The \$25 million threshold for LACs also has a statutory cross-reference tying it into the statutes regulating the FHCF. Section 215.555(4)(b)4., F.S., specifically references the definition of limited apportionment companies under s. 627.351(6)(c), F.S., for the purpose of allowing the LACs to participate in an additional layer of FHCF coverage not otherwise available. Accordingly, those companies with surplus up to \$25 million could qualify as LACs for participating in the additional layer of FHCF coverage.

### **Mandated Health Benefit Coverages**

Sections 627.6401, F.S., through 627.64193, F.S., there are 17 different statutory sections that impose various forms of mandatory health benefits that must be included in every health insurance policy, unless an exception is designated within the statutory section that describes the specific mandate being imposed. Many of the mandates provide for exceptions within the specific section that imposes the mandate, as follows:

- Section 627.6406, F.S., Maternity care, explicitly exempts health insurance coverage that does not provide for hospitalization in connection with childbirth.
- Section 627.6408, F.S., Osteoporosis screening, does not apply to “specific-accident, specific-disease, hospital indemnity, Medicare supplement, or long-term care health insurance, or the state employee health insurance program.”
- Section 627.641, F.S., Newborn children, does not apply to disability income or hospital indemnity policies, or to normal maternity policy provisions.
- Section 627.6416, F.S., Child health supervision services, does not apply to “disability income, specified disease, Medicare supplement, or hospital indemnity policies.”
- Section 627.6417, F.S., Surgical procedures and devices incident to mastectomy, does not apply to “disability income, specified disease other than cancer, or hospital indemnity policies.”
- Section 627.64171, F.S., Outpatient postsurgical care, does not apply to “disability income, specified diseases other than cancer, or hospital indemnity policies.”
- Section 627.6418, F.S., Mammograms, does not apply to “disability income, specified disease, or hospital indemnity policies.”
- Section 627.64193, F.S., Cleft lip and cleft palate, does not apply to “specified-accident, specified-disease, hospital indemnity, limited benefit disability income, or long-term care insurance policies.”

### **Alternative Procedure for Claim Dispute Resolution**

Section 627.7015, F. S., establishes procedures for a mediated claim resolution process for all claimants and insureds under personal lines and commercial residential policies. The process is available prior to the commencing of the appraisal process or commencing litigation. If requested by the insured, legal counsel is permitted. The process explicitly excludes commercial coverages, motor vehicle coverages, or liability disputes on a property insurance policy. When a first party claim is filed for the mediation process, the insurer is obligated to notify all first-party claimants of their right to participate in the mediation program. If the insurer fails to comply with its obligations, the insured is relieved from any contractual obligation to participate in the loss appraisal process as a precondition to legal action. For purposes of the alternative dispute resolution procedure, the term “claim” means any dispute between an insurer and an insured over a material issue of fact, with four exceptions, specified as follows:

- When the insurer has a reasonable basis to suspect fraud;
- When, based on agreed-upon facts as to the cause of the loss, there is no coverage under the policy;
- When the insurer has a reasonable basis to believe the claimant has intentionally made a material misrepresentation relevant to the claim, and the entire claim is denied based on the misrepresentation;
- When the controversy is less than \$500, unless the parties agree to mediate the dispute.

### **Cancellation of Motor Vehicle Insurance Policies**

Prior to the effective date of a private passenger motor vehicle insurance policy or a binder for such a policy, the insurer or agent must collect from the insured an amount equal to 2 months premium. This is not applicable if:

- The insured or member of the insured’s family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group.
- The insurer issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents.
- All policy payments are paid through a payroll deduction plan or an automatic electronic funds transfer payment plan from the policyholder.<sup>9</sup>

For policies under which the first 2 months of premium are not required to be paid up front, the insurer may not cancel the new policy or binder during the first 60 days immediately following the effective date of the policy or binder except for nonpayment of premium.

### **Overdue Payments of Personal Injury Protection (PIP) Benefits**

Section 627.736(4)(d), F.S., provides that when an insurer fails to meet the statutory requirements for timely payment of PIP benefits, the obligation will accrue interest at the rate established in the contract or the statutory interest rate established to apply to judgments and decrees,<sup>10</sup> whichever is greater. The interest rate for judgments is established by the Chief

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<sup>9</sup> Section 627.7295(7), F.S.

<sup>10</sup> Section 55.03, F.S.

Financial Officer (CFO) four times<sup>11</sup> a year to apply to each calendar quarter in the year.<sup>12</sup> The CFO is to average the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then add 400 basis points. The statute states that the interest is to be applied “for the year in which the payment became overdue.”<sup>13</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 320.27, F.S., relating to requirements imposed on licensed Florida motor vehicle dealers. The bill specifies that a salvage motor vehicle dealer, as defined in s. 320.27(1)(c)5., F.S., is not required to carry the \$25,000 combined single-limit liability coverage for bodily injury and property damage, or the \$10,000 PIP coverage, for vehicles that have been issued a certificate of destruction and cannot be operated legally on state roads. The liability and PIP coverage requirements cover risk that arises only when a motor vehicle is being driven; this provision of the bill removes the requirement of coverage for vehicles that cannot be driven.

**Section 2** amends s. 624.501(9), F.S., relating to the fees applicable for the original appointment and biennial renewal fee for limited appointments as agents. Current law provides a fee of \$60 (including tax) for the original appointment fee and the biennial renewal fee for an appointment for each agent, with an exception that is applicable only to agents selling or soliciting motor vehicle rental insurance. For those limited agents, the original appointment fee and the biennial renewal fee is also \$60, but the fee is not required to be paid for each individual that sells the product, but rather the fee must be paid only for each office, branch office, or place of business covered by the license.

The bill adds travel insurance to the exception that is currently applicable only to motor vehicle rental insurance. As a result, for the sale of travel insurance, an insurer would be required to pay the \$60 original appointment fee and the \$60 biennial renewal fee only for each office, branch office, or place of business covered by the license.

**Section 3** amends s. 624.610(11)(c), F.S., by clarifying that the exemption from filing specified reinsurance information applies to any insurer with less than \$500,000 in direct written premiums in Florida in the preceding calendar year, as long as that insurer did not write more than \$250,000 of premium during the preceding calendar quarter, or to any insurer with less than 1,000 policyholders at the end of the preceding calendar year, or to any insurer with more than \$100 million in surplus as to policyholders.

**Section 4** creates s. 626.261(5), which allows the DFS to provide licensing examinations in Spanish. Applicants seeking to be given an examination in Spanish must bear the full cost incurred by the DFS in developing, administering, grading and evaluating the examination. In determining whether to allow the examination to be translated and administered in Spanish, the DFS must consider the percentage of population who speak Spanish.

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<sup>11</sup> The CFO is to establish the interest rate on December 1, March 1, June 1, and September 1.

<sup>12</sup> The quarters are specified as beginning January 1, April 1, July 1, and October 1.

<sup>13</sup> Section 627.736(4)(d), F.S.

**Section 5** amends s. 626.321, F.S., relating to limited agent licenses. The bill removes a current reference to the OIR's review of travel insurance under s. 624.605(1)(q), F.S., which refers to a miscellaneous subcomponent of the definition of casualty insurance. The bill adds event cancellation and damage to travel accommodations as permissible perils for inclusion under travel insurance. The bill increases the maximum allowable duration of travel or accommodations which a travel insurance policy or certificate may cover from the current 60 days limit to 90 days. The bill expands the list of individuals or entities to whom a limited license for travel insurance may be issued to include full-time salaried employees of a licensed general lines agent and business entities that offer travel planning services when the insurance activities are in connection with travel, providing:

- The license issued to a business entity offering travel planning services encompasses each office, branch office, or place of business using the entity's business name to sell insurance;
- The application for licensure must list the name, address, and phone number for each place of business covered under the license, and the licensee is obligated to provide updated information to the DFS for every place of business that is added to or deleted from the license within 30 days of the change.
- The licensed entity is directly responsible for the acts of those acting under the license.

**Section 6** amends s. 626.753, F.S., relating to the sharing of agents' commissions. The bill prohibits a patronage dividend or other payment from being paid to a production credit association or a federal land bank association, if the payment is directly or indirectly based on the premium charged to that member for crop hail or multi-peril crop insurance. The bill specifies that any such payment is an unlawful rebate in violation of ss. 626.573, F.S., and 626.9541(1)(h), F.S. The bill further provides that an agent engaging in commission sharing with a production credit association or a federal land bank association, who has knowledge that the association is providing patronage dividends or other payments is in violation of the unlawful rebate provisions.

**Section 7** creates s. 626.8675, F.S., providing an exemption from part VI of ch. 626, F.S., for portable electronics insurance claims employees. The bill allows a licensed independent adjuster or a licensed agent to supervise up to 25 individuals who are not required to obtain a license to perform functions in connection with entering data into an automated claims adjudication system. "Automated claims adjudication system" is defined as a preprogrammed computer system for the resolution of portable electronics insurance claims, as long as the system:

- Is used only by a licensed independent adjuster, a licensed agent, or an individual supervised under this provision;
- Complies with all claims payment requirements of the Florida Insurance Code; and
- Is certified as compliant by a licensed independent adjuster who is an officer of a business entity licensed under ch. 626, F.S.

The bill provides that a resident of Canada cannot obtain a license as a nonresident independent adjuster for the purposes of adjusting portable electronics insurance claims, unless the individual obtains an adjuster license in another U.S. state.

**Section 8** amends s. 627.351.(2)(b)3., F.S. The bill changes the threshold level of surplus to qualify as an LAC under this section from the current \$20 million to \$25 million. As a result, the statutory definitions and cross-references for LACs will be consistent. An insurer with surplus as

to policyholders of \$25 million or less can qualify as an LAC for all statutory purposes, including being qualified to receive advances from the FHCF under s. 215.555(4)(e)3., F.S.

**Section 9** creates s. 627.6011, F.S., relating to mandated health insurance coverages. The bill provides that, rather than the current practice of designating all exemptions within each statutory section that describes the specific mandate being imposed, every “mandatory health benefit” applies only to the type of health benefit plan defined in s. 627.6699(3), F.S.,<sup>14</sup> unless the mandate specifically designates otherwise. The bill defines “mandatory health benefits” to mean those set forth in s. 627.6401, F.S., through s. 627.64193, F.S., along with any cross-references, and all mandatory treatment or health coverages or benefits that are enacted after the effective date of the bill.

**Section 10** amends s. 627.7015, F.S., relating to alternative procedures for claim dispute resolution for personal lines and commercial residential property insurance. The bill specifies that the alternative dispute resolution procedure can be requested only by the policyholder, as a first-party claimant, or by the insurer. For all purposes within the alternative dispute resolution procedure, every current reference to either “insured” or “first-party claimant” is replaced in the bill with the term “policyholder.” The bill adds an exception to the circumstances under which a claim would qualify for the alternative procedure for claim dispute resolution. Under current law, for purposes of the alternative dispute resolution procedure, the term “claim” means any dispute between an insurer and an insured over a material issue of fact, with four specified exceptions. The bill adds a fifth specific exception, namely that when the notice of loss is reported more than 36 months after a declaration of a state of emergency by the Governor in response to a hurricane, the alternative claim dispute resolution process is not available.

**Section 11** amends s. 627.7295, F.S., relating to motor vehicle insurance contracts. The bill allows the cancellation of a private passenger motor vehicle insurance policy, regardless of whether the first 2 months of premiums need to be paid up front, within the first 60 days for nonpayment of premium when the check or other method of payment presented is subsequently dishonored. The bill also removes current language that limits the cancellation of policies within the first 60 days only for the reason of nonpayment of premium. This section is effective upon the act becoming a law.

**Section 12** amends s. 627.736, F.S., by clarifying that when an insurer fails to meet the statutory requirements for timely payment of PIP benefits, the obligation will accrue interest at the rate established in the contract or the statutory interest rate that applies to judgments and decrees, whichever is greater, that is in effect on the date the payment became overdue. This provision specifies a more precise date than the current statutory language which states that the interest is to be applied “for the year in which the payment became overdue.” This section is effective upon the act becoming a law.

**Section 13** provides an effective date of July 1, 2012, except for sections 11 and 12, which are effective upon the act becoming a law.

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<sup>14</sup> Section 627.6699(3)(b), F.S., defines the “basic health benefit plan” and the “standard health benefit plan,” with a cross reference s. 627.6699(12), F.S. Section 627.6699(3)(k), F.S., defines “health benefit plan.” Section 627.6699(3)(m), F.S., defines “limited benefit policy or contract,” to provide specified-disease or specified-accident coverage, or one that fulfills an experimental or reasonable need.

**Other Potential Implications:****IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Salvage motor vehicle dealers will save the cost of the premiums for the purchase of the \$25,000 combined single-limit liability coverage for bodily injury and property damage, and the \$10,000 PIP coverage, for vehicles that have been issued a certificate of destruction and cannot be operated legally on state roads.

A residential property insurer with surplus as to policyholders of greater than \$20 million, but not more than \$25 million can now qualify as an LAC for the purpose of receiving advances from the FHCF under s. 215.555(4)(e)3.

**C. Government Sector Impact:**

The bill allows the DFS to administer licensing examinations in Spanish, depending on the percentage of the population who speak Spanish. If the DFS determines that it will provide examinations in Spanish, it will incur incremental costs to develop, administer, and grade the Spanish examinations. The DFS estimates that the development of new examination would be \$45,000. These incremental costs are to be borne by the applicants who elect to take the examinations in Spanish. Based on data obtained from Texas, which administers a Spanish translation examination, the DFS estimates that a candidate taking the Spanish translation examination would pay \$341 for the examination, rather than the current cost of \$43 to take the examination in English.

The DFS reports that in order to comply with the bill's procedure for travel insurance agents, it will need to make changes to its computer system, which it estimates will cost approximately \$5,000.

Provisions in the bill will require policy contract changes for travel insurance, motor vehicle insurance, health insurance and residential property insurance contracts and rates. The OIR anticipates that its product review units will have significant workload increases. The amount of this impact is indeterminate at this point.

#### **VI. Technical Deficiencies:**

Section 9 of the bill specifies that mandatory health benefits are to be applied only to the types of health benefit plan that is defined in s. 627.6699(3), F.S., unless specifically designated otherwise. However, s. 627.6699(3)(m), F.S., defines “limited benefit policy or contract,” as providing specified-disease or specified-accident coverage. These are two of the most prevalent exemptions from mandated coverages under current law.

#### **VII. Related Issues:**

Section 6 of the bill defines an “automated claims adjudication system” as a preprogrammed computer system used to resolve portable electronics insurance claims. The term portable electronics insurance is not currently defined in the insurance code nor in the bill.

#### **VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Banking and Insurance on February 2, 2012:**

The CS prohibits a patronage dividend or other payment from being be paid to a production credit association or a federal land bank association, if the payment is directly or indirectly based on the premium charged to that member for crop hail or multi-peril crop insurance, and specifies that any such payment is an unlawful rebate in violation of ss. 626.573, F.S., and 626.9541(1)(h), F.S.

The CS removes provisions in the original bill that would have established 120 days as the notice requirement for cancelling or nonrenewing residential property insurance policies in most circumstances.

The CS provides that if requested by the policyholder, any person having relevant information would be allowed to attend a session of the mediated claim resolution process for personal lines and commercial residential policies.

The CS provides that sections 11 and 12 of the bill are to be effective upon the act becoming a law.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Richter

37-00755D-12

20121620\_\_

1 A bill to be entitled  
 2 An act relating to insurance; amending s. 320.27,  
 3 F.S.; providing that a salvage motor vehicle dealer is  
 4 not required to carry certain insurance on vehicles  
 5 that have been issued a certificate of destruction;  
 6 amending s. 624.501, F.S.; conforming a cross-  
 7 reference; amending s. 624.610, F.S.; revising  
 8 provisions specifying which insurers are not subject  
 9 to certain filing requirements relating to  
 10 reinsurance; amending s. 626.261, F.S.; authorizing  
 11 the Department of Financial Services to provide  
 12 examinations in Spanish; amending s. 626.321, F.S.;  
 13 revising provisions relating to limited licenses for  
 14 travel insurance; providing that a full-time salaried  
 15 employee of a licensed general lines agent or a  
 16 business entity that offers travel planning services  
 17 may be issued such license under certain  
 18 circumstances; creating s. 626.8675, F.S.; providing  
 19 that provisions relating to insurance adjusters do not  
 20 apply to individuals who conduct data entry into an  
 21 automated claims adjustment system for portable  
 22 electronics insurance claims; amending s. 627.351,  
 23 F.S.; increasing the amount of surplus required for an  
 24 association to qualify as a limited apportionment  
 25 company; amending s. 627.4133, F.S.; revising  
 26 provisions relating to the notice that an insurer must  
 27 provide to an insured regarding the nonrenewal,  
 28 cancellation, or termination of a commercial  
 29 residential property insurance policy; creating s.

Page 1 of 36

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37-00755D-12

20121620\_\_

30 627.6011, F.S.; providing that mandatory health  
 31 benefits apply only to certain health benefit plans;  
 32 amending s. 627.7015, F.S.; revising provisions  
 33 relating to alternative procedures for the resolution  
 34 of disputed property insurance claims; amending s.  
 35 627.7295, F.S.; revising provisions relating to  
 36 cancellation for nonpayment of premiums for motor  
 37 vehicle insurance; amending s. 627.736, F.S.;  
 38 clarifying provisions relating to the amount of  
 39 interest on overdue payments for personal injury  
 40 protection benefits; providing an effective date.  
 41  
 42 Be It Enacted by the Legislature of the State of Florida:  
 43  
 44 Section 1. Subsection (3) of section 320.27, Florida  
 45 Statutes, is amended to read:  
 46 320.27 Motor vehicle dealers.—  
 47 (3) APPLICATION AND FEE.—The application for the license  
 48 shall be in such form as may be prescribed by the department and  
 49 shall be subject to such rules with respect thereto as may be so  
 50 prescribed by it. Such application shall be verified by oath or  
 51 affirmation and shall contain a full statement of the name and  
 52 birth date of the person or persons applying therefor; the name  
 53 of the firm or copartnership, with the names and places of  
 54 residence of all members thereof, if such applicant is a firm or  
 55 copartnership; the names and places of residence of the  
 56 principal officers, if the applicant is a body corporate or  
 57 other artificial body; the name of the state under whose laws  
 58 the corporation is organized; the present and former place or

Page 2 of 36

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37-00755D-12

20121620\_\_

59 places of residence of the applicant; and prior business in  
 60 which the applicant has been engaged and the location thereof.  
 61 Such application shall describe the exact location of the place  
 62 of business and shall state whether the place of business is  
 63 owned by the applicant and when acquired, or, if leased, a true  
 64 copy of the lease shall be attached to the application. The  
 65 applicant shall certify that the location provides an adequately  
 66 equipped office and is not a residence; that the location  
 67 affords sufficient unoccupied space upon and within which  
 68 adequately to store all motor vehicles offered and displayed for  
 69 sale; and that the location is a suitable place where the  
 70 applicant can in good faith carry on such business and keep and  
 71 maintain books, records, and files necessary to conduct such  
 72 business, which will be available at all reasonable hours to  
 73 inspection by the department or any of its inspectors or other  
 74 employees. The applicant shall certify that the business of a  
 75 motor vehicle dealer is the principal business which shall be  
 76 conducted at that location. Such application shall contain a  
 77 statement that the applicant is either franchised by a  
 78 manufacturer of motor vehicles, in which case the name of each  
 79 motor vehicle that the applicant is franchised to sell shall be  
 80 included, or an independent (nonfranchised) motor vehicle  
 81 dealer. Such application shall contain such other relevant  
 82 information as may be required by the department, including  
 83 evidence that the applicant is insured under a garage liability  
 84 insurance policy or a general liability insurance policy coupled  
 85 with a business automobile policy, which shall include, at a  
 86 minimum, \$25,000 combined single-limit liability coverage  
 87 including bodily injury and property damage protection and

Page 3 of 36

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37-00755D-12

20121620\_\_

88 \$10,000 personal injury protection. However, a salvage motor  
 89 vehicle dealer as defined in subparagraph (1)(c)5. is exempt  
 90 from the requirements for garage liability insurance and  
 91 personal injury protection insurance on those vehicles that have  
 92 been issued a certificate of destruction and cannot be operated  
 93 legally on state roads, highways, or streets. Franchise dealers  
 94 must submit a garage liability insurance policy, and all other  
 95 dealers must submit a garage liability insurance policy or a  
 96 general liability insurance policy coupled with a business  
 97 automobile policy. Such policy shall be for the license period,  
 98 and evidence of a new or continued policy shall be delivered to  
 99 the department at the beginning of each license period. Upon  
 100 making initial application, the applicant shall pay to the  
 101 department a fee of \$300 in addition to any other fees now  
 102 required by law; upon making a subsequent renewal application,  
 103 the applicant shall pay to the department a fee of \$75 in  
 104 addition to any other fees now required by law. Upon making an  
 105 application for a change of location, the person shall pay a fee  
 106 of \$50 in addition to any other fees now required by law. The  
 107 department shall, in the case of every application for initial  
 108 licensure, verify whether certain facts set forth in the  
 109 application are true. Each applicant, general partner in the  
 110 case of a partnership, or corporate officer and director in the  
 111 case of a corporate applicant, must file a set of fingerprints  
 112 with the department for the purpose of determining any prior  
 113 criminal record or any outstanding warrants. The department  
 114 shall submit the fingerprints to the Department of Law  
 115 Enforcement for state processing and forwarding to the Federal  
 116 Bureau of Investigation for federal processing. The actual cost

Page 4 of 36

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37-00755D-12 20121620\_\_  
 117 of state and federal processing shall be borne by the applicant  
 118 and is in addition to the fee for licensure. The department may  
 119 issue a license to an applicant pending the results of the  
 120 fingerprint investigation, which license is fully revocable if  
 121 the department subsequently determines that any facts set forth  
 122 in the application are not true or correctly represented.

123 Section 2. Paragraph (b) of subsection (9) of section  
 124 624.501, Florida Statutes, is amended to read:

125 624.501 Filing, license, appointment, and miscellaneous  
 126 fees.—The department, commission, or office, as appropriate,  
 127 shall collect in advance, and persons so served shall pay to it  
 128 in advance, fees, licenses, and miscellaneous charges as  
 129 follows:

130 (9)

131 (b) For all limited appointments as agent, as provided ~~for~~  
 132 in s. 626.321(1)(c) and (d) ~~626.321(1)(d)~~, the agent's original  
 133 appointment and biennial renewal or continuation thereof for  
 134 each insurer is shall be equal to the number of offices, branch  
 135 offices, or places of business covered by the license multiplied  
 136 by the fees set forth in paragraph (a).

137 Section 3. Paragraph (c) of subsection (11) of section  
 138 624.610, Florida Statutes, is amended to read:

139 624.610 Reinsurance.—

140 (11)

141 (c) This subsection applies to cessions of directly written  
 142 risk or loss. This subsection does not apply to contracts of  
 143 facultative reinsurance or to any ceding insurer that has a with  
 144 surplus as to policyholders which that exceeds \$100 million as  
 145 of the immediately preceding December 31. A ~~Additionally, any~~

37-00755D-12 20121620\_\_  
 146 ceding insurer otherwise subject to this section which had with  
 147 less than \$500,000 in direct premiums written in this state  
 148 during the preceding calendar year and no more than \$250,000 in  
 149 direct premiums written in this state during the preceding  
 150 calendar quarter, or which had with less than 1,000  
 151 policyholders at the end of the preceding calendar year, is  
 152 exempt from ~~the requirements of~~ this subsection. ~~However, any~~  
 153 ~~ceding insurer otherwise subject to this section with more than~~  
 154 ~~\$250,000 in direct premiums written in this state during the~~  
 155 ~~preceding calendar quarter is not exempt from the requirements~~  
 156 ~~of this subsection.~~

157 Section 4. Subsection (5) is added to section 626.261,  
 158 Florida Statutes, to read:

159 626.261 Conduct of examination.—

160 (5) The department may provide licensure examinations in  
 161 Spanish. Applicants requesting examination or reexamination in  
 162 Spanish must bear the full cost of the department's development,  
 163 preparation, administration, grading, and evaluation of the  
 164 Spanish-language examination. When determining whether it is in  
 165 the public interest to allow the examination to be translated  
 166 into and administered in Spanish, the department shall consider  
 167 the percentage of the population who speak Spanish.

168 Section 5. Paragraph (c) of subsection (1) of section  
 169 626.321, Florida Statutes, is amended to read:

170 626.321 Limited licenses.—

171 (1) The department shall issue to a qualified individual,  
 172 or a qualified individual or entity under paragraphs (c), (d),  
 173 (e), and (i), a license as agent authorized to transact a  
 174 limited class of business in any of the following categories:

37-00755D-12

20121620\_\_

175 (c) *Travel insurance.*—License covering only policies and  
 176 certificates of travel insurance, which are subject to review by  
 177 the office under ~~s. 624.605(1)(g)~~. Policies and certificates of  
 178 travel insurance may provide coverage for risks incidental to  
 179 travel, planned travel, or accommodations while traveling,  
 180 including, but not limited to, accidental death and  
 181 dismemberment of a traveler; trip or event cancellation,  
 182 interruption, or delay; loss of or damage to personal effects or  
 183 travel documents; damages to travel accommodations; baggage  
 184 delay; emergency medical travel or evacuation of a traveler; or  
 185 medical, surgical, and hospital expenses related to an illness  
 186 or emergency of a traveler. ~~Any~~ Such policy or certificate may  
 187 be issued for terms longer than 90 ~~60~~ days, but ~~each policy or~~  
 188 ~~certificate~~, other than a policy or certificate providing  
 189 coverage for air ambulatory services only, each policy or  
 190 certificate must be limited to coverage for travel or use of  
 191 accommodations of no longer than 90 ~~60~~ days. The license may be  
 192 issued only:

193 1. To a full-time salaried employee of a common carrier or  
 194 a full-time salaried employee or owner of a transportation  
 195 ticket agency and may authorize the sale of such ticket policies  
 196 only in connection with the sale of transportation tickets, or  
 197 to the full-time salaried employee of such an agent. ~~No~~ Such  
 198 policy ~~may not shall~~ be for a ~~duration of~~ more than 48 hours or  
 199 more than ~~for~~ the duration of a specified one-way trip or round  
 200 trip.

201 2. To an entity or individual that is:

202 a. The developer of a timeshare plan that is the subject of  
 203 an approved public offering statement under chapter 721;

Page 7 of 36

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37-00755D-12

20121620\_\_

204 b. An exchange company operating an exchange program  
 205 approved under chapter 721;  
 206 c. A managing entity operating a timeshare plan approved  
 207 under chapter 721;  
 208 d. A seller of travel as defined in chapter 559; or  
 209 e. A subsidiary or affiliate of any of the entities  
 210 described in sub-subparagraphs a.-d.

211  
 212 A licensee shall require each individual ~~employee~~ who offers  
 213 policies or certificates under this subparagraph to receive  
 214 initial training from a general lines agent or an insurer  
 215 authorized under chapter 624 to transact insurance within this  
 216 state. For an entity applying for a license as a travel  
 217 insurance agent, the fingerprinting requirement of this section  
 218 applies only to the president, secretary, and treasurer and to  
 219 any other officer or person who directs or controls the travel  
 220 insurance operations of the entity.

221 3. To a full-time salaried employee of a licensed general  
 222 lines agent or to a business entity that offers travel planning  
 223 services if insurance sales activities authorized by the license  
 224 are in connection with, and incidental to, travel.

225 a. A license issued to a business entity that offers travel  
 226 planning services must encompass each office, branch office, or  
 227 place of business making use of the entity's business name in  
 228 order to offer, solicit, and sell insurance pursuant to this  
 229 paragraph.

230 b. The application for licensure must list the name,  
 231 address, and phone number for each office, branch office, or  
 232 place of business that is to be covered by the license. The

Page 8 of 36

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37-00755D-12 20121620

233 licensee shall notify the department of the name, address, and  
 234 phone number of any new location that is to be covered by the  
 235 license before the new office, branch office, or place of  
 236 business engages in the sale of insurance pursuant to this  
 237 paragraph. The licensee shall notify the department within 30  
 238 days after the closing or terminating of an office, branch  
 239 office, or place of business. Upon receipt of the notice, the  
 240 department shall delete the office, branch office, or place of  
 241 business from the license.

242 c. A licensed and appointed entity is directly responsible  
 243 and accountable for all acts of the licensee's employees and  
 244 parties with whom the licensee has entered into a contractual  
 245 agreement to offer travel insurance.

246 Section 6. Section 626.8675, Florida Statutes, is created  
 247 to read:

248 626.8675 Portable electronics insurance claims employee  
 249 exemption.-

250 (1) This part does not apply to individuals who collect  
 251 claims information from, or furnish claims information to,  
 252 insureds or claimants, and who conduct data entry, including  
 253 entering data into an automated claims adjudication system, if  
 254 such individuals are employees of a business entity licensed  
 255 under this chapter, or its affiliate, where up to 25 such  
 256 individuals are under the supervision of a licensed independent  
 257 adjuster or licensed agent who is exempt from licensure pursuant  
 258 to s. 626.862. For purposes of this section, "automated claims  
 259 adjudication system" means a preprogrammed computer system  
 260 designed for the collection, data entry, calculation, and final  
 261 resolution of portable electronics insurance claims that:

37-00755D-12 20121620

262 (a) May be used only by a licensed independent adjuster,  
 263 licensed agent, or supervised individual operating pursuant to  
 264 this section;

265 (b) Must comply with all claims payment requirements of the  
 266 insurance code; and

267 (c) Must be certified as compliant with this section by a  
 268 licensed independent adjuster who is an officer of a licensed  
 269 business entity under this chapter.

270 (2) Notwithstanding any other provision of law, a resident  
 271 of Canada may not be licensed as a nonresident independent  
 272 adjuster for purposes of adjusting portable electronics  
 273 insurance claims unless that person has successfully obtained an  
 274 adjuster license in another state.

275 Section 7. Paragraph (b) of subsection (2) of section  
 276 627.351, Florida Statutes, is amended to read:

277 627.351 Insurance risk apportionment plans.-

278 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.-

279 (b) The department shall require all insurers holding a  
 280 certificate of authority to transact property insurance on a  
 281 direct basis in this state, other than joint underwriting  
 282 associations and other entities formed pursuant to this section,  
 283 to provide windstorm coverage to applicants from areas  
 284 determined to be eligible pursuant to paragraph (c) who in good  
 285 faith are entitled to, but are unable to procure, such coverage  
 286 through ordinary means; or it shall adopt a reasonable plan or  
 287 plans for the equitable apportionment or sharing among such  
 288 insurers of windstorm coverage, which may include formation of  
 289 an association for this purpose. As used in this subsection, the  
 290 term "property insurance" means insurance on real or personal

37-00755D-12 20121620\_\_  
 291 property, as defined in s. 624.604, including insurance for  
 292 fire, industrial fire, allied lines, farmowners multiperil,  
 293 homeowners' multiperil, commercial multiperil, and mobile homes,  
 294 and including liability coverages on all such insurance, but  
 295 excluding inland marine as defined in s. 624.607(3) and  
 296 excluding vehicle insurance as defined in s. 624.605(1)(a) other  
 297 than insurance on mobile homes used as permanent dwellings. The  
 298 department shall adopt rules that provide a formula for the  
 299 recovery and repayment of any deferred assessments.

300 1. For the purpose of this section, properties eligible for  
 301 such windstorm coverage are defined as dwellings, buildings, and  
 302 other structures, including mobile homes which are used as  
 303 dwellings and which are tied down in compliance with mobile home  
 304 tie-down requirements prescribed by the Department of Highway  
 305 Safety and Motor Vehicles pursuant to s. 320.8325, and the  
 306 contents of all such properties. An applicant or policyholder is  
 307 eligible for coverage only if an offer of coverage cannot be  
 308 obtained by or for the applicant or policyholder from an  
 309 admitted insurer at approved rates.

310 2.a.(I) All insurers required to be members of such  
 311 association shall participate in its writings, expenses, and  
 312 losses. Surplus of the association shall be retained for the  
 313 payment of claims and shall not be distributed to the member  
 314 insurers. Such participation by member insurers shall be in the  
 315 proportion that the net direct premiums of each member insurer  
 316 written for property insurance in this state during the  
 317 preceding calendar year bear to the aggregate net direct  
 318 premiums for property insurance of all member insurers, as  
 319 reduced by any credits for voluntary writings, in this state

37-00755D-12 20121620\_\_  
 320 during the preceding calendar year. For the purposes of this  
 321 subsection, the term "net direct premiums" means direct written  
 322 premiums for property insurance, reduced by premium for  
 323 liability coverage and for the following if included in allied  
 324 lines: rain and hail on growing crops; livestock; association  
 325 direct premiums booked; National Flood Insurance Program direct  
 326 premiums; and similar deductions specifically authorized by the  
 327 plan of operation and approved by the department. A member's  
 328 participation shall begin on the first day of the calendar year  
 329 following the year in which it is issued a certificate of  
 330 authority to transact property insurance in the state and shall  
 331 terminate 1 year after the end of the calendar year during which  
 332 it no longer holds a certificate of authority to transact  
 333 property insurance in the state. The commissioner, after review  
 334 of annual statements, other reports, and any other statistics  
 335 that the commissioner deems necessary, shall certify to the  
 336 association the aggregate direct premiums written for property  
 337 insurance in this state by all member insurers.

338 (II) Effective July 1, 2002, the association shall operate  
 339 subject to the supervision and approval of a board of governors  
 340 who are the same individuals that have been appointed by the  
 341 Treasurer to serve on the board of governors of the Citizens  
 342 Property Insurance Corporation.

343 (III) The plan of operation shall provide a formula whereby  
 344 a company voluntarily providing windstorm coverage in affected  
 345 areas will be relieved wholly or partially from apportionment of  
 346 a regular assessment pursuant to sub-sub-subparagraph d.(I) or  
 347 sub-sub-subparagraph d.(II).

348 (IV) A company which is a member of a group of companies

37-00755D-12 20121620  
 349 under common management may elect to have its credits applied on  
 350 a group basis, and any company or group may elect to have its  
 351 credits applied to any other company or group.

352 (V) There shall be no credits or relief from apportionment  
 353 to a company for emergency assessments collected from its  
 354 policyholders under sub-sub-subparagraph d.(III).

355 (VI) The plan of operation may also provide for the award  
 356 of credits, for a period not to exceed 3 years, from a regular  
 357 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-  
 358 subparagraph d.(II) as an incentive for taking policies out of  
 359 the Residential Property and Casualty Joint Underwriting  
 360 Association. In order to qualify for the exemption under this  
 361 sub-sub-subparagraph, the take-out plan must provide that at  
 362 least 40 percent of the policies removed from the Residential  
 363 Property and Casualty Joint Underwriting Association cover risks  
 364 located in Miami-Dade, Broward, and Palm Beach Counties or at  
 365 least 30 percent of the policies so removed cover risks located  
 366 in Miami-Dade, Broward, and Palm Beach Counties and an  
 367 additional 50 percent of the policies so removed cover risks  
 368 located in other coastal counties, and must also provide that no  
 369 more than 15 percent of the policies so removed may exclude  
 370 windstorm coverage. With the approval of the department, the  
 371 association may waive these geographic criteria for a take-out  
 372 plan that removes at least the lesser of 100,000 Residential  
 373 Property and Casualty Joint Underwriting Association policies or  
 374 15 percent of the total number of Residential Property and  
 375 Casualty Joint Underwriting Association policies, provided the  
 376 governing board of the Residential Property and Casualty Joint  
 377 Underwriting Association certifies that the take-out plan will

37-00755D-12 20121620  
 378 materially reduce the Residential Property and Casualty Joint  
 379 Underwriting Association's 100-year probable maximum loss from  
 380 hurricanes. With the approval of the department, the board may  
 381 extend such credits for an additional year if the insurer  
 382 guarantees an additional year of renewability for all policies  
 383 removed from the Residential Property and Casualty Joint  
 384 Underwriting Association, or for 2 additional years if the  
 385 insurer guarantees 2 additional years of renewability for all  
 386 policies removed from the Residential Property and Casualty  
 387 Joint Underwriting Association.

388 b. Assessments to pay deficits in the association under  
 389 this subparagraph shall be included as an appropriate factor in  
 390 the making of rates as provided in s. 627.3512.

391 c. The Legislature finds that the potential for unlimited  
 392 deficit assessments under this subparagraph may induce insurers  
 393 to attempt to reduce their writings in the voluntary market, and  
 394 that such actions would worsen the availability problems that  
 395 the association was created to remedy. It is the intent of the  
 396 Legislature that insurers remain fully responsible for paying  
 397 regular assessments and collecting emergency assessments for any  
 398 deficits of the association; however, it is also the intent of  
 399 the Legislature to provide a means by which assessment  
 400 liabilities may be amortized over a period of years.

401 d.(I) When the deficit incurred in a particular calendar  
 402 year is 10 percent or less of the aggregate statewide direct  
 403 written premium for property insurance for the prior calendar  
 404 year for all member insurers, the association shall levy an  
 405 assessment on member insurers in an amount equal to the deficit.

406 (II) When the deficit incurred in a particular calendar

37-00755D-12 20121620\_\_  
 407 year exceeds 10 percent of the aggregate statewide direct  
 408 written premium for property insurance for the prior calendar  
 409 year for all member insurers, the association shall levy an  
 410 assessment on member insurers in an amount equal to the greater  
 411 of 10 percent of the deficit or 10 percent of the aggregate  
 412 statewide direct written premium for property insurance for the  
 413 prior calendar year for member insurers. Any remaining deficit  
 414 shall be recovered through emergency assessments under sub-sub-  
 415 subparagraph (III).

416 (III) Upon a determination by the board of directors that a  
 417 deficit exceeds the amount that will be recovered through  
 418 regular assessments on member insurers, pursuant to sub-sub-  
 419 subparagraph (I) or sub-sub-subparagraph (II), the board shall  
 420 levy, after verification by the department, emergency  
 421 assessments to be collected by member insurers and by  
 422 underwriting associations created pursuant to this section which  
 423 write property insurance, upon issuance or renewal of property  
 424 insurance policies other than National Flood Insurance policies  
 425 in the year or years following levy of the regular assessments.  
 426 The amount of the emergency assessment collected in a particular  
 427 year shall be a uniform percentage of that year's direct written  
 428 premium for property insurance for all member insurers and  
 429 underwriting associations, excluding National Flood Insurance  
 430 policy premiums, as annually determined by the board and  
 431 verified by the department. The department shall verify the  
 432 arithmetic calculations involved in the board's determination  
 433 within 30 days after receipt of the information on which the  
 434 determination was based. Notwithstanding any other provision of  
 435 law, each member insurer and each underwriting association

37-00755D-12 20121620\_\_  
 436 created pursuant to this section shall collect emergency  
 437 assessments from its policyholders without such obligation being  
 438 affected by any credit, limitation, exemption, or deferment. The  
 439 emergency assessments so collected shall be transferred directly  
 440 to the association on a periodic basis as determined by the  
 441 association. The aggregate amount of emergency assessments  
 442 levied under this sub-sub-subparagraph in any calendar year may  
 443 not exceed the greater of 10 percent of the amount needed to  
 444 cover the original deficit, plus interest, fees, commissions,  
 445 required reserves, and other costs associated with financing of  
 446 the original deficit, or 10 percent of the aggregate statewide  
 447 direct written premium for property insurance written by member  
 448 insurers and underwriting associations for the prior year, plus  
 449 interest, fees, commissions, required reserves, and other costs  
 450 associated with financing the original deficit. The board may  
 451 pledge the proceeds of the emergency assessments under this sub-  
 452 sub-subparagraph as the source of revenue for bonds, to retire  
 453 any other debt incurred as a result of the deficit or events  
 454 giving rise to the deficit, or in any other way that the board  
 455 determines will efficiently recover the deficit. The emergency  
 456 assessments under this sub-sub-subparagraph shall continue as  
 457 long as any bonds issued or other indebtedness incurred with  
 458 respect to a deficit for which the assessment was imposed remain  
 459 outstanding, unless adequate provision has been made for the  
 460 payment of such bonds or other indebtedness pursuant to the  
 461 document governing such bonds or other indebtedness. Emergency  
 462 assessments collected under this sub-sub-subparagraph are not  
 463 part of an insurer's rates, are not premium, and are not subject  
 464 to premium tax, fees, or commissions; however, failure to pay

37-00755D-12 20121620\_\_

465 the emergency assessment shall be treated as failure to pay  
466 premium.

467 (IV) Each member insurer's share of the total regular  
468 assessments under sub-sub-subparagraph (I) or sub-sub-  
469 subparagraph (II) shall be in the proportion that the insurer's  
470 net direct premium for property insurance in this state, for the  
471 year preceding the assessment bears to the aggregate statewide  
472 net direct premium for property insurance of all member  
473 insurers, as reduced by any credits for voluntary writings for  
474 that year.

475 (V) If regular deficit assessments are made under sub-sub-  
476 subparagraph (I) or sub-sub-subparagraph (II), or by the  
477 Residential Property and Casualty Joint Underwriting Association  
478 under sub-subparagraph (6) (b) 3.a. ~~or sub-subparagraph~~  
479 ~~(6) (b) 3.b.~~, the association shall levy upon the association's  
480 policyholders, as part of its next rate filing, or by a separate  
481 rate filing solely for this purpose, a market equalization  
482 surcharge in a percentage equal to the total amount of such  
483 regular assessments divided by the aggregate statewide direct  
484 written premium for property insurance for member insurers for  
485 the prior calendar year. Market equalization surcharges under  
486 this sub-sub-subparagraph are not considered premium and are not  
487 subject to commissions, fees, or premium taxes; however, failure  
488 to pay a market equalization surcharge shall be treated as  
489 failure to pay premium.

490 e. The governing body of any unit of local government, any  
491 residents of which are insured under the plan, may issue bonds  
492 as defined in s. 125.013 or s. 166.101 to fund an assistance  
493 program, in conjunction with the association, for the purpose of

37-00755D-12 20121620\_\_

494 defraying deficits of the association. In order to avoid  
495 needless and indiscriminate proliferation, duplication, and  
496 fragmentation of such assistance programs, any unit of local  
497 government, any residents of which are insured by the  
498 association, may provide for the payment of losses, regardless  
499 of whether or not the losses occurred within or outside of the  
500 territorial jurisdiction of the local government. Revenue bonds  
501 may not be issued until validated pursuant to chapter 75, unless  
502 a state of emergency is declared by executive order or  
503 proclamation of the Governor pursuant to s. 252.36 making such  
504 findings as are necessary to determine that it is in the best  
505 interests of, and necessary for, the protection of the public  
506 health, safety, and general welfare of residents of this state  
507 and the protection and preservation of the economic stability of  
508 insurers operating in this state, and declaring it an essential  
509 public purpose to permit certain municipalities or counties to  
510 issue bonds as will provide relief to claimants and  
511 policyholders of the association and insurers responsible for  
512 apportionment of plan losses. Any such unit of local government  
513 may enter into such contracts with the association and with any  
514 other entity created pursuant to this subsection as are  
515 necessary to carry out this paragraph. Any bonds issued under  
516 this sub-subparagraph shall be payable from and secured by  
517 moneys received by the association from assessments under this  
518 subparagraph, and assigned and pledged to or on behalf of the  
519 unit of local government for the benefit of the holders of such  
520 bonds. The funds, credit, property, and taxing power of the  
521 state or of the unit of local government shall not be pledged  
522 for the payment of such bonds. If any of the bonds remain unsold

37-00755D-12 20121620\_\_  
 523 60 days after issuance, the department shall require all  
 524 insurers subject to assessment to purchase the bonds, which  
 525 shall be treated as admitted assets; each insurer shall be  
 526 required to purchase that percentage of the unsold portion of  
 527 the bond issue that equals the insurer's relative share of  
 528 assessment liability under this subsection. An insurer shall not  
 529 be required to purchase the bonds to the extent that the  
 530 department determines that the purchase would endanger or impair  
 531 the solvency of the insurer. The authority granted by this sub-  
 532 subparagraph is additional to any bonding authority granted by  
 533 subparagraph 6.

534 3. The plan shall also provide that any member with a  
 535 surplus as to policyholders of \$25 ~~\$20~~ million or less writing  
 536 25 percent or more of its total countrywide property insurance  
 537 premiums in this state may petition the department, within the  
 538 first 90 days of each calendar year, to qualify as a limited  
 539 apportionment company. The apportionment of such a member  
 540 company in any calendar year for which it is qualified shall not  
 541 exceed its gross participation, which shall not be affected by  
 542 the formula for voluntary writings. In no event shall a limited  
 543 apportionment company be required to participate in any  
 544 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)  
 545 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds  
 546 \$50 million after payment of available plan funds in any  
 547 calendar year. However, a limited apportionment company shall  
 548 collect from its policyholders any emergency assessment imposed  
 549 under sub-sub-subparagraph 2.d.(III). The plan shall provide  
 550 that, if the department determines that any regular assessment  
 551 will result in an impairment of the surplus of a limited

37-00755D-12 20121620\_\_  
 552 apportionment company, the department may direct that all or  
 553 part of such assessment be deferred. However, there shall be no  
 554 limitation or deferment of an emergency assessment to be  
 555 collected from policyholders under sub-sub-subparagraph  
 556 2.d.(III).

557 4. The plan shall provide for the deferment, in whole or in  
 558 part, of a regular assessment of a member insurer under sub-sub-  
 559 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not  
 560 for an emergency assessment collected from policyholders under  
 561 sub-sub-subparagraph 2.d.(III), if, in the opinion of the  
 562 commissioner, payment of such regular assessment would endanger  
 563 or impair the solvency of the member insurer. In the event a  
 564 regular assessment against a member insurer is deferred in whole  
 565 or in part, the amount by which such assessment is deferred may  
 566 be assessed against the other member insurers in a manner  
 567 consistent with the basis for assessments set forth in sub-sub-  
 568 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

569 5.a. The plan of operation may include deductibles and  
 570 rules for classification of risks and rate modifications  
 571 consistent with the objective of providing and maintaining funds  
 572 sufficient to pay catastrophe losses.

573 b. It is the intent of the Legislature that the rates for  
 574 coverage provided by the association be actuarially sound and  
 575 not competitive with approved rates charged in the admitted  
 576 voluntary market such that the association functions as a  
 577 residual market mechanism to provide insurance only when the  
 578 insurance cannot be procured in the voluntary market. The plan  
 579 of operation shall provide a mechanism to assure that, beginning  
 580 no later than January 1, 1999, the rates charged by the

37-00755D-12 20121620\_\_  
 581 association for each line of business are reflective of approved  
 582 rates in the voluntary market for hurricane coverage for each  
 583 line of business in the various areas eligible for association  
 584 coverage.

585 c. The association shall provide for windstorm coverage on  
 586 residential properties in limits up to \$10 million for  
 587 commercial lines residential risks and up to \$1 million for  
 588 personal lines residential risks. If coverage with the  
 589 association is sought for a residential risk valued in excess of  
 590 these limits, coverage shall be available to the risk up to the  
 591 replacement cost or actual cash value of the property, at the  
 592 option of the insured, if coverage for the risk cannot be  
 593 located in the authorized market. The association must accept a  
 594 commercial lines residential risk with limits above \$10 million  
 595 or a personal lines residential risk with limits above \$1  
 596 million if coverage is not available in the authorized market.  
 597 The association may write coverage above the limits specified in  
 598 this subparagraph with or without facultative or other  
 599 reinsurance coverage, as the association determines appropriate.

600 d. The plan of operation must provide objective criteria  
 601 and procedures, approved by the department, to be uniformly  
 602 applied for all applicants in determining whether an individual  
 603 risk is so hazardous as to be uninsurable. In making this  
 604 determination and in establishing the criteria and procedures,  
 605 the following shall be considered:

606 (I) Whether the likelihood of a loss for the individual  
 607 risk is substantially higher than for other risks of the same  
 608 class; and

609 (II) Whether the uncertainty associated with the individual

37-00755D-12 20121620\_\_  
 610 risk is such that an appropriate premium cannot be determined.

611  
 612 The acceptance or rejection of a risk by the association  
 613 pursuant to such criteria and procedures must be construed as  
 614 the private placement of insurance, and the provisions of  
 615 chapter 120 do not apply.

616 e. If the risk accepts an offer of coverage through the  
 617 market assistance program or through a mechanism established by  
 618 the association, either before the policy is issued by the  
 619 association or during the first 30 days of coverage by the  
 620 association, and the producing agent who submitted the  
 621 application to the association is not currently appointed by the  
 622 insurer, the insurer shall:

623 (I) Pay to the producing agent of record of the policy, for  
 624 the first year, an amount that is the greater of the insurer's  
 625 usual and customary commission for the type of policy written or  
 626 a fee equal to the usual and customary commission of the  
 627 association; or

628 (II) Offer to allow the producing agent of record of the  
 629 policy to continue servicing the policy for a period of not less  
 630 than 1 year and offer to pay the agent the greater of the  
 631 insurer's or the association's usual and customary commission  
 632 for the type of policy written.

633  
 634 If the producing agent is unwilling or unable to accept  
 635 appointment, the new insurer shall pay the agent in accordance  
 636 with sub-sub-subparagraph (I). Subject to the provisions of s.  
 637 627.3517, the policies issued by the association must provide  
 638 that if the association obtains an offer from an authorized

37-00755D-12 20121620\_\_

639 insurer to cover the risk at its approved rates under either a  
 640 standard policy including wind coverage or, if consistent with  
 641 the insurer's underwriting rules as filed with the department, a  
 642 basic policy including wind coverage, the risk is no longer  
 643 eligible for coverage through the association. Upon termination  
 644 of eligibility, the association shall provide written notice to  
 645 the policyholder and agent of record stating that the  
 646 association policy must be canceled as of 60 days after the date  
 647 of the notice because of the offer of coverage from an  
 648 authorized insurer. Other provisions of the insurance code  
 649 relating to cancellation and notice of cancellation do not apply  
 650 to actions under this sub-subparagraph.

651 f. When the association enters into a contractual agreement  
 652 for a take-out plan, the producing agent of record of the  
 653 association policy is entitled to retain any unearned commission  
 654 on the policy, and the insurer shall:

655 (I) Pay to the producing agent of record of the association  
 656 policy, for the first year, an amount that is the greater of the  
 657 insurer's usual and customary commission for the type of policy  
 658 written or a fee equal to the usual and customary commission of  
 659 the association; or

660 (II) Offer to allow the producing agent of record of the  
 661 association policy to continue servicing the policy for a period  
 662 of not less than 1 year and offer to pay the agent the greater  
 663 of the insurer's or the association's usual and customary  
 664 commission for the type of policy written.

665  
 666 If the producing agent is unwilling or unable to accept  
 667 appointment, the new insurer shall pay the agent in accordance

37-00755D-12 20121620\_\_

668 with sub-sub-subparagraph (I).

669 6.a. The plan of operation may authorize the formation of a  
 670 private nonprofit corporation, a private nonprofit  
 671 unincorporated association, a partnership, a trust, a limited  
 672 liability company, or a nonprofit mutual company which may be  
 673 empowered, among other things, to borrow money by issuing bonds  
 674 or by incurring other indebtedness and to accumulate reserves or  
 675 funds to be used for the payment of insured catastrophe losses.  
 676 The plan may authorize all actions necessary to facilitate the  
 677 issuance of bonds, including the pledging of assessments or  
 678 other revenues.

679 b. Any entity created under this subsection, or any entity  
 680 formed for the purposes of this subsection, may sue and be sued,  
 681 may borrow money; issue bonds, notes, or debt instruments;  
 682 pledge or sell assessments, market equalization surcharges and  
 683 other surcharges, rights, premiums, contractual rights,  
 684 projected recoveries from the Florida Hurricane Catastrophe  
 685 Fund, other reinsurance recoverables, and other assets as  
 686 security for such bonds, notes, or debt instruments; enter into  
 687 any contracts or agreements necessary or proper to accomplish  
 688 such borrowings; and take other actions necessary to carry out  
 689 the purposes of this subsection. The association may issue bonds  
 690 or incur other indebtedness, or have bonds issued on its behalf  
 691 by a unit of local government pursuant to subparagraph (6)(q)2.,  
 692 in the absence of a hurricane or other weather-related event,  
 693 upon a determination by the association subject to approval by  
 694 the department that such action would enable it to efficiently  
 695 meet the financial obligations of the association and that such  
 696 financings are reasonably necessary to effectuate the

37-00755D-12 20121620\_\_  
 697 requirements of this subsection. Any such entity may accumulate  
 698 reserves and retain surpluses as of the end of any association  
 699 year to provide for the payment of losses incurred by the  
 700 association during that year or any future year. The association  
 701 shall incorporate and continue the plan of operation and  
 702 articles of agreement in effect on the effective date of chapter  
 703 76-96, Laws of Florida, to the extent that it is not  
 704 inconsistent with chapter 76-96, and as subsequently modified  
 705 consistent with chapter 76-96. The board of directors and  
 706 officers currently serving shall continue to serve until their  
 707 successors are duly qualified as provided under the plan. The  
 708 assets and obligations of the plan in effect immediately prior  
 709 to the effective date of chapter 76-96 shall be construed to be  
 710 the assets and obligations of the successor plan created herein.

711 c. In recognition of s. 10, Art. I of the State  
 712 Constitution, prohibiting the impairment of obligations of  
 713 contracts, it is the intent of the Legislature that no action be  
 714 taken whose purpose is to impair any bond indenture or financing  
 715 agreement or any revenue source committed by contract to such  
 716 bond or other indebtedness issued or incurred by the association  
 717 or any other entity created under this subsection.

718 7. On such coverage, an agent's remuneration shall be that  
 719 amount of money payable to the agent by the terms of his or her  
 720 contract with the company with which the business is placed.  
 721 However, no commission will be paid on that portion of the  
 722 premium which is in excess of the standard premium of that  
 723 company.

724 8. Subject to approval by the department, the association  
 725 may establish different eligibility requirements and operational

37-00755D-12 20121620\_\_  
 726 procedures for any line or type of coverage for any specified  
 727 eligible area or portion of an eligible area if the board  
 728 determines that such changes to the eligibility requirements and  
 729 operational procedures are justified due to the voluntary market  
 730 being sufficiently stable and competitive in such area or for  
 731 such line or type of coverage and that consumers who, in good  
 732 faith, are unable to obtain insurance through the voluntary  
 733 market through ordinary methods would continue to have access to  
 734 coverage from the association. When coverage is sought in  
 735 connection with a real property transfer, such requirements and  
 736 procedures shall not provide for an effective date of coverage  
 737 later than the date of the closing of the transfer as  
 738 established by the transferor, the transferee, and, if  
 739 applicable, the lender.

740 9. Notwithstanding any other provision of law:

741 a. The pledge or sale of, the lien upon, and the security  
 742 interest in any rights, revenues, or other assets of the  
 743 association created or purported to be created pursuant to any  
 744 financing documents to secure any bonds or other indebtedness of  
 745 the association shall be and remain valid and enforceable,  
 746 notwithstanding the commencement of and during the continuation  
 747 of, and after, any rehabilitation, insolvency, liquidation,  
 748 bankruptcy, receivership, conservatorship, reorganization, or  
 749 similar proceeding against the association under the laws of  
 750 this state or any other applicable laws.

751 b. No such proceeding shall relieve the association of its  
 752 obligation, or otherwise affect its ability to perform its  
 753 obligation, to continue to collect, or levy and collect,  
 754 assessments, market equalization or other surcharges, projected

37-00755D-12 20121620\_\_

755 recoveries from the Florida Hurricane Catastrophe Fund,  
756 reinsurance recoverables, or any other rights, revenues, or  
757 other assets of the association pledged.

758 c. Each such pledge or sale of, lien upon, and security  
759 interest in, including the priority of such pledge, lien, or  
760 security interest, any such assessments, emergency assessments,  
761 market equalization or renewal surcharges, projected recoveries  
762 from the Florida Hurricane Catastrophe Fund, reinsurance  
763 recoverables, or other rights, revenues, or other assets which  
764 are collected, or levied and collected, after the commencement  
765 of and during the pendency of or after any such proceeding shall  
766 continue unaffected by such proceeding.

767 d. As used in this subsection, the term "financing  
768 documents" means any agreement, instrument, or other document  
769 now existing or hereafter created evidencing any bonds or other  
770 indebtedness of the association or pursuant to which any such  
771 bonds or other indebtedness has been or may be issued and  
772 pursuant to which any rights, revenues, or other assets of the  
773 association are pledged or sold to secure the repayment of such  
774 bonds or indebtedness, together with the payment of interest on  
775 such bonds or such indebtedness, or the payment of any other  
776 obligation of the association related to such bonds or  
777 indebtedness.

778 e. Any such pledge or sale of assessments, revenues,  
779 contract rights or other rights or assets of the association  
780 shall constitute a lien and security interest, or sale, as the  
781 case may be, that is immediately effective and attaches to such  
782 assessments, revenues, contract, or other rights or assets,  
783 whether or not imposed or collected at the time the pledge or

37-00755D-12 20121620\_\_

784 sale is made. Any such pledge or sale is effective, valid,  
785 binding, and enforceable against the association or other entity  
786 making such pledge or sale, and valid and binding against and  
787 superior to any competing claims or obligations owed to any  
788 other person or entity, including policyholders in this state,  
789 asserting rights in any such assessments, revenues, contract, or  
790 other rights or assets to the extent set forth in and in  
791 accordance with the terms of the pledge or sale contained in the  
792 applicable financing documents, whether or not any such person  
793 or entity has notice of such pledge or sale and without the need  
794 for any physical delivery, recordation, filing, or other action.

795 f. There shall be no liability on the part of, and no cause  
796 of action of any nature shall arise against, any member insurer  
797 or its agents or employees, agents or employees of the  
798 association, members of the board of directors of the  
799 association, or the department or its representatives, for any  
800 action taken by them in the performance of their duties or  
801 responsibilities under this subsection. Such immunity does not  
802 apply to actions for breach of any contract or agreement  
803 pertaining to insurance, or any willful tort.

804 Section 8. Paragraph (b) of subsection (2) of section  
805 627.4133, Florida Statutes, is amended to read:

806 627.4133 Notice of cancellation, nonrenewal, or renewal  
807 premium.—

808 (2) With respect to any personal lines or commercial  
809 residential property insurance policy, including, but not  
810 limited to, any homeowner's, mobile home owner's, farmowner's,  
811 condominium association, condominium unit owner's, apartment  
812 building, or other policy covering a residential structure or

37-00755D-12

20121620\_\_

813 its contents:

814 (b) The insurer shall give the first-named insured written  
 815 notice of nonrenewal, cancellation, or termination at least 120  
 816 ~~100~~ days before the effective date of the nonrenewal,  
 817 cancellation, or termination. ~~However, the insurer shall give at~~  
 818 ~~least 100 days' written notice, or written notice by June 1,~~  
 819 ~~whichever is earlier, for any nonrenewal, cancellation, or~~  
 820 ~~termination that would be effective between June 1 and November~~  
 821 ~~30.~~ The notice must include the ~~reason or~~ reasons for the  
 822 nonrenewal, cancellation, or termination, except that:

823 1. The insurer must ~~shall~~ give the first-named insured  
 824 written notice of nonrenewal, cancellation, or termination at  
 825 least 120 days before ~~prior to~~ the effective date of the  
 826 nonrenewal, cancellation, or termination for a first-named  
 827 insured whose residential structure has been insured by that  
 828 insurer or an affiliated insurer for at least the 5 years before  
 829 ~~a 5-year period immediately prior to~~ the date of the written  
 830 notice.

831 2. If cancellation is for nonpayment of premium, at least  
 832 10 days' written notice of cancellation accompanied by the  
 833 reason therefor must be given. As used in this subparagraph, the  
 834 term "nonpayment of premium" means failure of the named insured  
 835 to discharge when due her or his obligations for in connection  
 836 ~~with~~ the payment of premiums on a policy or any installment of  
 837 such premium, whether the premium is payable directly to the  
 838 insurer or its agent or indirectly under any premium finance  
 839 plan or extension of credit, or failure to maintain membership  
 840 in an organization if such membership is a condition precedent  
 841 to insurance coverage. The term also means the failure of a

37-00755D-12

20121620\_\_

842 financial institution to honor an insurance applicant's check  
 843 after delivery to a licensed agent for payment of a premium,  
 844 even if the agent has previously delivered or transferred the  
 845 premium to the insurer. If a dishonored check represents the  
 846 initial premium payment, the contract and all contractual  
 847 obligations are void ab initio unless the nonpayment is cured  
 848 within the earlier of 5 days after actual notice by certified  
 849 mail is received by the applicant or 15 days after notice is  
 850 sent to the applicant by certified mail or registered mail, ~~and~~  
 851 If the contract is void, any premium received by the insurer  
 852 from a third party must be refunded to that party in full.

853 3. If ~~such~~ cancellation or termination occurs during the  
 854 first 90 days the insurance is in force and the insurance is  
 855 canceled or terminated for reasons other than nonpayment of  
 856 premium, at least 20 days' written notice of cancellation or  
 857 termination accompanied by the reason therefor must be given  
 858 unless there has been a material misstatement or  
 859 misrepresentation or failure to comply with the underwriting  
 860 requirements established by the insurer.

861 4. After the policy has been in effect for 90 days, it may  
 862 not be canceled by the insurer unless there has been a material  
 863 misstatement, a nonpayment of premium, a failure to comply with  
 864 underwriting requirements established by the insurer within 90  
 865 days after the date of effectuation of coverage, or a  
 866 substantial change in the risk covered by the policy or unless  
 867 the cancellation applies to all insureds for a given class of  
 868 insureds under such policies. This subparagraph does not apply  
 869 to individually rated risks having a policy term of less than 90  
 870 days.

37-00755D-12

20121620\_\_

871 ~~4. The requirement for providing written notice by June 1~~  
 872 ~~of any nonrenewal that would be effective between June 1 and~~  
 873 ~~November 30 does not apply to the following situations, but the~~  
 874 ~~insurer remains subject to the requirement to provide such~~  
 875 ~~notice at least 100 days before the effective date of~~  
 876 ~~nonrenewal:~~

877 ~~a. A policy that is nonrenewed due to a revision in the~~  
 878 ~~coverage for sinkhole losses and catastrophic ground cover~~  
 879 ~~collapse pursuant to s. 627.706.~~

880 ~~5.b.~~ A policy that is nonrenewed by Citizens Property  
 881 Insurance Corporation, pursuant to s. 627.351(6), for a policy  
 882 that has been assumed by an authorized insurer offering  
 883 replacement coverage to the policyholder is exempt from the  
 884 notice requirements of paragraph (a) and this paragraph. In such  
 885 cases, the corporation must give the named insured written  
 886 notice of nonrenewal at least 45 days before the effective date  
 887 of the nonrenewal.

888  
 889 ~~After the policy has been in effect for 90 days, the policy may~~  
 890 ~~not be canceled by the insurer unless there has been a material~~  
 891 ~~misstatement, a nonpayment of premium, a failure to comply with~~  
 892 ~~underwriting requirements established by the insurer within 90~~  
 893 ~~days after the date of effectuation of coverage, or a~~  
 894 ~~substantial change in the risk covered by the policy or if the~~  
 895 ~~cancellation is for all insureds under such policies for a given~~  
 896 ~~class of insureds. This paragraph does not apply to individually~~  
 897 ~~rated risks having a policy term of less than 90 days.~~

898 ~~6.5.~~ Notwithstanding any other provision of law, an insurer  
 899 may cancel or nonrenew a property insurance policy after at

Page 31 of 36

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

37-00755D-12

20121620\_\_

900 least 45 days' notice if the office finds that the early  
 901 cancellation of some or all of the insurer's policies is  
 902 necessary to protect the best interests of the public or  
 903 policyholders and the office approves the insurer's plan for  
 904 early cancellation or nonrenewal of some or all of its policies.  
 905 The office may base such finding upon the financial condition of  
 906 the insurer, lack of adequate reinsurance coverage for hurricane  
 907 risk, or other relevant factors. The office may condition its  
 908 finding on the consent of the insurer to be placed under  
 909 administrative supervision pursuant to s. 624.81 or to the  
 910 appointment of a receiver under chapter 631.

911 ~~7.6.~~ A policy covering both a home and motor vehicle may be  
 912 nonrenewed for any reason applicable to ~~either~~ the property or  
 913 motor vehicle insurance after providing 90 days' notice.

914 Section 9. Section 627.6011, Florida Statutes, is created  
 915 to read:

916 627.6011 Mandated coverages.—Mandatory health benefits  
 917 regulated under this chapter which must be covered by an insurer  
 918 are intended to apply only to the type of health benefit plan  
 919 defined in s. 627.6699(3), issued in any market, unless  
 920 specifically designated otherwise. For purposes of this section,  
 921 the term "mandatory health benefits" means those benefits set  
 922 forth in ss. 627.6401-627.64193 and any cross-references to  
 923 these sections, and any other mandatory treatment or health  
 924 coverages or benefits enacted on or after July 1, 2012.

925 Section 10. Subsections (1), (2), (7), and (9) of section  
 926 627.7015, Florida Statutes, are amended to read:

927 627.7015 Alternative procedure for resolution of disputed  
 928 property insurance claims.—

Page 32 of 36

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

37-00755D-12

20121620\_\_

929 (1) ~~PURPOSE AND SCOPE.~~ This section sets forth a  
 930 nonadversarial alternative dispute resolution procedure for a  
 931 mediated claim resolution conference prompted by the need for  
 932 effective, fair, and timely handling of property insurance  
 933 claims. There is a particular need for an informal,  
 934 nonthreatening forum for helping parties who elect this  
 935 procedure to resolve their claims disputes because most  
 936 homeowner's and commercial residential insurance policies  
 937 obligate policyholders insureds to participate in a potentially  
 938 expensive and time-consuming adversarial appraisal process  
 939 ~~before~~ prior to litigation. The procedure set forth in this  
 940 section is designed to bring the parties together for a mediated  
 941 claims settlement conference without any of the trappings or  
 942 drawbacks of an adversarial process. Before resorting to these  
 943 procedures, policyholders insureds and insurers are encouraged  
 944 to resolve claims as quickly and fairly as possible. This  
 945 section is available with respect to claims under personal lines  
 946 and commercial residential policies before ~~for all claimants and~~  
 947 ~~insurers prior to~~ commencing the appraisal process, or before  
 948 commencing litigation. Mediation may be requested only by the  
 949 policyholder, as a first-party claimant, or the insurer. If  
 950 requested by the policyholder insured, participation by legal  
 951 counsel ~~is shall be~~ permitted. Mediation under this section is  
 952 also available to litigants referred to the department by a  
 953 county court or circuit court. This section does not apply to  
 954 commercial coverages, to private passenger motor vehicle  
 955 insurance coverages, or to disputes relating to liability  
 956 coverages in policies of property insurance.

957 (2) At the time a first-party claim within the scope of

37-00755D-12

20121620\_\_

958 this section is filed by the policyholder, the insurer shall  
 959 notify the policyholder ~~all first-party claimants~~ of ~~its their~~  
 960 right to participate in the mediation program under this  
 961 section. The department shall prepare a consumer information  
 962 pamphlet for distribution to persons participating in mediation  
 963 ~~under this section.~~

964 (7) If the insurer fails to comply with subsection (2) by  
 965 failing to notify a policyholder ~~first-party claimant~~ of its  
 966 right to participate in the mediation program under this section  
 967 or if the insurer requests the mediation, and the mediation  
 968 results are rejected by either party, the policyholder is  
 969 ~~insured shall not be~~ required to submit to or participate in any  
 970 contractual loss appraisal process of the property loss damage  
 971 as a precondition to legal action for breach of contract against  
 972 the insurer for its failure to pay the policyholder's claims  
 973 covered by the policy.

974 (9) For purposes of this section, the term "claim" refers  
 975 to any dispute between an insurer and a policyholder an insured  
 976 relating to a material issue of fact other than a dispute:

977 (a) With respect to which the insurer has a reasonable  
 978 basis to suspect fraud;

979 (b) Where, based on agreed-upon facts as to the cause of  
 980 loss, there is no coverage under the policy;

981 (c) With respect to which the insurer has a reasonable  
 982 basis to believe that the policyholder claimant has  
 983 intentionally made a material misrepresentation of fact which is  
 984 relevant to the claim, and the entire request for payment of a  
 985 loss has been denied on the basis of the material  
 986 misrepresentation; ~~or~~

37-00755D-12

20121620\_\_

987 (d) With respect to which the amount in controversy is less  
 988 than \$500, unless the parties agree to mediate a dispute  
 989 involving a lesser amount; ~~or-~~

990 (e) Where the notice of loss is reported to the insurer  
 991 more than 36 months after the declaration of a state of  
 992 emergency by the Governor in response to a hurricane that makes  
 993 landfall in this state.

994 Section 11. Subsection (4) of section 627.7295, Florida  
 995 Statutes, is amended to read:

996 627.7295 Motor vehicle insurance contracts.-

997 (4) ~~if subsection (7) does not apply,~~ The insurer may  
 998 cancel the policy in accordance with this code except that,  
 999 notwithstanding s. 627.728, an insurer may not cancel a new  
 1000 policy or binder during the first 60 days immediately following  
 1001 the effective date of the policy or binder ~~except~~ for nonpayment  
 1002 of premium unless the reason for the cancellation is the  
 1003 issuance of a check for the premium that is dishonored for any  
 1004 reason or any other type of premium payment that was  
 1005 subsequently determined to be rejected or invalid.

1006 Section 12. Paragraph (d) of subsection (4) of section  
 1007 627.736, Florida Statutes, is amended to read:

1008 627.736 Required personal injury protection benefits;  
 1009 exclusions; priority; claims.-

1010 (4) BENEFITS; WHEN DUE.-Benefits due from an insurer under  
 1011 ss. 627.730-627.7405 shall be primary, except that benefits  
 1012 received under any workers' compensation law shall be credited  
 1013 against the benefits provided by subsection (1) and shall be due  
 1014 and payable as loss accrues, upon receipt of reasonable proof of  
 1015 such loss and the amount of expenses and loss incurred which are

37-00755D-12

20121620\_\_

1016 covered by the policy issued under ss. 627.730-627.7405. When  
 1017 the Agency for Health Care Administration provides, pays, or  
 1018 becomes liable for medical assistance under the Medicaid program  
 1019 related to injury, sickness, disease, or death arising out of  
 1020 the ownership, maintenance, or use of a motor vehicle, benefits  
 1021 under ss. 627.730-627.7405 shall be subject to the provisions of  
 1022 the Medicaid program.

1023 (d) All overdue payments ~~shall~~ bear simple interest fixed  
 1024 at the rate established under s. 55.03 or the rate established  
 1025 in the insurance contract, whichever is greater, in effect on  
 1026 the date for the year in which the payment became overdue,  
 1027 calculated from the date the insurer was furnished with written  
 1028 notice of the amount of covered loss. Interest is ~~shall be~~ due  
 1029 at the time payment of the overdue claim is made.

1030 Section 13. This act shall take effect July 1, 2012.



708624

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (6) is added to section 175.351,  
Florida Statutes, to read:

175.351 Municipalities and special fire control districts  
having their own pension plans for firefighters.—For any  
municipality, special fire control district, local law  
municipality, local law special fire control district, or local  
law plan under this chapter, in order for municipalities and  
special fire control districts with their own pension plans for



708624

13 firefighters, or for firefighters and police officers if  
14 included, to participate in the distribution of the tax fund  
15 established pursuant to s. 175.101, local law plans must meet  
16 the minimum benefits and minimum standards set forth in this  
17 chapter.

18 (6) Notwithstanding any other provision, with respect to  
19 any plan established under this chapter, if the municipality or  
20 special fire control district and the plan members' collective  
21 bargaining representative or, if none, a majority of the plan  
22 members, agree to the retirement benefits provided in the plan  
23 or to the use of income from the premium tax provided pursuant  
24 to this chapter, the provisions of the agreement shall be deemed  
25 to comply with this chapter for all purposes. This subsection is  
26 retroactive in application to any agreement entered into or  
27 effective on or after October 1, 2010.

28 Section 2. Subsection (4) of section 185.02, Florida  
29 Statutes, is amended to read:

30 185.02 Definitions.—For any municipality, chapter plan,  
31 local law municipality, or local law plan under this chapter,  
32 the following words and phrases as used in this chapter shall  
33 have the following meanings, unless a different meaning is  
34 plainly required by the context:

35 (4) The term "compensation" or "salary" means, for  
36 noncollectively bargained service earned before July 1, 2011, or  
37 for service earned under collective bargaining agreements in  
38 place before July 1, 2011, the total cash remuneration including  
39 "overtime" paid by the primary employer to a police officer for  
40 services rendered, but not including any payments for extra duty  
41 or special detail work performed on behalf of a second party



708624

42 employer. A local law plan may limit the amount of overtime  
43 payments which can be used for retirement benefit calculation  
44 purposes; ~~however, such overtime limit may not be less than 300~~  
45 ~~hours per officer per calendar year.~~ For noncollectively  
46 bargained service earned on or after July 1, 2011, or for  
47 service earned under collective bargaining agreements entered  
48 into on or after July 1, 2011, the term has the same meaning  
49 except that when calculating retirement benefits, up to 300  
50 hours per year in overtime compensation may be included as  
51 specified in the plan or collective bargaining agreement, but  
52 payments for accrued unused sick or annual leave may not be  
53 included.

54 (a) Any retirement trust fund or plan that meets the  
55 requirements of this chapter does not, solely by virtue of this  
56 subsection, reduce or diminish the monthly retirement income  
57 otherwise payable to each police officer covered by the  
58 retirement trust fund or plan.

59 (b) The member's compensation or salary contributed as  
60 employee-elective salary reductions or deferrals to any salary  
61 reduction, deferred compensation, or tax-sheltered annuity  
62 program authorized under the Internal Revenue Code shall be  
63 deemed to be the compensation or salary the member would receive  
64 if he or she were not participating in such program and shall be  
65 treated as compensation for retirement purposes under this  
66 chapter.

67 (c) For any person who first becomes a member in any plan  
68 year beginning on or after January 1, 1996, compensation for  
69 that plan year may not include any amounts in excess of the  
70 Internal Revenue Code s. 401(a)(17) limitation, as amended by



708624

71 the Omnibus Budget Reconciliation Act of 1993, which limitation  
72 of \$150,000 shall be adjusted as required by federal law for  
73 qualified government plans and shall be further adjusted for  
74 changes in the cost of living in the manner provided by Internal  
75 Revenue Code s. 401(a)(17)(B). For any person who first became a  
76 member before the first plan year beginning on or after January  
77 1, 1996, the limitation on compensation may not be less than the  
78 maximum compensation amount that was allowed to be taken into  
79 account under the plan as in effect on July 1, 1993, which  
80 limitation shall be adjusted for changes in the cost of living  
81 since 1989 in the manner provided by Internal Revenue Code s.  
82 401(a)(17)(1991).

83 Section 3. Subsection (6) is added to section 185.35,  
84 Florida Statutes, to read:

85 185.35 Municipalities having their own pension plans for  
86 police officers.—For any municipality, chapter plan, local law  
87 municipality, or local law plan under this chapter, in order for  
88 municipalities with their own pension plans for police officers,  
89 or for police officers and firefighters if included, to  
90 participate in the distribution of the tax fund established  
91 pursuant to s. 185.08, local law plans must meet the minimum  
92 benefits and minimum standards set forth in this chapter:

93 (6) Notwithstanding any other provision, with respect to  
94 any plan established under this chapter, if the municipality and  
95 the plan members' collective bargaining representative or, if  
96 none, a majority of the plan members, agree to the retirement  
97 benefits provided in the plan or to the use of income from the  
98 premium tax provided pursuant to this chapter, the provisions of  
99 the agreement shall be deemed to comply with this chapter for



708624

100 all purposes. This subsection is retroactive in application to  
101 any agreement entered into or effective on or after October 1,  
102 2010.

103 Section 4. The Legislature finds that a proper and  
104 legitimate state purpose is served when employees and retirees  
105 of the state and its political subdivisions, and the dependents,  
106 survivors, and beneficiaries of such employees and retirees are  
107 extended the basic protections afforded by governmental  
108 retirement systems that provide fair and adequate benefits and  
109 that are managed, administered, and funded in an actuarially  
110 sound manner as required by s. 14, Art. X of the State  
111 Constitution and part VII of chapter 112, Florida Statutes.  
112 Therefore, the Legislature determines and declares that this act  
113 fulfills an important state interest.

114 Section 5. This act shall take effect upon becoming a law.

116 ===== T I T L E A M E N D M E N T =====

117 And the title is amended as follows:

118 Delete everything before the enacting clause  
119 and insert:

120 A bill to be entitled

121 An act relating to public retirement plans; amending  
122 s. 175.351, F.S.; revising provisions relating to  
123 benefits paid from the premium tax by a municipality  
124 or special fire control district that has its own  
125 pension plan; providing for retroactive application;  
126 amending s. 185.02, F.S.; revising the definition of  
127 the term "compensation" or "salary" for purposes of  
128 police officers' pensions; amending s. 185.35, F.S.;



708624

129       revising provisions relating to benefits paid by a  
130       municipality that has its own pension plan; providing  
131       for retroactive application; providing a declaration  
132       of important state interest; providing an effective  
133       date.



935180

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment to Amendment (708624)**

Delete lines 22 - 23  
and insert:  
members, mutually consent to the retirement benefits provided in the plan or to the use of income for retirement benefits from the premium tax provided pursuant

Delete lines 96 - 97  
and insert:  
none, a majority of plan members, mutually consent to the retirement benefits provided in the plan or to the use of income



935180

13

for retirement benefits from the

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/2012

*Meeting Date*

Topic Local Pension

Bill Number 910  
*(if applicable)*

Name Leticia M Adams

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director of Infrastructure & Governance Policy

Address 136 South Bronough Street  
*Street*

Phone 850-544-6866

Tallahassee                      FL                      32301  
*City*                                      *State*                                      *Zip*

E-mail ladams@flchamber.com

Speaking:     For     Against     Information

Representing Florida Chamber of Commerce

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/2012  
Meeting Date

Topic Public Employees' Pension

Bill Number 910  
*(if applicable)*

Name Matt Puckett

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title lobbyist

Address 300 East Brevard St.

Phone 850-222-3329

Tallahassee Fl 32301  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Police Benevolent Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/12

Meeting Date

Topic Pensioning

Bill Number 910  
*(if applicable)*

Name Bill Holmich

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 303 Johns Dr

Phone 850 251 3126

Street

Tallahassee FL 32301

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2 February 2012  
Meeting Date

Topic SB 910 Public Employees

Bill Number SB 910  
*(if applicable)*

Name Jim Catron

Amendment Barcode 708624  
*(if applicable)*

Job Title Mayor/Commissioner

Address 321 SW Rutledge St  
*Street*  
Madison FL 32340  
*City State Zip*

Phone 850 673-8201

E-mail Catronj@aol.com

Speaking:  For  Against  Information

Representing Suwannee River League of Cities & City of Madison

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
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(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic Public Employee / Pension

Bill Number 910  
*(if applicable)*

Name Doug Bell

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 216 Hawk Meadow Dr

Phone 222-3533

*Street*

Tall  
*City*

FL  
*State*

*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Ormond Beach

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/2/11

Meeting Date

Topic Pension

Bill Number 910 (if applicable)

Name Lisa Henning

Amendment Barcode (if applicable)

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr

Phone 766-8808

Tallahassee, FL 32301

E-mail

Speaking: For Against Information

Representing Fraternal Order of Police

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 910  
*(if applicable)*

Name Kraig Conn

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 301 S. Bromough  
Street  
Tall FL 32301  
City State Zip

Phone 222 9684

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic Public Emp 10/60 Bill Number SB 910  
*(if applicable)*

Name JERRY SANSON Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address PO Box 98 Phone 321-777-8188  
*Street*

Cocoa FL 32923 E-mail FISHAWK @ AOL.COM  
*City State Zip*

Speaking:  For  Against  Information

Representing CITIES OF COCOA, ROCKLEDGE, MELBOURNE

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic Public Emp

Bill Number 910  
*(if applicable)*

Name TIM CADDELL

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Gov. Relations Administrator City of Pinellas Park

Address 5851 Park Blvd

Phone 727-541-0721

Street

Pinellas Park

City

State

Zip

E-mail tcaddell@pinellas-park.com

Speaking:  For  Against  Information

Representing City of Pinellas Park

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12  
Meeting Date

Topic Local Pension Plans

Bill Number 910  
(if applicable)

Name Jim Tolley

Amendment Barcode 935180  
(if applicable)

Job Title Gov Relations Director

Address 345 West Madison St.  
Street

Phone 850 224 7333

Tallahassee FL 32301  
City State Zip

E-mail tolley@mindspring.com

Speaking:  For  Against  Information

Representing Florida Prof Firefighters

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2-2-12

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Municipal Retinement

Bill Number 910

Name Dean Parkerson

Amendment Barcode 708627 (if applicable)

Job Title President

935180 (if applicable)

Address 8000 NW 25 ST

Phone 305-525-6250

Street Miami State FL Zip 33122

E-mail deanpark@bellsouth.net

Speaking:  For  Against  Information

Representing South Florida Council of Fire Fighters

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12

Meeting Date

Topic MUNICIPAL RETIREMENT

Bill Number 910

Name ROBERT SUAREZ

Amendment Barcode 208624+935180 (if applicable)

Job Title VICE PRESIDENT, FLORIDA FIREFIGHTERS

Address 345 W. MADISON STREET

Phone

Street

TALLAHASSEE FL 33

E-mail

City

AMENDMENTS

State

Zip

Speaking: [X] For [ ] Against [ ] Information

Representing FLORIDA PROFESSIONAL FIREFIGHTERS

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic Public Employees

Bill Number 910  
*(if applicable)*

Name Frank Newsome

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 2901 Sk Bradford

Phone 576-5858

Street

Tallah FL

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Sheriffs Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 910

INTRODUCER: Banking and Insurance Committee and Senators Hays and Bennett

SUBJECT: Public Employees

DATE: February 3, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	<b>Fav/CS</b>
2.			GO	
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The Division of Retirement of the Department of Management Services (DMS) is responsible for administering the Florida Retirement System and monitoring the actuarial soundness of local government retirement systems that are not part of the Florida Retirement System, as well as pension plans for firefighters and municipal police officers established in chs. 175 and 185, F.S., respectively. In addition, the DMS is responsible for approving the distribution of insurance premium tax revenues to qualified municipal police officer and firefighter pension plans.

In recent years, many state and local governments have experienced budget shortfalls and an increase in the demand for government services due to the economic downturn. This steep market decline has resulted in many governments having reduced assets available to meet future pension obligations while having increased annual required contributions for pensions.

The bill provides that, notwithstanding any plan established under chs. 175 or 185, F.S., if the local government and the plan members' collective bargaining representative or, if none, a majority of the plan members agree to the retirement benefits provided in the plan or to the use from the premium tax, the provisions of the agreement are deemed to comply with this chapter. This provision is retroactive in application to any agreement entered into or effective on or after

October 1, 2010. The bill also eliminates the requirement that a minimum of 300 hours of overtime must be included in the definition of “salary” for police officers plans under ch. 185, F.S.

This bill substantially amends the following sections of the Florida Statutes: 175.351, 185.02, and 185.35.

## **II. Present Situation:**

### **Overview of State and Local Government Retirement Systems**

The Division of Retirement in the Department of Management Services is responsible for monitoring Florida’s state and local government defined benefit pension plans for compliance with Florida laws. However, the local boards of trustees are responsible for overseeing these local plans on a day-to-day basis. The local government plans include local pension plans under the provisions of part VII of ch. 112, F.S., and municipal police and firefighters plans established under the provisions of chs. 175 and 185, F.S., respectively.

The Municipal Police Officers’ Retirement Trust Fund and the Firefighters’ Pension Trust Fund are administered by a local governing board of trustees, which are created in participating cities and special fire control districts, and subject to the regulatory oversight of the Division of Retirement.<sup>1</sup> The membership of the board consists of five members: two residents appointed by the governing body of the municipality or a special fire control district, two police officers or firefighters selected by the active membership, and one member selected by the other four members and approved by the appropriate governing body pro forma, who are subject to two-year terms.<sup>2</sup>

The board of trustees has the authority to invest and reinvest pension trust fund assets into annuities and life insurance contracts in amounts sufficient to provide entitled benefits and initial and subsequent premiums.<sup>3</sup> Under current law, if the trust fund is not sufficient to provide entitled benefits, the municipality pays any additional contributions necessary to maintain the actuarial soundness of the plan.<sup>4</sup>

### **Actuarial Soundness and Minimum Funding Standards for Pension Plans**

Article X, s. 14, of the State Constitution requires the funding of public retirement benefits on a sound actuarial basis:

SECTION 14: State retirement systems benefit changes.- A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members

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<sup>1</sup> Sections 175.061 and 185.05, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Sections 175.071 and 185.06, F.S.

<sup>4</sup> Sections 175.091(1)(d) and 185.07(1)(d), F.S.; *see also* ss. 175.051 and 185.04, F.S., stating, “[f]or any municipality, chapter plan, local law municipality, or local plan under this chapter, actuarial deficits, if any, arising under this chapter are not the obligation of the state.”

or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of ch. 112, F.S., creates minimum operation and funding standards for public employee retirement plans. It is applicable to all units of state, county, special district, and municipal governments participating in or operating a retirement system for public employees, which is funded in whole or in part by public funds.

Pursuant to ch. 112, F.S., a local government may not change retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system and furnished a copy of such statement to the Division of Retirement in the Department of Management Services.<sup>5</sup> The statement also is required to indicate whether the proposed changes comply with s. 14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

### **Municipal Firefighters' Pension Trust Fund and Police Officers' Retirement Trust Fund**

#### ***Funding***

Municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.<sup>6</sup> Funding for these pension plans comes from four sources: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax), employee contributions, other revenue sources, and mandatory payments by the city of any extra amount needed to keep the plan solvent. Most firefighters and police officers participate in these plans.

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.<sup>7</sup> These taxes must be paid to the Department of Revenue on March 1 of each year in an amount equal to 1.75 percent of the gross amount of receipts on the specified policies, and 1.00 percent on annuity policies or contracts, to be distributed into the General Revenue Fund. The insurer is allowed to take credits for the municipal taxes imposed on property and casualty insurance policies used to fund firefighter and police pension trust funds.<sup>8</sup>

The Firefighters' Pension Trust Fund is financed through an excise tax of 1.85 percent imposed on fire insurance companies, fire insurance associations, or other property insurers on the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance.<sup>9</sup> This excise tax is imposed on the policies located within the municipality or special fire control district. It is payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.<sup>10</sup>

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<sup>5</sup> Section 112.63, F.S.

<sup>6</sup> Sections 175.021(1) and 185.01(1), F.S.

<sup>7</sup> Section 624.509, F.S.

<sup>8</sup> Section 624.51055, F.S.

<sup>9</sup> Section 175.091(1), F.S.

<sup>10</sup> Section 175.121, F.S.

The Police Officers' Retirement Trust Fund is financed through an excise tax on casualty insurance policies that amount up to 0.85 percent of the gross receipts on premiums for policies issued within the municipality.<sup>11</sup> Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.<sup>12</sup>

### ***Benefits***

Prior to the 1999 Legislative Session, the statutes contained different benefit levels for "chapter" and "local law" plans. With the amendments in 1999, all cities and districts receiving premium tax proceeds had to meet the same minimum chapter-plan benefit levels in order to be eligible for the state moneys.<sup>13</sup> The legislation also provided that minimum benefits could not be reduced by local charter, ordinance, resolution, or by special act of the Legislature, nor could the minimum benefits or minimum standards be reduced or offset by any other local, state, or federal law that may include firefighters or police officers in its operation, except as provided under s. 112.65, F.S.<sup>14 15</sup>

Local plans were allowed to continue to use the amount of premium tax proceeds for the calendar year 1997 to fund their existing benefits, but were required to enact any missing minimum benefits as the increases in state funds became available. The law also provides that local plans in effect on October 1, 1998, must comply with the minimum benefit provisions of ch. 175 or 185, F.S., only to the extent that additional premium tax revenues become available to fund incrementally the cost of such compliance. Once a plan complies with such minimum benefit provisions, as subsequent additional premium tax revenues become available, they must be used to provide extra benefits.<sup>16</sup> Sections 175.351 and 185.35, F.S., define the term "extra benefits," to mean benefits in addition to or greater than those provided to general employees of the municipality, and in addition to those in existence for firefighters and police officers, respectively, on March 12, 1999.<sup>17</sup>

Any benefits in place on March 12, 1999, must be provided in order to maintain compliance with ch. 175 or 185, F.S., and eligibility for premium tax revenues. According to the DMS, any benefit improvements by a local plan enacted since March 12, 1999, can be reduced, or eliminated.<sup>18</sup> Of the 346 participating plans as of September 30, 2010, 31 have still not met all the required chapter minimum benefits, and of those, 13 are police plans that have failed to satisfy the 300 hours of overtime-minimum benefit.<sup>19</sup>

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<sup>11</sup> Section 185.08, F.S.

<sup>12</sup> Section 185.10, F.S.

<sup>13</sup> Chapter 99-1, L.O.F.

<sup>14</sup> Sections 175.021(2) and 185.01(2), F.S.

<sup>15</sup> Sections 175.381 and 185.39, F.S.

<sup>16</sup> Section 175.351(2), F.S.

<sup>17</sup> Sections 175.351 and 185.02, F.S.

<sup>18</sup> Memorandum from Patricia Shoemaker, Division of Retirement of the Department of Management Services, to Randy Knight, City Manager of Winter Park, dated December 14, 2011.

<sup>19</sup> Department of Management Services SB 910 analysis, dated December 1, 2011.

### III. Effect of Proposed Changes:

**Section 1** amends s. 175.351, F.S., to provide that, notwithstanding any plan established under this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative or, if none, a majority of the plan members mutually consent to the retirement benefits provided in the plan or to the use income for retirement benefits from premium taxes, the provisions of the agreement are deemed to comply with this chapter. This provision is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

**Section 2** amends s. 185.02(4), F.S., by eliminating the requirement that a minimum of 300 hours of overtime must be included in the definition of salary for police officer plans under this chapter.

**Sections 3** amends ss. 185.35, F.S., to provide that, notwithstanding any plan established under this chapter, if the municipality and the plan members' collective bargaining representative or, if none, a majority of the plan members mutually consent to the retirement benefits provided in the plan or to the use from the use of income for retirement benefits from premium taxes, the provisions of the agreement are deemed to comply with this chapter. This provision is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

**Sections 4** provides that the act fulfills an important state interest.

**Section 5** provides that the act shall take effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

To the extent this bill would require a local government to expend funds to comply with its terms, the provisions of section 18(a) of article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (section 4 of the bill) and one of the following relevant exceptions must apply:

- Funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

Indeterminate.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that local governments are allowed to use premium tax revenues for more of their pension funding needs each year, there would be more revenue available to help pay these expenses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 2, 2012:**

The CS made the following changes:

- Eliminates revisions to the workers' compensation presumption under s. 112.18, F.S.
- Eliminates changes relating to the use of premium tax moneys.
- Eliminates changes to definitions of terms in chs. 175 and 185, F.S.
- Removes authority of municipalities and fire districts to establish one or more new plans, or benefit levels within a plan or to transfer all of its police and firefighters into a defined contribution plan or enroll their police and firefighters in the FRS.
- Eliminates reporting requirements

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Hays

20-00646A-12

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1 A bill to be entitled  
 2 An act relating to public employees; amending s.  
 3 112.18, F.S.; revising conditions under which certain  
 4 firefighters, law enforcement officers, correctional  
 5 officers, or correctional probations officers who  
 6 suffer or have died from any of specified medical  
 7 conditions are presumed to have been injured or killed  
 8 accidentally and in the line of duty; revising the  
 9 conditions under which the presumption with respect to  
 10 disability due to any of specified diseases is against  
 11 occurrence in the line of duty for purposes of  
 12 workers' compensation claims; changing an evidentiary  
 13 standard; amending s. 175.061, F.S.; providing duties  
 14 of the board of trustees relating to the reporting of  
 15 expenses and the operation under an administrative  
 16 expense budget; amending s. 175.071, F.S.; revising  
 17 requirements of the board relating to the employment  
 18 of legal counsel, actuaries, and other advisers;  
 19 amending s. 175.231, F.S.; providing medical  
 20 conditions or behaviors that are appropriate for  
 21 consideration in denying or overcoming the presumption  
 22 of accidental disabilities or death suffered in the  
 23 line of duty for firefighters; changing an evidentiary  
 24 standard; amending s. 175.351, F.S.; revising  
 25 provisions relating to benefits paid from the premium  
 26 tax by a municipality or special fire control district  
 27 that has its own pension plan; providing definitions;  
 28 providing a process for determining the allocation of  
 29 the premium tax revenues to a supplemental plan;

Page 1 of 27

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

20-00646A-12

2012910\_\_

30 amending s. 175.361, F.S.; providing certain powers  
 31 and responsibilities to municipalities and special  
 32 fire control districts relating to termination of  
 33 plans and distribution of funds; amending s. 185.02,  
 34 F.S.; revising the definition of the term  
 35 "compensation" or "salary" for purposes of police  
 36 officers' pensions; amending s. 185.05, F.S.;  
 37 authorizing a municipality to change the municipal  
 38 representation of the board of trustees pursuant to  
 39 certain requirements; providing duties of the board of  
 40 trustees relating to the reporting of expenses and the  
 41 operation under an administrative expense budget;  
 42 amending s. 185.06, F.S.; revising requirements of the  
 43 board relating to the employment of legal counsel,  
 44 actuaries, and other advisers; amending s. 185.34,  
 45 F.S.; providing medical conditions or behaviors that  
 46 are appropriate for consideration in denying or  
 47 overcoming the presumption of accidental disabilities  
 48 or death suffered in the line of duty for police  
 49 officers; changing an evidentiary standard; amending  
 50 s. 185.35, F.S.; revising provisions relating to  
 51 benefits paid by a municipality that has its own  
 52 pension plan; providing definitions; providing a  
 53 process for determining the allocation of the premium  
 54 tax revenues to a supplemental plan; amending s.  
 55 185.37, F.S.; providing certain powers and  
 56 responsibilities to municipalities relating to  
 57 termination of plans and distribution of funds;  
 58 providing a declaration of important state interest;

Page 2 of 27

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20-00646A-12

2012910\_\_

59 providing an effective date.

60

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

62

63 Section 1. Section 112.18, Florida Statutes, is amended to  
64 read:

65 112.18 Firefighters and law enforcement or correctional  
66 officers; special provisions relative to disability.-

67 (1)(a) Any condition or impairment of health of any Florida  
68 state, municipal, county, port authority, special tax district,  
69 or fire control district firefighter or any law enforcement  
70 officer, correctional officer, or correctional probation officer  
71 as defined in s. 943.10(1), (2), or (3), who has been employed  
72 by the current employer for at least 5 years and who is less  
73 than 37 years of age, caused by tuberculosis, heart disease, or  
74 hypertension resulting in total or partial disability or death  
75 shall be presumed to have been accidental and to have been  
76 suffered in the line of duty unless the contrary be shown by a  
77 preponderance of the ~~competent~~ evidence. However, any such  
78 firefighter, correctional officer, correctional probation  
79 officer, or law enforcement officer must have successfully  
80 passed a physical examination upon entering into any such  
81 service as a firefighter, correctional officer, correctional  
82 probation officer, or law enforcement officer, which examination  
83 failed to reveal any evidence of any such condition. Risk  
84 factors and epidemiological data relating to nonwork-related  
85 conditions unique to an individual, such as blood cholesterol,  
86 body mass index, history of tobacco and alcohol use, and other  
87 medical conditions or behaviors that are associated with the

Page 3 of 27

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20-00646A-12

2012910\_\_

88 disease or condition subject to the presumption, are appropriate  
89 for consideration in denying or overcoming the presumption. Such  
90 presumption does not apply to benefits payable under or granted  
91 in a policy of life insurance or disability insurance, unless  
92 the insurer and insured have negotiated for such additional  
93 benefits to be included in the policy contract.

94 (b)1. For any workers' compensation claim filed under this  
95 section and chapter 440 occurring on or after July 1, 2010, a  
96 firefighter, law enforcement officer, correctional officer, or  
97 correctional probation officer as defined in s. 943.10(1), (2),  
98 or (3) suffering from tuberculosis, heart disease, or  
99 hypertension is presumed not to have incurred such disease in  
100 the line of duty as provided in this section if the firefighter,  
101 law enforcement officer, correctional officer, or correctional  
102 probation officer:

103 a. Departed in a material fashion from the prescribed  
104 course of treatment of his or her personal physician and the  
105 departure is demonstrated to have resulted in a significant  
106 aggravation of the tuberculosis, heart disease, or hypertension  
107 resulting in disability or increasing the disability or need for  
108 medical treatment; or

109 b. Was previously compensated pursuant to this section and  
110 chapter 440 for tuberculosis, heart disease, or hypertension and  
111 thereafter sustains and reports a new compensable workers'  
112 compensation claim under this section and chapter 440, and the  
113 firefighter, law enforcement officer, correctional officer, or  
114 correctional probation officer has departed in a material  
115 fashion from the prescribed course of treatment of an authorized  
116 physician for the preexisting workers' compensation claim and

Page 4 of 27

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20-00646A-12

2012910\_\_

117 the departure is demonstrated to have resulted in a significant  
118 aggravation of the tuberculosis, heart disease, or hypertension  
119 resulting in disability or increasing the disability or need for  
120 medical treatment.

121 2. As used in this paragraph, "prescribed course of  
122 treatment" means prescribed medical courses of action and  
123 prescribed medicines for the specific disease or diseases  
124 claimed and as documented in the prescribing physician's medical  
125 records.

126 3. If there is a dispute as to the appropriateness of the  
127 course of treatment prescribed by a physician under sub-  
128 subparagraph 1.a. or sub-subparagraph 1.b. or whether a  
129 departure in a material fashion from the prescribed course of  
130 treatment is demonstrated to have resulted in a significant  
131 aggravation of the tuberculosis, heart disease, or hypertension  
132 resulting in disability or increasing the disability or need for  
133 medical treatment, the firefighter, law enforcement officer,  
134 correctional officer, or correctional probation officer is  
135 entitled to seek an independent medical examination pursuant to  
136 s. 440.13(5).

137 4. A firefighter, law enforcement officer, correctional  
138 officer, or correctional probation officer is not entitled to  
139 the presumption provided in this section unless a claim for  
140 benefits is made prior to or within 180 days after leaving the  
141 employment of the employing agency.

142 (2) This section authorizes each governmental entity  
143 specified in subsection (1) to negotiate policy contracts for  
144 life and disability insurance to include accidental death  
145 benefits or double indemnity coverage which shall include the

20-00646A-12

2012910\_\_

146 presumption that any condition or impairment of health of any  
147 firefighter, law enforcement officer, or correctional officer  
148 caused by tuberculosis, heart disease, or hypertension resulting  
149 in total or partial disability or death was accidental and  
150 suffered in the line of duty, unless the contrary be shown by a  
151 preponderance of the ~~competent~~ evidence.

152 Section 2. Subsection (8) is added to section 175.061,  
153 Florida Statutes, to read:

154 175.061 Board of trustees; members; terms of office;  
155 meetings; legal entity; costs; attorney's fees.—For any  
156 municipality, special fire control district, chapter plan, local  
157 law municipality, local law special fire control district, or  
158 local law plan under this chapter:

159 (8) The board of trustees shall:

160 (a) Provide a detailed accounting report of its expenses  
161 for each fiscal year to the plan sponsor and the Department of  
162 Management Services and make the report available to every  
163 member of the plan. The report must include, but need not be  
164 limited to, all administrative expenses that, for purposes of  
165 this subsection, are expenses relating to any legal counsel,  
166 actuary, plan administrator, and all other consultants, and all  
167 travel and other expenses paid to or on behalf of the members of  
168 the board of trustees or anyone else on behalf of the plan.

169 (b) Operate under an administrative expense budget for each  
170 fiscal year, provide a copy of the budget to the plan sponsor,  
171 and make available a copy of the budget to plan members before  
172 the beginning of the fiscal year. The administrative expense  
173 budget must regulate the administrative expenses of the board of  
174 trustees. If the board of trustees amends the administrative

20-00646A-12 2012910\_\_

175 expense budget, the board must provide a copy of the amended  
 176 budget to the plan sponsor and make available a copy of the  
 177 amended budget to plan members before the amendment takes  
 178 effect.

179 Section 3. Subsection (7) of section 175.071, Florida  
 180 Statutes, is amended to read:

181 175.071 General powers and duties of board of trustees.—For  
 182 any municipality, special fire control district, chapter plan,  
 183 local law municipality, local law special fire control district,  
 184 or local law plan under this chapter:

185 (7) To assist the board in meeting its responsibilities  
 186 under this chapter, the board, if it so elects, and subject to  
 187 s. 175.061(8), may:

188 (a) Employ independent legal counsel at the pension fund's  
 189 expense.

190 (b) Employ an independent actuary, as defined in s.  
 191 175.032(7), at the pension fund's expense.

192 (c) Employ such independent professional, technical, or  
 193 other advisers as it deems necessary at the pension fund's  
 194 expense.

195  
 196 If the board chooses to use the municipality's or special  
 197 district's legal counsel or actuary, or chooses to use any of  
 198 the municipality's or special district's ~~other~~ professional,  
 199 technical, or other advisers, it must do so only under terms and  
 200 conditions acceptable to the board.

201 Section 4. Section 175.231, Florida Statutes, is amended to  
 202 read:

203 175.231 Diseases of firefighters suffered in line of duty;

20-00646A-12 2012910\_\_

204 presumption.—For any municipality, special fire control  
 205 district, chapter plan, local law municipality, local law  
 206 special fire control district, or local law plan under this  
 207 chapter, any condition or impairment of health of a firefighter,  
 208 who has been employed by the current employer for at least 5  
 209 years and who is less than 37 years of age, caused by  
 210 tuberculosis, hypertension, or heart disease resulting in total  
 211 or partial disability or death shall be presumed to have been  
 212 accidental and suffered in the line of duty unless the contrary  
 213 is shown by a preponderance of the ~~competent~~ evidence, provided  
 214 that such firefighter shall have successfully passed a physical  
 215 examination before entering into such service, which examination  
 216 failed to reveal any evidence of such condition. Risk factors  
 217 and epidemiological data relating to nonwork-related conditions  
 218 unique to an individual, such as blood cholesterol, body mass  
 219 index, history of tobacco and alcohol use, and other medical  
 220 conditions or behaviors that are associated with the disease or  
 221 condition subject to the presumption, are appropriate for  
 222 consideration in denying or overcoming the presumption. This  
 223 section shall be applicable to all firefighters only with  
 224 reference to pension and retirement benefits under this chapter.

225 Section 5. Section 175.351, Florida Statutes, is amended to  
 226 read:

227 175.351 Municipalities and special fire control districts  
 228 having their own pension plans for firefighters.—For any  
 229 municipality, special fire control district, local law  
 230 municipality, local law special fire control district, or local  
 231 law plan under this chapter, in order for municipalities and  
 232 special fire control districts with their own pension plans for

20-00646A-12 2012910  
 233 firefighters, or for firefighters and police officers if  
 234 included, to participate in the distribution of the tax fund  
 235 established pursuant to s. 175.101, local law plans must meet  
 236 the minimum benefits and minimum standards set forth in this  
 237 chapter.

238 (1) Notwithstanding any other provision, retirement  
 239 benefits provided pursuant to this chapter and the use of the  
 240 income from the premium tax in s. 175.101 must be determined and  
 241 implemented in accordance with the collective bargaining  
 242 process, and where collective bargaining is not applicable, in  
 243 accordance with the pension plan, except as provided in  
 244 subsection (2). If the term of a collective bargaining agreement  
 245 ends without a new collective bargaining agreement in effect,  
 246 the retirement benefits of a plan operating pursuant to this  
 247 chapter shall revert to the minimum benefit provisions of this  
 248 chapter for the period of time from the end of the collective  
 249 bargaining agreement until the effective date of the subsequent  
 250 collective bargaining agreement, and the income from the premium  
 251 tax may be used for any retirement benefit provided pursuant to  
 252 this chapter as determined unilaterally by the municipality or  
 253 special fire control district. If a municipality has a pension  
 254 plan for firefighters, or a pension plan for firefighters and  
 255 police officers if included, which in the opinion of the  
 256 division meets the minimum benefits and minimum standards set  
 257 forth in this chapter, the board of trustees of the pension  
 258 plan, as approved by a majority of firefighters of the  
 259 municipality, may:

260 ~~(a) Place the income from the premium tax in s. 175.101 in~~  
 261 ~~such pension plan for the sole and exclusive use of its~~

20-00646A-12 2012910  
 262 ~~firefighters, or for firefighters and police officers if~~  
 263 ~~included, where it shall become an integral part of that pension~~  
 264 ~~plan and shall be used to pay extra benefits to the firefighters~~  
 265 ~~included in that pension plan; or~~

266 ~~(b) Place the income from the premium tax in s. 175.101 in~~  
 267 ~~a separate supplemental plan to pay extra benefits to~~  
 268 ~~firefighters, or to firefighters and police officers if~~  
 269 ~~included, participating in such separate supplemental plan.~~

270 ~~(2) The premium tax provided by this chapter shall in all~~  
 271 ~~cases be used in its entirety to provide extra benefits to~~  
 272 ~~firefighters, or to firefighters and police officers if~~  
 273 ~~included. For However, local law plans in effect on October 1,~~  
 274 ~~1998, which do not must comply with the minimum benefit~~  
 275 ~~provisions of this chapter, as only to the extent that~~  
 276 ~~additional premium tax revenues become available, such revenues~~  
 277 ~~shall be used to incrementally fund the cost of such compliance~~  
 278 ~~as provided in s. 175.162(2)(a). If a plan is in compliance with~~  
 279 ~~such minimum benefit provisions, as subsequent additional~~  
 280 ~~premium tax revenues become available, they must be used to~~  
 281 ~~provide extra benefits. Local law plans created by special act~~  
 282 ~~before May 27, 1939, are deemed to comply with this chapter. For~~  
 283 ~~the purpose of this chapter, the term:~~

284 ~~(a) "additional premium tax revenues" means revenues~~  
 285 ~~received by a municipality or special fire control district~~  
 286 ~~pursuant to s. 175.121 which exceed that amount received for~~  
 287 ~~calendar year 1997. Once a plan is in compliance with the~~  
 288 ~~minimum benefit provisions of this chapter, the provisions of~~  
 289 ~~subsection (1) apply.~~

290 ~~(b) "Extra benefits" means benefits in addition to or~~

20-00646A-12

2012910\_\_

291 ~~greater than those provided to general employees of the~~  
 292 ~~municipality and in addition to those in existence for~~  
 293 ~~firefighters on March 12, 1999.~~

294 (3) A retirement plan or amendment to a retirement plan may  
 295 not be proposed for adoption unless the proposed plan or  
 296 amendment contains an actuarial estimate of the costs involved.  
 297 ~~The Such~~ proposed plan or proposed plan change may not be  
 298 adopted without the approval of the municipality, special fire  
 299 control district, or, if required where permitted, the  
 300 Legislature. Copies of the proposed plan or proposed plan change  
 301 and the actuarial impact statement of the proposed plan or  
 302 proposed plan change shall be furnished to the division before  
 303 the last public hearing thereon. Such statement must also  
 304 indicate whether the proposed plan or proposed plan change is in  
 305 compliance with s. 14, Art. X of the State Constitution and  
 306 those provisions of part VII of chapter 112 which are not  
 307 expressly provided in this chapter. Notwithstanding any other  
 308 provision, only those local law plans created by special act of  
 309 legislation before May 27, 1939, are deemed to meet the minimum  
 310 benefits and minimum standards only in this chapter.

311 (4) Notwithstanding any other provision, with respect to  
 312 any supplemental plan municipality:

313 (a) A local law plan and a supplemental plan may continue  
 314 to use their definition of compensation or salary in existence  
 315 on March 12, 1999.

316 (b) Section 175.061(1)(b) does not apply, and a local law  
 317 plan and a supplemental plan shall continue to be administered  
 318 by a board or boards of trustees numbered, constituted, and  
 319 selected as the board or boards were numbered, constituted, and

Page 11 of 27

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20-00646A-12

2012910\_\_

320 selected on December 1, 2000.

321 (c) The election set forth in paragraph (1)(b) is deemed to  
 322 have been made.

323 (d) The annual amount of premium tax revenues allocated to  
 324 the supplemental plan shall be determined through collective  
 325 bargaining, where applicable, and in accordance with the pension  
 326 plan where collective bargaining does not apply. If the term of  
 327 a collective bargaining agreement ends without a new collective  
 328 bargaining agreement in effect, the amount of premium tax  
 329 revenues allocated to the supplemental plan shall be determined  
 330 unilaterally by the municipality or special fire control  
 331 district for the period of time from the end of the collective  
 332 bargaining agreement until the effective date of the subsequent  
 333 collective bargaining agreement.

334 (5) The retirement plan setting forth the benefits and the  
 335 trust agreement, if any, covering the duties and  
 336 responsibilities of the trustees and the regulations of the  
 337 investment of funds must be in writing, and copies made  
 338 available to the participants and to the general public.

339 (6) A municipality or special fire control district may  
 340 unilaterally establish one or more new plans, or benefit levels  
 341 within a plan, which provide different benefit levels for plan  
 342 members based on the member's date of hire if the new plan or  
 343 benefit level provides pension benefits that, in the aggregate,  
 344 meet or exceed the minimum benefits set forth in this chapter,  
 345 as determined by the plan's or employer's actuary. A  
 346 municipality or special fire control district may unilaterally  
 347 elect to maintain an existing plan and join the Florida  
 348 Retirement System or establish a defined contribution retirement

Page 12 of 27

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20-00646A-12 2012910\_\_  
 349 plan for employees hired after a specified date. A municipality  
 350 or special fire control district choosing to operate under this  
 351 subsection shall use the premium tax provided under this chapter  
 352 for the current plan or benefit level, for any additional plan  
 353 or benefit level, for contributions to the Florida Retirement  
 354 System, or for contributions to a defined contribution  
 355 retirement plan.

356 Section 6. Section 175.361, Florida Statutes, is amended to  
 357 read:

358 175.361 Termination of plan and distribution of fund.—For  
 359 any municipality, special fire control district, chapter plan,  
 360 local law municipality, local law special fire control district,  
 361 or local law plan under this chapter, the plan may be terminated  
 362 by the municipality or special fire control district. Upon  
 363 termination of the plan by the municipality or special fire  
 364 control district for any reason or because of a transfer,  
 365 merger, or consolidation of governmental units, services, or  
 366 functions as provided in chapter 121, or upon written notice by  
 367 the municipality or special fire control district to the board  
 368 of trustees that contributions under the plan are being  
 369 permanently discontinued, the rights of all employees to  
 370 benefits accrued to the date of such termination and the amounts  
 371 credited to the employees' accounts are nonforfeitable. The fund  
 372 shall be distributed in accordance with the following  
 373 procedures:

374 (1) The board of trustees, subject to prior written  
 375 approval of the municipality or special fire control district,  
 376 shall determine the date of distribution and the asset value  
 377 required to fund all the nonforfeitable benefits after taking

20-00646A-12 2012910\_\_  
 378 into account the expenses of such distribution. The board shall  
 379 inform the municipality or special fire control district if  
 380 additional assets are required, in which event the municipality  
 381 or special fire control district shall continue to financially  
 382 support the plan until all nonforfeitable benefits have been  
 383 funded.

384 (2) The board of trustees, subject to prior written  
 385 approval of the municipality or special fire control district,  
 386 shall determine the method of distribution of the asset value,  
 387 whether distribution shall be by payment in cash, by the  
 388 maintenance of another or substituted trust fund, by the  
 389 purchase of insured annuities, or otherwise, for each  
 390 firefighter entitled to benefits under the plan as specified in  
 391 subsection (3).

392 (3) The board of trustees, subject to prior written  
 393 approval of the municipality or special fire control district,  
 394 shall distribute the asset value as of the date of termination  
 395 in the manner set forth in this subsection, on the basis that  
 396 the amount required to provide any given retirement income is  
 397 the actuarially computed single-sum value of such retirement  
 398 income, except that if the method of distribution determined  
 399 under subsection (2) involves the purchase of an insured  
 400 annuity, the amount required to provide the given retirement  
 401 income is the single premium payable for such annuity. The  
 402 actuarial single-sum value may not be less than the employee's  
 403 accumulated contributions to the plan, with interest if provided  
 404 by the plan, less the value of any plan benefits previously paid  
 405 to the employee.

406 (4) If there is asset value remaining after the full

20-00646A-12 2012910\_\_  
 407 distribution specified in subsection (3), and after the payment  
 408 of any expenses incurred with such distribution, such excess  
 409 shall be returned to the municipality or special fire control  
 410 district, less return to the state of the state's contributions,  
 411 provided that, if the excess is less than the total  
 412 contributions made by the municipality or special fire control  
 413 district and the state to date of termination of the plan, such  
 414 excess shall be divided proportionately to the total  
 415 contributions made by the municipality or special fire control  
 416 district and the state.

417 (5) The board of trustees, subject to prior written  
 418 approval of the municipality or special fire control district,  
 419 shall distribute, in accordance with subsection (2), the amounts  
 420 determined under subsection (3).

421 If, after 24 months after the date the plan terminated or the  
 422 date the board received written notice that the contributions  
 423 thereunder were being permanently discontinued, the municipality  
 424 or special fire control district or the board of trustees of the  
 425 firefighters' pension trust fund affected has not complied with  
 426 all the provisions in this section, the Department of Management  
 427 Services shall effect the termination of the fund in accordance  
 428 with this section and in the manner having the least fiscal  
 429 impact on the municipality or special fire control district.

430 Section 7. Subsection (4) of section 185.02, Florida  
 431 Statutes, is amended to read:

432 185.02 Definitions.—For any municipality, chapter plan,  
 433 local law municipality, or local law plan under this chapter,  
 434 the following words and phrases as used in this chapter shall  
 435

20-00646A-12 2012910\_\_  
 436 have the following meanings, unless a different meaning is  
 437 plainly required by the context:

438 (4) "Compensation" or "salary" means, for noncollectively  
 439 bargained service earned before July 1, 2011, or for service  
 440 earned under collective bargaining agreements in place before  
 441 July 1, 2011, the total cash remuneration including "overtime"  
 442 paid by the primary employer to a police officer for services  
 443 rendered, but not including any payments for extra duty or  
 444 special detail work performed on behalf of a second party  
 445 employer. A local law plan may limit the amount of overtime  
 446 payments which can be used for retirement benefit calculation  
 447 purposes; ~~however, such overtime limit may not be less than 300~~  
 448 ~~hours per officer per calendar year.~~ For noncollectively  
 449 bargained service earned on or after July 1, 2011, or for  
 450 service earned under collective bargaining agreements entered  
 451 into on or after July 1, 2011, the term has the same meaning  
 452 except that when calculating retirement benefits, up to 300  
 453 hours per year in overtime compensation may be included as  
 454 specified in the plan or collective bargaining agreement, but  
 455 payments for accrued unused sick or annual leave may not be  
 456 included.

457 (a) Any retirement trust fund or plan that meets the  
 458 requirements of this chapter does not, solely by virtue of this  
 459 subsection, reduce or diminish the monthly retirement income  
 460 otherwise payable to each police officer covered by the  
 461 retirement trust fund or plan.

462 (b) The member's compensation or salary contributed as  
 463 employee-elective salary reductions or deferrals to any salary  
 464 reduction, deferred compensation, or tax-sheltered annuity

20-00646A-12

2012910\_\_

465 program authorized under the Internal Revenue Code shall be  
 466 deemed to be the compensation or salary the member would receive  
 467 if he or she were not participating in such program and shall be  
 468 treated as compensation for retirement purposes under this  
 469 chapter.

470 (c) For any person who first becomes a member in any plan  
 471 year beginning on or after January 1, 1996, compensation for  
 472 that plan year may not include any amounts in excess of the  
 473 Internal Revenue Code s. 401(a)(17) limitation, as amended by  
 474 the Omnibus Budget Reconciliation Act of 1993, which limitation  
 475 of \$150,000 shall be adjusted as required by federal law for  
 476 qualified government plans and shall be further adjusted for  
 477 changes in the cost of living in the manner provided by Internal  
 478 Revenue Code s. 401(a)(17)(B). For any person who first became a  
 479 member before the first plan year beginning on or after January  
 480 1, 1996, the limitation on compensation may not be less than the  
 481 maximum compensation amount that was allowed to be taken into  
 482 account under the plan as in effect on July 1, 1993, which  
 483 limitation shall be adjusted for changes in the cost of living  
 484 since 1989 in the manner provided by Internal Revenue Code s.  
 485 401(a)(17)(1991).

486 Section 8. Subsection (8) is added to section 185.05,  
 487 Florida Statutes, to read:

488 185.05 Board of trustees; members; terms of office;  
 489 meetings; legal entity; costs; attorney's fees.—For any  
 490 municipality, chapter plan, local law municipality, or local law  
 491 plan under this chapter:

492 (8) The board of trustees shall:

493 (a) Provide a detailed accounting report of its expenses

Page 17 of 27

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20-00646A-12

2012910\_\_

494 for each fiscal year to the plan sponsor and the Department of  
 495 Management Services and make the report available to every  
 496 member of the plan. The report must include, but need not be  
 497 limited to, all administrative expenses that, for purposes of  
 498 this subsection, are expenses relating to any legal counsel,  
 499 actuary, plan administrator, and all other consultants, and all  
 500 travel and other expenses paid to or on behalf of the members of  
 501 the board of trustees or anyone else on behalf of the plan.

502 (b) Operate under an administrative expense budget for each  
 503 fiscal year, provide a copy of the budget to the plan sponsor,  
 504 and make available a copy of the budget to plan members before  
 505 the beginning of the fiscal year. The administrative expense  
 506 budget must regulate the administrative expenses of the board of  
 507 trustees. If the board of trustees amends the administrative  
 508 expense budget, the board must provide a copy of the amended  
 509 budget to the plan sponsor and make available a copy of the  
 510 amended budget to plan members before the amendment takes  
 511 effect.

512 Section 9. Subsection (6) of section 185.06, Florida  
 513 Statutes, is amended to read:

514 185.06 General powers and duties of board of trustees.—For  
 515 any municipality, chapter plan, local law municipality, or local  
 516 law plan under this chapter:

517 (6) To assist the board in meeting its responsibilities  
 518 under this chapter, the board, if it so elects, and subject to  
 519 s. 185.05(8), may:

520 (a) Employ independent legal counsel at the pension fund's  
 521 expense.

522 (b) Employ an independent actuary, as defined in s.

Page 18 of 27

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20-00646A-12

2012910\_\_

523 185.02(8), at the pension fund's expense.

524 (c) Employ such independent professional, technical, or  
525 other advisers as it deems necessary at the pension fund's  
526 expense.

527

528 If the board chooses to use the municipality's or special  
529 district's legal counsel or actuary, or chooses to use any of  
530 the municipality's ~~other~~ professional, technical, or other  
531 advisers, it must do so only under terms and conditions  
532 acceptable to the board.

533 Section 10. Section 185.34, Florida Statutes, is amended to  
534 read:

535 185.34 Disability in line of duty.—For any municipality,  
536 chapter plan, local law municipality, or local law plan under  
537 this chapter, any condition or impairment of health of any ~~and~~  
538 all police officer officers employed in the state, who has been  
539 employed by the current employer for at least 5 years and who is  
540 less than 37 years of age, caused by tuberculosis, hypertension,  
541 heart disease, or hardening of the arteries, resulting in total  
542 or partial disability or death, shall be presumed to be  
543 accidental and suffered in line of duty unless the contrary be  
544 shown by a preponderance of the competent evidence. Any  
545 condition or impairment of health caused directly or proximately  
546 by exposure, which exposure occurred in the active performance  
547 of duty at some definite time or place without willful  
548 negligence on the part of the police officer, resulting in total  
549 or partial disability, shall be presumed to be accidental and  
550 suffered in the line of duty, provided that such police officer  
551 shall have successfully passed a physical examination upon

20-00646A-12

2012910\_\_

552 entering such service, which physical examination including  
553 electrocardiogram failed to reveal any evidence of such  
554 condition, and, further, that such presumption shall not apply  
555 to benefits payable under or granted in a policy of life  
556 insurance or disability insurance. Risk factors and  
557 epidemiological data relating to nonwork-related conditions  
558 unique to an individual, such as blood cholesterol, body mass  
559 index, history of tobacco and alcohol use, and other medical  
560 conditions or behaviors that are associated with the disease or  
561 condition subject to the presumption, are appropriate for  
562 consideration in denying or overcoming the presumption. This  
563 section shall be applicable to all police officers only with  
564 reference to pension and retirement benefits under this chapter.

565 Section 11. Section 185.35, Florida Statutes, is amended to  
566 read:

567 185.35 Municipalities having their own pension plans for  
568 police officers.—For any municipality, chapter plan, local law  
569 municipality, or local law plan under this chapter, in order for  
570 municipalities with their own pension plans for police officers,  
571 or for police officers and firefighters if included, to  
572 participate in the distribution of the tax fund established  
573 pursuant to s. 185.08, local law plans must meet the minimum  
574 benefits and minimum standards set forth in this chapter. ~~+~~

575 (1) Notwithstanding any other provision, retirement  
576 benefits provided pursuant to this chapter and the use of the  
577 income from the premium tax in s. 185.08 must be determined and  
578 implemented in accordance with the collective bargaining  
579 process, and where collective bargaining is not applicable, in  
580 accordance with the pension plan, except as provided in

20-00646A-12

2012910

581 subsection (2). If the term of a collective bargaining agreement  
 582 ends without a new collective bargaining agreement in effect,  
 583 the retirement benefits of a plan operating pursuant to this  
 584 chapter shall revert to the minimum benefit provisions of this  
 585 chapter for the period of time from the end of the collective  
 586 bargaining agreement until the effective date of the subsequent  
 587 collective bargaining agreement, and the income from the premium  
 588 tax may be used for any retirement benefit provided pursuant to  
 589 this chapter as determined unilaterally by the municipality. If  
 590 a municipality has a pension plan for police officers, or for  
 591 police officers and firefighters if included, which, in the  
 592 opinion of the division, meets the minimum benefits and minimum  
 593 standards set forth in this chapter, the board of trustees of  
 594 the pension plan, as approved by a majority of police officers  
 595 of the municipality, may:

596 ~~(a) Place the income from the premium tax in s. 185.08 in~~  
 597 ~~such pension plan for the sole and exclusive use of its police~~  
 598 ~~officers, or its police officers and firefighters if included,~~  
 599 ~~where it shall become an integral part of that pension plan and~~  
 600 ~~shall be used to pay extra benefits to the police officers~~  
 601 ~~included in that pension plan; or~~

602 ~~(b) May place the income from the premium tax in s. 185.08~~  
 603 ~~in a separate supplemental plan to pay extra benefits to the~~  
 604 ~~police officers, or police officers and firefighters if~~  
 605 ~~included, participating in such separate supplemental plan.~~

606 ~~(2) The premium tax provided by this chapter shall in all~~  
 607 ~~cases be used in its entirety to provide extra benefits to~~  
 608 ~~police officers, or to police officers and firefighters if~~  
 609 ~~included. For However, local law plans in effect on October 1,~~

20-00646A-12

2012910

610 1998, which do not ~~must~~ comply with the minimum benefit  
 611 provisions of this chapter, as ~~only to the extent that~~  
 612 additional premium tax revenues become available, such revenues  
 613 shall be used to incrementally fund the cost of such compliance  
 614 as provided in s. 185.16(2). ~~If a plan is in compliance with~~  
 615 such minimum benefit provisions, as subsequent additional tax  
 616 revenues become available, they shall be used to provide extra  
 617 benefits. Local law plans created by special act before May 27,  
 618 1939, shall be deemed to comply with this chapter. For the  
 619 purpose of this chapter, the term:

620 ~~(a)~~ "additional premium tax revenues" means revenues  
 621 received by a municipality pursuant to s. 185.10 which exceed  
 622 the amount received for calendar year 1997. Once a plan is in  
 623 compliance with the minimum benefit provisions of this chapter,  
 624 the provisions of subsection (1) apply.

625 ~~(b)~~ "Extra benefits" means benefits in addition to or  
 626 greater than those provided to general employees of the  
 627 municipality and in addition to those in existence for police  
 628 officers on March 12, 1999.

629 (3) A retirement plan or amendment to a retirement plan may  
 630 not be proposed for adoption unless the proposed plan or  
 631 amendment contains an actuarial estimate of the costs involved.  
 632 The Such proposed plan or proposed plan change may not be  
 633 adopted without the approval of the municipality or, if required  
 634 where permitted, the Legislature. Copies of the proposed plan or  
 635 proposed plan change and the actuarial impact statement of the  
 636 proposed plan or proposed plan change shall be furnished to the  
 637 division before the last public hearing thereon. Such statement  
 638 must also indicate whether the proposed plan or proposed plan

20-00646A-12 2012910\_\_

639 change is in compliance with s. 14, Art. X of the State  
 640 Constitution and those provisions of part VII of chapter 112  
 641 which are not expressly provided in this chapter.  
 642 Notwithstanding any other provision, only those local law plans  
 643 created by special act of legislation before May 27, 1939, are  
 644 deemed to meet the minimum benefits and minimum standards only  
 645 in this chapter.

646 (4) Notwithstanding any other provision, with respect to  
 647 any supplemental plan municipality:

648 (a) ~~Section 185.02(4) (a) does not apply,~~ and A local law  
 649 plan and a supplemental plan may continue to use their  
 650 definition of compensation or salary in existence on March 12,  
 651 1999.

652 (b) Section 185.05(1) (b) does not apply, and a local law  
 653 plan and a supplemental plan must continue to be administered by  
 654 a board or boards of trustees numbered, constituted, and  
 655 selected as the board or boards were numbered, constituted, and  
 656 selected on December 1, 2000.

657 (c) The election set forth in paragraph (1) (b) is deemed to  
 658 have been made.

659 (d) The annual amount of premium tax revenues allocated to  
 660 the supplemental plan shall be determined through collective  
 661 bargaining, where applicable, and in accordance with the pension  
 662 plan where collective bargaining does not apply. If the term of  
 663 a collective bargaining agreement ends without a new collective  
 664 bargaining agreement in effect, the amount of premium tax  
 665 revenues allocated to the supplemental plan shall be determined  
 666 unilaterally by the municipality for the period of time from the  
 667 end of the collective bargaining agreement until the effective

20-00646A-12 2012910\_\_

668 date of the subsequent collective bargaining agreement.

669 (5) The retirement plan setting forth the benefits and the  
 670 trust agreement, if any, covering the duties and  
 671 responsibilities of the trustees and the regulations of the  
 672 investment of funds must be in writing and copies made available  
 673 to the participants and to the general public.

674 (6) A municipality may unilaterally establish one or more  
 675 new plans, or benefit levels within a plan, which provide  
 676 different benefit levels for plan members based on the member's  
 677 date of hire if the new plan or benefit level provides pension  
 678 benefits that, in the aggregate, meet or exceed the minimum  
 679 benefits set forth in this chapter, as determined by the plan's  
 680 or employer's actuary. A municipality may unilaterally elect to  
 681 maintain an existing plan and join the Florida Retirement System  
 682 or establish a defined contribution retirement plan for  
 683 employees hired after a specified date. A municipality choosing  
 684 to operate under this subsection shall use the premium tax  
 685 provided under this chapter for the current plan or benefit  
 686 level, for any additional plan or benefit level, for  
 687 contributions to the Florida Retirement System, or for  
 688 contributions to a defined contribution retirement plan.

689 Section 12. Section 185.37, Florida Statutes, is amended to  
 690 read:

691 185.37 Termination of plan and distribution of fund.—For  
 692 any municipality, chapter plan, local law municipality, or local  
 693 law plan under this chapter, the plan may be terminated by the  
 694 municipality. Upon termination of the plan by the municipality  
 695 for any reason, or because of a transfer, merger, or  
 696 consolidation of governmental units, services, or functions as

20-00646A-12 2012910  
 697 provided in chapter 121, or upon written notice to the board of  
 698 trustees by the municipality that contributions under the plan  
 699 are being permanently discontinued, the rights of all employees  
 700 to benefits accrued to the date of such termination or  
 701 discontinuance and the amounts credited to the employees'  
 702 accounts are nonforfeitable. The fund shall be distributed in  
 703 accordance with the following procedures:

704 (1) The board of trustees, subject to prior written  
 705 approval of the municipality, shall determine the date of  
 706 distribution and the asset value required to fund all the  
 707 nonforfeitable benefits, after taking into account the expenses  
 708 of such distribution. The board shall inform the municipality if  
 709 additional assets are required, in which event the municipality  
 710 shall continue to financially support the plan until all  
 711 nonforfeitable benefits have been funded.

712 (2) The board of trustees, subject to prior written  
 713 approval of the municipality, shall determine the method of  
 714 distribution of the asset value, whether distribution shall be  
 715 by payment in cash, by the maintenance of another or substituted  
 716 trust fund, by the purchase of insured annuities, or otherwise,  
 717 for each police officer entitled to benefits under the plan, as  
 718 specified in subsection (3).

719 (3) The board of trustees, subject to prior written  
 720 approval of the municipality, shall distribute the asset value  
 721 as of the date of termination in the manner set forth in this  
 722 subsection, on the basis that the amount required to provide any  
 723 given retirement income is the actuarially computed single-sum  
 724 value of such retirement income, except that if the method of  
 725 distribution determined under subsection (2) involves the

20-00646A-12 2012910  
 726 purchase of an insured annuity, the amount required to provide  
 727 the given retirement income is the single premium payable for  
 728 such annuity. The actuarial single-sum value may not be less  
 729 than the employee's accumulated contributions to the plan, with  
 730 interest if provided by the plan, less the value of any plan  
 731 benefits previously paid to the employee.

732 (4) If there is asset value remaining after the full  
 733 distribution specified in subsection (3), and after payment of  
 734 any expenses incurred with such distribution, such excess shall  
 735 be returned to the municipality, less return to the state of the  
 736 state's contributions, provided that, if the excess is less than  
 737 the total contributions made by the municipality and the state  
 738 to date of termination of the plan, such excess shall be divided  
 739 proportionately to the total contributions made by the  
 740 municipality and the state.

741 (5) The board of trustees, subject to prior written  
 742 approval of the municipality, shall distribute, in accordance  
 743 with the manner of distribution determined under subsection (2),  
 744 the amounts determined under subsection (3).

745  
 746 If, after 24 months after the date the plan terminated or the  
 747 date the board received written notice that the contributions  
 748 thereunder were being permanently discontinued, the municipality  
 749 or the board of trustees of the municipal police officers'  
 750 retirement trust fund affected has not complied with all the  
 751 provisions in this section, the Department of Management  
 752 Services shall effect the termination of the fund in accordance  
 753 with this section and in the manner having the least fiscal  
 754 impact on the municipality.

20-00646A-12

2012910\_\_

755           Section 13. The Legislature finds that a proper and  
756 legitimate state purpose is served when employees and retirees  
757 of the state and its political subdivisions, and the dependents,  
758 survivors, and beneficiaries of such employees and retirees are  
759 extended the basic protections afforded by governmental  
760 retirement systems that provide fair and adequate benefits and  
761 that are managed, administered, and funded in an actuarially  
762 sound manner as required by s. 14, Article X of the State  
763 Constitution and part VII of chapter 112, Florida Statutes.  
764 Therefore, the Legislature determines and declares that this act  
765 fulfills an important state interest.

766           Section 14. This act shall take effect July 1, 2012.



144930

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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The Committee on Banking and Insurance (Smith) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 15 - 20  
and insert:

(8) Upon expiration of the policy term, an insurer may transfer a commercial lines policy to another authorized insurer that is a member of the same group or owned by the same holding company as the transferring insurer. The transfer constitutes a renewal of the policy and may not be treated as a cancellation or a nonrenewal of the policy. The insurer must provide notice of its intent to transfer the policy at least 45 days before the effective date of the transfer along with the financial rating



144930

13 of the authorized insurer to which the policy is being  
14 transferred. Such notice may be provided in the notice of  
15 renewal premium. This subsection does not apply to a policy  
16 providing residential property insurance coverage, except for  
17 farmowners insurance and commercial general liability policies  
18 providing farm coverage or commercial property policies  
19 providing farm coverage.

20

21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete line 6

24 and insert:

25 rather than a cancellation or nonrenewal; requiring  
26 notice of such transfer; specifying which types of  
27 policies such transfer provisions apply to; providing  
28 an

2-2-2012

~~SB 1428~~

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic transfer of commercial policies

Bill Number SB 1428  
*(if applicable)*

Name Meredith Snowden

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title consultant

Address 215 S Monroe St.

Phone 577 0398

Tall 32301  
City State Zip

E-mail msnowden@cftlaw.com

Speaking:  For  Against  Information

Representing FCCI Insurance Group

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

**BILL:** CS/SB 1428

**INTRODUCER:** Banking and Insurance Committee and Senator Smith

**SUBJECT:** Renewal of a Commercial Lines Insurance Policy

**DATE:** February 2, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	<b>Fav/CS</b>
2.			BC	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill provides that upon the expiration of the term of a commercial lines insurance policy, the insurer may transfer the policy to another authorized insurer that is a member of the same group or owned by the same holding company. This type of transfer would be treated as a renewal of the policy, rather than a cancellation or nonrenewal. The insurer is required to provide at least 45 days' notice of its intent to transfer, along with the financial rating of the insurer to which the policy is being transferred. The notice may be provided in the notice of renewal premium.

The bill explicitly provides that it does not apply to residential property insurance, except for farmowners insurance and general liability policies that provide farm coverage or commercial property policies that provide farm coverage.

This bill substantially amends the following section of the Florida Statutes: 627.4133.

## II. Present Situation:

### Commercial Lines Insurance

Commercial lines insurance is designed for and purchased by businesses to cover losses sustained by the business.<sup>1</sup> The specific type of commercial lines insurance that a business purchases may depend, in part, on the business type and industry. Major types of commercial insurance are:

- Boiler and machinery;
- Business income;
- Commercial automobile;
- Comprehensive general liability;
- Directors and officers liability;
- Medical malpractice liability;
- Product liability;
- Professional liability; and
- Workers' compensation.

### Notice of Cancellation, Nonrenewal, or Renewal Premium

The requirements for an insurer to give notice of cancellation, nonrenewal, or renewal premium are provided in s. 627.4133, F.S. The specific notice depends on the type of insurance being provided and the particular circumstances of the subject policy. For workers' compensation, employer's liability insurance, property (except personal lines and commercial lines residential), casualty except mortgage guaranty, surety, or marine insurance, other than motor vehicle, must give the insured at least 45 days' written notice of cancellation, nonrenewal, or the renewal premium.<sup>2</sup> For motor vehicle policies, the general requirement is also 45 days notice for nonrenewal or cancellation, but there exist several exceptions, depending on the circumstance.<sup>3</sup> For personal lines or commercial lines residential property insurance:

- Generally, an insurer must give the insured 100 days written notice of nonrenewal or cancellation, and must give 45 days' notice of the renewal premium;<sup>4</sup>
- For any nonrenewal or cancellation that would be effective between June 1 and November 30 (hurricane season), an insurer must give notice by June 1, or 100 days, whichever is earlier;<sup>5</sup>
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the reason is a revision in sinkhole coverage, the insurer must give the insured 100 days written notice of nonrenewal;<sup>6</sup>
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the policy is to be nonrenewed by Citizens pursuant to an approved assumption plan by an authorized insurer, Citizens must give the insured 45 days written notice of nonrenewal;<sup>7</sup>

---

<sup>1</sup> <http://www2.iii.org/glossary/> "commercial lines" definition. Last visited 1/23/2012.

<sup>2</sup> Section 627.4133(1)(a) and (b), F.S.

<sup>3</sup> Section 627.728(3) and (4), F.S.

<sup>4</sup> Section 627.4133(2)(a) and (b), F.S.

<sup>5</sup> Section 627.4133(2)(b), F.S.

<sup>6</sup> Section 627.4133(2)(b)1., F.S.

<sup>7</sup> Section 627.4133(2)(b)4.b., F.S.

- If the insured structure has been insured by the insurer or an affiliate for at least 5 years, the insurer must give 120 days' notice of nonrenewal or cancellation;<sup>8</sup>
- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;<sup>9</sup>
- If the OIR finds that the early cancellation is necessary to protect the best interests of the public or policyholders, the insurer must give the insured 45 days written notice of cancellation or nonrenewal.<sup>10</sup>

### **Section 627.728(4)(d), F.S.**

Currently, s. 627.728(4)(d), F.S., allows an insurance company to transfer a motor vehicle insurance policy to a new insurer under the same ownership or management of first insurer, instead of canceling and nonrenewing the policies at the expiration of the policy term, by giving the insured 45 days' advance notice the intent to transfer.

### **III. Effect of Proposed Changes:**

The bill provides that upon the expiration of the term of a commercial lines insurance policy, the insurer may transfer the policy to another authorized insurer that is a member of the same group or owned by the same holding company. This type of transfer would be treated as a renewal of the policy, rather than a cancellation or nonrenewal. The insurer is required to provide at least 45 days' notice of its intent to transfer, along with the financial rating of the insurer to which the policy is being transferred. The notice may be provided in the notice of renewal premium.

The bill explicitly provides that it does not apply to residential property insurance, except for farmowners insurance and general liability policies that provide farm coverage or commercial property policies that provide farm coverage.

The bill is effective upon becoming a law.

### **Other Potential Implications:**

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

<sup>8</sup> Section 627.4133(2)(b)1., F.S.

<sup>9</sup> Section 627.4133(1)(b)1., F.S.

<sup>10</sup> Section 627.4133(2)(b)5., F.S.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing policies to be transferred between affiliated insurers, rather than requiring policies to be nonrenewed by the original insurer and reissued by an affiliated insurer, allows insurers to more easily manage their book of business, and insurers believe it will eliminate confusion among policyholders associated with policy nonrenewal and subsequent reissuance.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 2, 2012:**

The CS provides that upon the expiration of the term of a commercial lines insurance policy, the insurer may transfer the policy to another authorized insurer that is a member of the same group or owned by the same holding company, whereas the original bill allowed a transfer to an authorized insurer under the “same direct or indirect ownership, management, or control” as the original insurer.

The CS adds the requirement that the insurer must provide at least 45 days’ notice of its intent to transfer, along with the financial rating of the insurer to which the policy is being transferred. The CS allows the insurer to provide the notice of its intent to transfer within the notice of renewal premium.

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The CS explicitly provides that it does not apply to residential property insurance, except for farmowners insurance and general liability policies that provide farm coverage or commercial property policies that provide farm coverage.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Smith

29-00829A-12

20121428\_\_

1                   A bill to be entitled  
2           An act relating to the renewal of a commercial lines  
3           insurance policy; amending s. 627.4133, F.S.;  
4           providing that the transfer of a policy to certain  
5           other insurers is considered a renewal of the policy  
6           rather than a cancellation or nonrenewal; providing an  
7           effective date.

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

10  
11           Section 1. Subsection (8) is added to section 627.4133,  
12           Florida Statutes, to read:

13           627.4133 Notice of cancellation, nonrenewal, or renewal  
14           premium.—

15           (8) Upon the expiration of the term of a commercial lines  
16           policy, the insurer may transfer such policy to another  
17           authorized insurer under the same direct or indirect ownership,  
18           management, or control as the transferring insurer. Such  
19           transfer shall be treated as a renewal of the policy and not a  
20           cancellation or nonrenewal of the policy.

21           Section 2. This act shall take effect upon becoming a law.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1814

INTRODUCER: Senator Smith

SUBJECT: Uniform Home Grading Scale

DATE: January 30, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	<b>Favorable</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

Current s. 215.55865, F.S., required that by 2007, the Financial Services Commission (Commission) was to adopt a uniform home grading scale to grade the ability of a home to withstand the wind load from a tropical storm or hurricane. Consistent with that statutory requirement, the Commission adopted the uniform home grading scale in 2007. Subsequent to the development of the uniform home grading scale, the legislature established three specific applications for which the uniform home grading scale was required to be used. More recently, however, the Legislature has repealed each of these three applications.

The bill repeals the language requiring the Financial Services Commission to develop a uniform home grading scale by 2007.

The bill also removes from the My Safe Florida Home Program (MSFH) a requirement that MSFH create a hurricane resistance rating scale that conforms to the uniform home grading scale. Because all funds originally appropriated to the program have been exhausted, MSFH is no longer operative.

This bill substantially amends the following section of the Florida Statutes: 215.5586

This bill repeals the following section of the Florida Statutes: 215.55865

## II. Present Situation:

### Uniform Home Grading Scale

In 2006, the Legislature required the Office of Insurance Regulation (OIR) to develop a program to provide an objective rating system allowing homeowners to evaluate the relative ability of Florida properties to withstand the wind load from a sustained severe tropical storm or hurricane.<sup>1</sup> In 2007, the Legislature created current s. 215.55865, F.S., requiring that by 2007, the Financial Services Commission (Commission) was to adopt a uniform home grading scale consistent with the 2006 legislation.<sup>2</sup> In 2007, pursuant to the statutory requirement, the Commission adopted the uniform home grading scale.<sup>3</sup> The uniform home grading scale scores homes on a scale of 1 to 100 and takes into account the construction features of the home, the home's wind zone location, and the terrain surrounding the home. In evaluating the home, eight primary wind resistive building features are considered: roof shape, secondary water resistance, roof cover, roof deck attachment, roof-to-wall connection, opening protection, number of stories, and roof covering type. Eleven secondary factors are also considered.

In 2008, the Legislature passed a law that established a two-part phase-in of a requirement that sellers of homes located in the state's wind borne debris region disclose the home's windstorm mitigation rating based on the home grading scale to prospective purchasers:

- The first part of the phase-in was to begin in January 2010, and would have required sellers of homes insured by Citizens Property Insurance Corporation for \$500,000 or more to disclose the home's windstorm mitigation rating.<sup>4</sup> However, in 2009, before it took effect, this disclosure requirement was repealed.<sup>5</sup>
- The second part of the phase-in, which was scheduled to begin on January 1, 2011, would have required sellers of any home in the wind borne debris region to disclose to the purchaser the home's mitigation rating.<sup>6</sup> In 2010, however the Legislature repealed this disclosure provision, as well.<sup>7</sup>

In addition, in 2008, the Legislature passed s. 627.0629(1)(b), F.S.,<sup>8</sup> which required the OIR to develop a method by February 1, 2011, to establish mitigation discounts for hurricane mitigation measures that correlate to the home's rating calculated by the uniform home grading scale. At that time, the OIR had already been enforcing an existing statutory requirement that property insurers provide discounts for hurricane loss mitigation, but because OIR's established discounts pre-dated the uniform home grading scale, those discounts did not directly correlate to the uniform home grading scale. In 2011, the Legislature repealed s. 627.0629(1)(b), F.S.,<sup>9</sup> thereby removing the requirement that the OIR establish a new wind mitigation discount scale to correlate with the uniform home grading scale.

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<sup>1</sup> Section 39, ch. 2006-12, L.O.F.

<sup>2</sup> Section 40, ch. 2007-1, L.O.F.

<sup>3</sup> Rule 69O-167.015, F.A.C.

<sup>4</sup> Section 13, ch. 2008-66, L.O.F.

<sup>5</sup> Section 10, ch. 2009-87, L.O.F.

<sup>6</sup> Section 15, ch. 2008-66, L.O.F.

<sup>7</sup> Section 1, ch. 2010-275, L.O.F.

<sup>8</sup> Section 12, ch. 2008-66, L.O.F.

<sup>9</sup> Section 14, ch. 2011-39, L.O.F.

## **My Safe Florida Home**

Section 215.5586, F.S., established within the Department of Financial Services (DFS) the My Safe Florida Home Program (MSFH), which was created to provide Florida residential property owners with mitigation inspections and grants for installation of specified mitigation features in order to make property less vulnerable to hurricane damage. The inspections provided to homeowners under the MSFH program must at a minimum include:

1. A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage.
2. A range of cost estimates regarding the recommended mitigation improvements.
3. Insurer-specific information regarding premium discounts correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.
4. A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities. The statute directs that, as soon as practical, this rating scale must conform to the uniform home grading scale, under s. 215.55865, F.S.<sup>10</sup>

The MSFH program expired on June 30, 2009, and is no longer operative. All funds originally appropriated to the program were exhausted and no additional funding has been appropriated.<sup>11</sup>

### **III. Effect of Proposed Changes:**

**Section 1** repeals s. 215.55865, F.S., relating to the uniform home grading scale. This section required the Commission to develop the uniform home grading scale by 2007. The uniform home grading scale was timely developed by the Commission. There is nothing in current law that requires the use of the uniform home grading scale.

**Section 2** amends s. 215.5586, F.S., to remove the requirement that the MSFH program adopt a hurricane resistance rating scale that conforms to the uniform home grading scale.

The act is effective July 1, 2012.

#### **Other Potential Implications:**

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

<sup>10</sup> Section 215.5586(1)(a), F.S.

<sup>11</sup> My Safe Florida Home website, <http://www.mysafefloridahome.com> (last viewed January 27, 2012).

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Smith

29-01265-12

20121814\_\_

A bill to be entitled

An act relating to a uniform home grading scale; repealing s. 215.55865, F.S., relating to the required adoption by the Financial Services Commission of a uniform home grading scale to grade the ability of a home to withstand the wind load from certain tropical storms or hurricanes; amending s. 215.5586, F.S., to conform; providing an effective date.

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

Section 1. Section 215.55865, Florida Statutes, is repealed.

Section 2. Paragraph (a) of subsection (1) of section 215.5586, Florida Statutes, is amended to read:

215.5586 My Safe Florida Home Program.—There is established within the Department of Financial Services the My Safe Florida Home Program. The department shall provide fiscal accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Home Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants as funding allows. The program shall develop and implement a comprehensive and

29-01265-12

20121814\_\_

coordinated approach for hurricane damage mitigation that may include the following:

(1) HURRICANE MITIGATION INSPECTIONS.—

(a) Certified inspectors to provide home-retrofit inspections of site-built, single-family, residential property may be offered to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The Department of Financial Services shall contract with wind certification entities to provide hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. Insurer-specific information regarding premium discounts correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

~~4. A hurricane resistance rating scale specifying the home's current as well as projected wind resistance capabilities. As soon as practical, the rating scale must be the uniform home grading scale adopted by the Financial Services Commission pursuant to s. 215.55865.~~

Section 3. This act shall take effect July 1, 2012.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Gaetz) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (a) and (i) of subsection (7) of section 11.45, Florida Statutes, are amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(a) The Auditor General must ~~shall~~ notify the Legislative Auditing Committee of any local governmental entity, district school board, charter school, or charter technical career center that does not comply with the reporting requirements of s.



725782

13 215.985 or s. 218.39.

14 (i) Beginning in 2012, the Auditor General shall annually  
15 transmit by July 15, to the President of the Senate, the Speaker  
16 of the House of Representatives, and the Department of Financial  
17 Services, a list of all school districts, charter schools,  
18 charter technical career centers, Florida College System  
19 institutions, state universities, and water management districts  
20 that have failed to comply with the transparency requirements of  
21 s. 215.985 as identified in the audit reports reviewed pursuant  
22 to paragraph (b) and those conducted pursuant to subsection (2).

23 Section 2. Section 215.971, Florida Statutes, is amended to  
24 read:

25 215.971 Agreements funded with federal and state  
26 assistance.—

27 (1) For an agency agreement that provides state financial  
28 assistance to a recipient or subrecipient, as those terms are  
29 defined in s. 215.97, or that provides federal financial  
30 assistance to a subrecipient, as defined by applicable United  
31 States Office of Management and Budget circulars, the agreement  
32 must ~~shall~~ include a provision:

33 (a) ~~(1)~~ ~~A provision~~ Specifying a scope of work that clearly  
34 establishes the tasks that the recipient or subrecipient is  
35 required to perform; and

36 (b) ~~(2)~~ ~~A provision~~ Dividing the agreement into quantifiable  
37 units of deliverables which ~~that~~ must be received and accepted  
38 in writing by the agency before payment. Each deliverable must  
39 be directly related to the scope of work and ~~must~~ specify a  
40 performance measure. As used in this paragraph, the term  
41 "performance measure" means the required minimum level of



42 service to be performed and the criteria for evaluating the  
43 successful completion of each deliverable.

44 (2) Effective October 1, 2012, before execution, agreements  
45 to be funded with state or federal financial assistance must be  
46 submitted for review and approval in accordance with rules  
47 adopted by the Department of Financial Services. The review must  
48 ensure that the agreement document contains a clear statement of  
49 work, quantifiable and measureable deliverables, performance  
50 measures, and financial consequences for nonperformance. An  
51 agreement that does not comply with this subsection may be  
52 rejected and returned to the submitting agency for revision.

53 (3) The Chief Financial Officer may establish dollar  
54 thresholds and other criteria for sampling the agreements that  
55 are to be reviewed prior to execution. The Chief Financial  
56 Officer may revise such thresholds and other criteria for an  
57 agency or the unit of any agency as he or she deems appropriate.

58 (4) The department has 30 days to make a final  
59 determination regarding approval of an agreement. The department  
60 and the agency entering into the agreement may agree to a longer  
61 review period to ensure the thorough consideration of the  
62 procurement process and its results.

63 (5) For each agreement funded with federal or state  
64 assistance, the contracting agency shall designate an employee  
65 to function as grant manager who shall be responsible for  
66 enforcing performance of the agreement terms and conditions and  
67 serve as a liaison with the recipient. A grant manager who is  
68 responsible for one or more agreements in excess of the  
69 threshold amount provided in s. 287.017 for CATEGORY FIVE must  
70 be certified under s. 287.1312. The Chief Financial Officer



725782

71 shall establish and disseminate uniform procedures for payment  
72 requests pursuant to s. 17.03(3) to ensure that services are  
73 rendered in accordance with the agreement terms before the  
74 agency processes an invoice for payment. The procedures must  
75 include, but need not be limited to, procedures for monitoring  
76 and documenting a recipient's performance, reviewing and  
77 documenting all deliverables for which payment is requested by  
78 the recipient, and providing written certification by the grant  
79 manager of the agency's receipt of goods and services.

80 Section 3. Subsection (16) of section 215.985, Florida  
81 Statutes, is amended to read:

82 215.985 Transparency in government spending.—

83 (16) The Chief Financial Officer shall establish and  
84 maintain a secure, shared, intergovernmental contract tracking  
85 provide public access to a state contract management system.

86 (a) Within 30 calendar days after executing a contract,  
87 each state agency as defined in s. 216.011(1), and, effective  
88 November 1, 2013, each local governmental entity and independent  
89 special district as defined in s. 218.31, each district school  
90 board as described in s. 1001.32, the Board of Governors of the  
91 State University System as described in s. 1001.70, and each  
92 Florida College System institution board of trustees as  
93 described in s. 1001.61 must post the following that provides  
94 information and documentation relating to that contract on the  
95 contract tracking system: ~~contracts procured by governmental~~  
96 entities.

- 97 1. The name of the contracting entities;  
98 2. The procurement method;  
99 3. The contract beginning and ending dates;



725782

- 100           4. The nature or type of the commodities or services  
101 purchased;
- 102           5. Applicable contract unit prices and deliverables;  
103           6. Total compensation to be paid or received under the  
104 contract;
- 105           7. All payments made to the contract vendor to date;  
106           8. All commodities or services received from the contract  
107 vendor to date;
- 108           9. Applicable contract performance measures;  
109           10. Contract extensions or renewals, if any;  
110           11. The justification for not using competitive  
111 solicitation to procure the contract, including citation to any  
112 statutory exemption or exception from competitive solicitation,  
113 if applicable;
- 114           12. Electronic copies of the contract and procurement  
115 documents, including any provision that may have been redacted  
116 to conceal exempt or confidential information; and
- 117           13. Any other information regarding the contract or the  
118 procurement which may be required by the Department of Financial  
119 Services.
- 120           ~~(a) The data collected in the system must include, but need~~  
121 ~~not be limited to, the contracting agency; the procurement~~  
122 ~~method; the contract beginning and ending dates; the type of~~  
123 ~~commodity or service; the purpose of the commodity or service;~~  
124 ~~the compensation to be paid; compliance information, such as~~  
125 ~~performance metrics for the service or commodity; contract~~  
126 ~~violations; the number of extensions or renewals; and the~~  
127 ~~statutory authority for providing the service.~~
- 128           (b) Within 30 calendar days after a major modification or



725782

129 amendment change to an existing contract, ~~or the execution of a~~  
130 ~~new contract, agency procurement staff of the affected state~~  
131 ~~governmental entity~~ must shall update the ~~necessary~~ information  
132 described in paragraph (a) in the state contract tracking  
133 ~~management~~ system. A major modification or amendment change to a  
134 contract includes, but is not limited to, a renewal,  
135 termination, or extension of the contract, or an amendment to  
136 the contract as determined by the Chief Financial Officer.

137 (c) Each entity identified in paragraph (a) must redact, as  
138 defined in s. 119.011, any exempt or confidential information,  
139 including trade secrets as defined in s. 688.002 or s. 812.081,  
140 from the contract or procurement documents before posting an  
141 electronic copy of such documents on the contract tracking  
142 system.

143 1. If an entity becomes aware that an electronic copy of a  
144 contract or procurement document that it posted has not been  
145 properly redacted, the entity must replace the electronic copy  
146 of the documents with a redacted copy.

147 2. If a party to a contract, or an authorized  
148 representative thereof, discovers that an electronic copy of a  
149 contract or procurement document on the system has not been  
150 properly redacted, the party or representative may request the  
151 entity that posted the document to redact the exempt or  
152 confidential information. Upon receipt of a request in  
153 compliance with this subparagraph, the entity that posted the  
154 document shall redact the exempt or confidential information.

155 a. Such request must be in writing and delivered by mail,  
156 facsimile, or electronic transmission, or in person to the  
157 entity that posted the information. The request must identify



725782

158 the specific document, the page numbers that include the exempt  
159 or confidential information, the information that is exempt or  
160 confidential, and the relevant statutory exemption. A fee may  
161 not be charged for a redaction made pursuant to such request.

162 b. If necessary, a party to the contract may petition the  
163 circuit court for an order directing compliance with this  
164 paragraph.

165 3. The Chief Financial Officer, the Department of Financial  
166 Services, or any officer, employee, or contractor thereof, is  
167 not responsible for redacting exempt or confidential information  
168 from an electronic copy of a contract or procurement document  
169 posted by another entity on the system, and is not liable for  
170 the failure of the entity to redact the exempt or confidential  
171 information. The Department of Financial Services may notify the  
172 posting entity if it discovers that a document posted on the  
173 tracking system contains exempt or confidential information.

174 (d) Pursuant to ss. 119.01 and 119.07, the Chief Financial  
175 Officer may make information posted on the contract tracking  
176 system available for viewing and downloading by the public  
177 through a secure website. Unless otherwise provided by law,  
178 information retrieved electronically pursuant to this paragraph  
179 is not admissible in court as an authenticated document.

180 1. The Chief Financial Officer may regulate and prohibit  
181 the posting of records that could facilitate identity theft or  
182 fraud, such as signatures; compromise or reveal an agency  
183 investigation; reveal the identity of undercover personnel;  
184 reveal proprietary confidential business information or trade  
185 secrets; reveal an individual's medical information; or reveal  
186 any other record or information that the Chief Financial Officer



725782

187 believes may jeopardize the health, safety, or welfare of the  
188 public. However, such prohibition does not eliminate the duty of  
189 an entity to provide a copy of a public record upon request. The  
190 Chief Financial Officer shall use appropriate Internet security  
191 measures to ensure that no person has the ability to alter or  
192 modify records available on the website.

193 2. Records made available on the website, including  
194 electronic copies of contracts or procurement documents, may not  
195 reveal information made exempt or confidential by law. Notice of  
196 the right of an affected party to request redaction of exempt or  
197 confidential information pursuant to paragraph (c) must be  
198 conspicuously and clearly displayed on the website. This  
199 includes, but is not limited to:

200 a. Criminal intelligence or criminal investigative  
201 information as defined in s. 119.011;

202 b. Surveillance techniques or procedures or personnel;

203 c. The identity of a confidential informant or confidential  
204 source;

205 d. The identify of undercover personnel of a criminal  
206 justice agency;

207 e. A security system plan; or

208 f. Trade secret as defined in s. 688.002 or s. 812.081.

209 (e) The posting of information on the contract tracking  
210 system or the provision of contract information on a website for  
211 public viewing and downloading does not eliminate the duty of an  
212 entity to respond to a public record request for such  
213 information or to a subpoena for such information.

214 1. A request for a copy of a contract or procurement  
215 document or a certified copy of a contract or procurement



725782

216 document shall be made to the entity that is party to the  
217 contract and that maintains the original documents. Such request  
218 may not be made to the Chief Financial Officer or the Department  
219 of Financial Services or any officer, employee, or contractor  
220 thereof unless the Chief Financial Officer or the department is  
221 a party to the contract.

222 2. A subpoena for a copy of a contract or procurement  
223 document or certified copy of a contract or procurement document  
224 must be served on the entity that is a party to the contract and  
225 that maintains the original documents. The Chief Financial  
226 Officer or the Department of Financial Services or any officer,  
227 employee, or contractor thereof may not be served a subpoena for  
228 those records unless the Chief Financial Officer or the  
229 department is a party to the contract.

230 (f) The Department of Financial Services may adopt rules to  
231 administer this subsection.

232 Section 4. Section 216.0111, Florida Statutes, is repealed.

233 Section 5. Effective October 1, 2013, section 287.032,  
234 Florida Statutes, is amended to read:

235 287.032 ~~Departmental responsibility purpose of department.~~  
236 Pursuant to the administration of this chapter:

237 (1) ~~It shall be~~ The responsibility ~~purpose~~ of the  
238 Department of Management Services is to:

239 (a) ~~(1) To~~ Promote efficiency, economy, and the conservation  
240 of energy and coordinate ~~to effect coordination in~~ the purchase  
241 of commodities and contractual services for the state.

242 (2) ~~To provide uniform commodity and contractual service~~  
243 ~~procurement policies, rules, procedures, and forms for use by~~  
244 ~~agencies and eligible users.~~



725782

245        (b) ~~(3)~~ To Procure and distribute federal surplus tangible  
246 personal property allocated to the state by the Federal  
247 Government.

248        (2) The responsibility of the Department of Financial  
249 Services is to:

250        (a) Provide uniform commodity and contractual service  
251 procurement policies, rules, procedures, and forms for use by  
252 agencies and eligible users.

253        (b) Monitor agencies with respect to compliance with  
254 established policies, rules, and procedures.

255        Section 6. Effective October 1, 2013, section 287.042,  
256 Florida Statutes, is amended to read:

257        287.042 Powers, duties, and functions of the Department of  
258 Management Services.—The department is responsible for the  
259 procurement of commodities and contractual services for agencies  
260 and has ~~shall have~~ the following powers, duties, and functions:

261        (1) ~~(a)~~ To canvass all sources of supply, establish and  
262 maintain a vendor list, and contract for the purchase, lease, or  
263 acquisition, including purchase by installment sales or lease-  
264 purchase contracts which may provide for the payment of interest  
265 on unpaid portions of the purchase price, of all commodities and  
266 contractual services required by an any agency under this  
267 chapter. A Any contract providing for deferred payments and the  
268 payment of interest is shall be subject to specific rules  
269 adopted by the Department of Financial Services.

270        (a) ~~(b)~~ The department shall develop a list of interested  
271 vendors to be maintained by classes of commodities and  
272 contractual services. The list may not be used to prequalify a  
273 vendor or to exclude an interested vendor from bidding. However,



725782

274 a vendor barred by the Chief Financial Officer pursuant to s.  
275 287.044(7) may not be included on the list. The department may  
276 remove from the its vendor list any source of supply which fails  
277 to fulfill any of its duties specified in a contract with the  
278 state. The department ~~It~~ may reinstate ~~any~~ such source of supply  
279 if the department ~~when it~~ is satisfied that further instances of  
280 default will not occur.

281 (b)(e) In order to promote the cost-effective procurement  
282 of commodities and contractual services, the department or an  
283 agency may enter into contracts that limit the liability of a  
284 vendor consistent with s. 672.719.

285 ~~(d) The department shall issue commodity numbers for all~~  
286 ~~products of the corporation operating the correctional industry~~  
287 ~~program which meet or exceed department specifications.~~

288 (c)(e) The department shall include the products offered by  
289 the corporation operating the correctional industry program on  
290 any listing prepared by the department which lists state term  
291 contracts executed by the department. The products or services  
292 shall be placed on such list in a category based upon  
293 specification criteria developed through a joint effort of the  
294 department and the corporation and approved by the department.

295 1.(f) The corporation may submit products and services to  
296 the department for testing, analysis, and review relating to the  
297 quality and cost comparability. If, after review and testing,  
298 the department approves ~~of~~ the products and services, the  
299 department shall give written notice ~~thereof~~ to the corporation.  
300 The corporation shall pay a reasonable fee ~~charged~~ for the  
301 testing of its products by the Department of Agriculture and  
302 Consumer Services.



725782

303           2. The department shall issue a commodity number for all  
304 products of the corporation which meet or exceed department  
305 specifications.

306           (d)~~(g)~~ The department shall include products and services  
307 that are offered by a qualified nonprofit agency for the blind  
308 or for the other severely handicapped ~~organized pursuant to~~  
309 ~~chapter 413~~ and that have been determined to be suitable for  
310 purchase pursuant to s. 413.035 on a a ~~any~~ department listing of  
311 state term contracts. The products and services shall be placed  
312 on such list in a category based upon specification criteria  
313 developed by the department in consultation with the ~~qualified~~  
314 nonprofit agency.

315           (e)~~(h)~~ The department may collect fees for the use of its  
316 electronic information services. The fees may be imposed on an  
317 individual transaction basis or as a fixed subscription for a  
318 designated period of time. At a minimum, the fees shall be  
319 determined in an amount sufficient to cover the department's  
320 projected costs for ~~of~~ the services, including overhead, in  
321 accordance with the policies of the department ~~of Management~~  
322 ~~Services~~ for computing its administrative assessment. All fees  
323 collected under this paragraph shall be deposited in the  
324 Operating Trust Fund for disbursement as provided by law.

325           (2)~~(a)~~ To establish purchasing agreements and procure state  
326 term contracts for commodities and contractual services,  
327 pursuant to s. 287.057, under which state agencies shall, and  
328 eligible users may, make purchases pursuant to s. 287.056.

329           (a) The department may restrict purchases by ~~from some term~~  
330 ~~contracts to~~ state agencies from ~~only for those~~ term contracts  
331 if ~~where~~ the inclusion of other governmental entities will have



725782

332 an adverse effect on competition or on ~~to these~~ federal  
333 facilities located in this state. In such planning or  
334 purchasing, the office of ~~Supplier Diversity~~ may monitor to  
335 ensure that opportunities are afforded for contracting with  
336 minority business enterprises. The department, for state term  
337 contracts, and all agencies, for multiyear contractual services  
338 or term contracts, shall explore reasonable and economical means  
339 to use ~~utilize~~ certified minority business enterprises.  
340 Purchases by any county, municipality, private nonprofit  
341 community transportation coordinator designated pursuant to  
342 chapter 427, ~~while~~ conducting business related solely to the  
343 Commission for the Transportation Disadvantaged, or other local  
344 public agency under the provisions in the state purchasing  
345 contracts, and purchases, from the corporation operating the  
346 correctional work programs, of products or services that are  
347 subject to paragraph (1)(c) ~~(1)(f)~~, are exempt from the  
348 competitive solicitation requirements otherwise applying to  
349 their purchases.

350 (b) As an alternative to ~~any provision in~~ s. 120.57(3)(c),  
351 the department may proceed with the competitive solicitation or  
352 contract award process of a term contract if ~~when~~ the secretary  
353 of the department or his or her designee sets forth in writing  
354 particular facts and circumstances that ~~which~~ demonstrate that  
355 the delay incident to staying the solicitation or contract award  
356 process would be detrimental to the interests of the state. If,  
357 after the award of the ~~a~~ contract resulting from a competitive  
358 solicitation in which a timely protest was received and in which  
359 the state did not prevail, the contract may be canceled and  
360 reawarded.



725782

361 (c) Any person who files an action protesting a decision or  
362 intended decision pertaining to contracts administered by the  
363 department, a water management district, or an agency pursuant  
364 to s. 120.57(3) (b) shall post with the department, the water  
365 management district, or the agency at the time of filing the  
366 formal written protest a bond payable to the department, the  
367 water management district, or agency in an amount equal to 1  
368 percent of the estimated contract amount. For protests of  
369 decisions or intended decisions pertaining to exceptional  
370 purchases, the bond must ~~shall be in an amount~~ equal to 1  
371 percent of the estimated contract amount for the exceptional  
372 purchase.

373 1. The estimated contract amount shall be based upon the  
374 contract price submitted by the protestor or, if no contract  
375 price was submitted, the department, water management district,  
376 or agency shall estimate the contract amount based on factors,  
377 including, but not limited to, the price of previous or existing  
378 contracts for similar commodities or contractual services, the  
379 amount appropriated by the Legislature for the contract, or the  
380 fair market value of similar commodities or contractual  
381 services. The agency shall provide the estimated contract amount  
382 to the vendor within 72 hours, excluding Saturdays, Sundays, and  
383 state holidays, after the filing of the notice of protest by the  
384 vendor. The estimated contract amount is not subject to protest  
385 pursuant to s. 120.57(3).

386 2. The bond shall be conditioned upon the payment of all  
387 costs and charges that are adjudged against the protestor in the  
388 administrative hearing in which the action is brought and in any  
389 subsequent appellate court proceeding.



725782

390           3. In lieu of a bond, the department, ~~the~~ water management  
391 district, or agency may, ~~in either case,~~ accept a cashier's  
392 check, official bank check, or money order in the amount of the  
393 bond.

394           4. If, after completion of the administrative hearing  
395 process and any appellate court proceedings, the department,  
396 water management district, or agency prevails, it shall recover  
397 all costs and charges, which must shall be included in the final  
398 order or judgment, excluding attorney ~~attorney's~~ fees. ~~This~~  
399 ~~section shall not apply to protests filed by the Office of~~  
400 ~~Supplier Diversity.~~ Upon payment of such costs and charges by  
401 the protestor, the bond, cashier's check, official bank check,  
402 or money order shall be returned to the protestor. If, after the  
403 completion of the administrative hearing process and any  
404 appellate court proceedings, the protestor prevails, the  
405 protestor may shall recover from the department, water  
406 management district, or agency all costs and charges that are  
407 ~~which shall be~~ included in the final order or judgment,  
408 excluding attorney ~~attorney's~~ fees.

409           5. This paragraph does not apply to protests filed by the  
410 office.

411           ~~(3) To establish a system of coordinated, uniform~~  
412 ~~procurement policies, procedures, and practices to be used by~~  
413 ~~agencies in acquiring commodities and contractual services,~~  
414 ~~which shall include, but not be limited to:~~

415           ~~(a) Development of a list of interested vendors to be~~  
416 ~~maintained by classes of commodities and contractual services.~~  
417 ~~This list shall not be used to prequalify vendors or to exclude~~  
418 ~~any interested vendor from bidding.~~



725782

419           ~~(b)1. Development of procedures for advertising~~  
420 ~~solicitations. These procedures must provide for electronic~~  
421 ~~posting of solicitations for at least 10 days before the date~~  
422 ~~set for receipt of bids, proposals, or replies, unless the~~  
423 ~~department or other agency determines in writing that a shorter~~  
424 ~~period of time is necessary to avoid harming the interests of~~  
425 ~~the state. The Office of Supplier Diversity may consult with the~~  
426 ~~department regarding the development of solicitation~~  
427 ~~distribution procedures to ensure that maximum distribution is~~  
428 ~~afforded to certified minority business enterprises as defined~~  
429 ~~in s. 288.703.~~

430           ~~2. Development of procedures for electronic posting. The~~  
431 ~~department shall designate a centralized website on the Internet~~  
432 ~~for the department and other agencies to electronically post~~  
433 ~~solicitations, decisions or intended decisions, and other~~  
434 ~~matters relating to procurement.~~

435           ~~(c) Development of procedures for the receipt and opening~~  
436 ~~of bids, proposals, or replies by an agency. Such procedures~~  
437 ~~shall provide the Office of Supplier Diversity an opportunity to~~  
438 ~~monitor and ensure that the contract award is consistent with~~  
439 ~~the requirements of s. 287.09451.~~

440           ~~(d) Development of procedures to be used by an agency in~~  
441 ~~deciding to contract, including, but not limited to, identifying~~  
442 ~~and assessing in writing project needs and requirements,~~  
443 ~~availability of agency employees, budgetary constraints or~~  
444 ~~availability, facility equipment availability, current and~~  
445 ~~projected agency workload capabilities, and the ability of any~~  
446 ~~other state agency to perform the services.~~

447           ~~(e) Development of procedures to be used by an agency in~~



725782

448 ~~maintaining a contract file for each contract which shall~~  
449 ~~include, but not be limited to, all pertinent information~~  
450 ~~relating to the contract during the preparatory stages; a copy~~  
451 ~~of the solicitation; documentation relating to the solicitation~~  
452 ~~process; opening of bids, proposals, or replies; evaluation and~~  
453 ~~tabulation of bids, proposals, or replies; and determination and~~  
454 ~~notice of award of contract.~~

455 ~~(f) Development of procedures to be used by an agency for~~  
456 ~~issuing solicitations that include requirements to describe~~  
457 ~~commodities, services, scope of work, and deliverables in a~~  
458 ~~manner that promotes competition.~~

459 ~~(g) Development of procedures to be used by an agency when~~  
460 ~~issuing requests for information and requests for quotes.~~

461 ~~(h) Development of procedures to be used by state agencies~~  
462 ~~when procuring information technology commodities and~~  
463 ~~contractual services that ensure compliance with public records~~  
464 ~~requirements and records retention and archiving requirements.~~

465 ~~(4) (a) To prescribe the methods of securing competitive~~  
466 ~~sealed bids, proposals, and replies. Such methods may include,~~  
467 ~~but are not limited to, procedures for identifying vendors;~~  
468 ~~setting qualifications; conducting conferences or written~~  
469 ~~question and answer periods for purposes of responding to vendor~~  
470 ~~questions; evaluating bids, proposals, and replies; ranking and~~  
471 ~~selecting vendors; and conducting negotiations.~~

472 ~~(b) To prescribe procedures for procuring information~~  
473 ~~technology and information technology consultant services that~~  
474 ~~provide for public announcement and qualification, competitive~~  
475 ~~solicitations, contract award, and prohibition against~~  
476 ~~contingent fees. Such procedures are limited to information~~



725782

477 ~~technology consultant contracts for which the total project~~  
478 ~~costs, or planning or study activities, are estimated to exceed~~  
479 ~~the threshold amount provided in s. 287.017, for CATEGORY TWO.~~

480 ~~(3)(5) To prescribe specific commodities and quantities to~~  
481 ~~be purchased locally.~~

482 ~~(6)(a) To govern the purchase by any agency of any~~  
483 ~~commodity or contractual service and to establish standards and~~  
484 ~~specifications for any commodity.~~

485 ~~(4)(b) Except for the purchase of insurance, to the~~  
486 ~~department may delegate to agencies the authority for the~~  
487 ~~procurement of and contracting for commodities or contractual~~  
488 ~~services.~~

489 ~~(7) To establish definitions and classes of commodities and~~  
490 ~~contractual services. Agencies shall follow the definitions and~~  
491 ~~classes of commodities and contractual services established by~~  
492 ~~the department in acquiring or purchasing commodities or~~  
493 ~~contractual services. The authority of the department under this~~  
494 ~~section shall not be construed to impair or interfere with the~~  
495 ~~determination by state agencies of their need for, or their use~~  
496 ~~of, services including particular specifications.~~

497 ~~(8) To provide any commodity and contractual service~~  
498 ~~purchasing rules to the Chief Financial Officer and all agencies~~  
499 ~~through an electronic medium or other means. Agencies may not~~  
500 ~~approve any account or request any payment of any account for~~  
501 ~~the purchase of any commodity or the procurement of any~~  
502 ~~contractual service covered by a purchasing or contractual~~  
503 ~~service rule except as authorized therein. The department shall~~  
504 ~~furnish copies of rules adopted by the department to any county,~~  
505 ~~municipality, or other local public agency requesting them.~~



725782

506        (5)~~(9)~~ To require that every agency furnish information  
507 relative to its commodity and contractual services purchases and  
508 methods of purchasing commodities and contractual services to  
509 the department when so requested.

510        (6)~~(10)~~ To prepare statistical data concerning the method  
511 of procurement, terms, usage, and disposition of commodities and  
512 contractual services by agencies. All agencies shall furnish  
513 such information for this purpose to the office and to the  
514 department, as the department or office may call for, but at  
515 least ~~no less frequently than~~ annually, on such forms or in such  
516 manner as the department may prescribe.

517        ~~(11) To establish and maintain programs for the purpose of~~  
518 ~~disseminating information to government, industry, educational~~  
519 ~~institutions, and the general public concerning policies,~~  
520 ~~procedures, rules, and forms for the procurement of commodities~~  
521 ~~and contractual services.~~

522        (7)~~(12)~~ Except as otherwise provided in this section  
523 ~~herein~~, to adopt rules necessary to carry out the purposes of  
524 this section, including the authority to delegate to any agency  
525 any and all of the responsibility conferred by this section,  
526 retaining to the department any and all authority for  
527 supervision thereof. Such purchasing of commodities and  
528 procurement of contractual services by state agencies must also  
529 ~~shall~~ be in strict accordance with the rules and procedures  
530 prescribed by the Department of Financial Services.

531        (8)~~(13)~~ If the department determines in writing that it is  
532 in the best interest of the state, to award to multiple  
533 suppliers contracts for commodities and contractual services  
534 established by the department for use by all agencies. Such



725782

535 awards may be on a statewide or regional basis. If regional  
536 contracts are established by the department, multiple supplier  
537 awards may be based upon multiple awards for regions. Agencies  
538 may award contracts to a responsible and responsive vendor on a  
539 statewide or regional basis.

540 (9)~~(14)~~ To procure and distribute federal surplus tangible  
541 personal property allocated to the state by the Federal  
542 Government.

543 (10)~~(15)~~ To enter into joint agreements with governmental  
544 agencies, as defined in s. 163.3164, for the purpose of pooling  
545 funds for the purchase of commodities or information technology  
546 that can be used by multiple agencies.

547 (a) Each agency that has been appropriated or has existing  
548 funds for such purchase, shall, upon contract award by the  
549 department, transfer their portion of the funds into the  
550 department's Operating Trust Fund for payment by the department.  
551 The funds shall be transferred by the Executive Office of the  
552 Governor pursuant to the agency budget amendment request  
553 provisions in chapter 216.

554 (b) Agencies that sign the joint agreements are financially  
555 obligated for their portion of the agreed-upon funds. If an  
556 agency becomes more than 90 days delinquent in paying the funds,  
557 the department shall certify to the Chief Financial Officer the  
558 amount due, and the Chief Financial Officer shall transfer the  
559 amount due to the Operating Trust Fund of the department from  
560 any of the agency's available funds. The Chief Financial Officer  
561 shall report these transfers and the reasons for the transfers  
562 to the Executive Office of the Governor and the legislative  
563 appropriations committees.



725782

564           ~~(11)-(16)~~ To evaluate contracts let by the Federal  
565 Government, another state, or a political subdivision for the  
566 provision of commodities and contract services, and, if it is  
567 determined in writing to be cost-effective and in the best  
568 interest of the state, to enter into a written agreement  
569 authorizing an agency to make purchases under such contract.

570           ~~(12)-(17)~~ (a) To enter into contracts pursuant to chapter 957  
571 for the designing, financing, acquiring, leasing, constructing,  
572 or operating of private correctional facilities. The department  
573 shall enter into such ~~a contract or~~ contracts with one  
574 contractor per facility ~~for the designing, acquiring, financing,~~  
575 ~~leasing, constructing, and operating of that facility~~ or may, if  
576 specifically authorized by the Legislature, separately contract  
577 for each of ~~any~~ such services.

578           ~~(a)-(b)~~ The department shall also ~~To~~ manage and enforce  
579 compliance with existing or future contracts entered into  
580 pursuant to chapter 957.

581           ~~(b)~~ The department may not delegate the responsibilities  
582 conferred by this subsection.

583           Section 7. Effective October 1, 2013, section 287.044,  
584 Florida Statutes, is created to read:

585           287.044 Powers, duties, and functions of the Department of  
586 Financial Services.—The Department of Financial Services is  
587 responsible for establishing and enforcing procurement and  
588 contracting policies and procedures for the Department of  
589 Management Services and all agencies. The Department of  
590 Financial Services has the following powers, duties, and  
591 functions:

592           (1) To establish a system of coordinated and uniform



725782

593 procurement policies, procedures, and practices to be used by  
594 agencies when acquiring commodities and contractual services,  
595 which includes, but is not limited to:

596 (a) The development of procedures to be used by an agency  
597 for issuing or advertising solicitations which include  
598 requirements for the agency to describe commodities, services,  
599 scope of work, and deliverables in a manner that promotes  
600 competition.

601 1. Such procedures must provide for electronic posting of  
602 solicitations at least 10 days before the date set for receipt  
603 of bids, proposals, or replies, unless the agency determines in  
604 writing that a shorter period of time is necessary to avoid  
605 harming the interests of the state.

606 2. The office may consult with the department regarding the  
607 development of solicitation distribution procedures to ensure  
608 that maximum distribution is afforded to certified minority  
609 business enterprises as defined in s. 288.703.

610 3. The department shall designate a centralized website on  
611 the Internet for the department and other agencies to  
612 electronically post solicitations, decisions or intended  
613 decisions, and other matters relating to procurement.

614 (b) The development of procedures to be used by an agency  
615 when issuing requests for information and requests for quotes.

616 (c) The development of procedures to be used by state  
617 agencies when procuring information technology commodities and  
618 contractual services which ensure compliance with public records  
619 requirements and records retention and archiving requirements.

620 (d) The development of procedures for the receipt and  
621 opening of bids, proposals, or replies by an agency. Such



725782

622 procedures must provide the office an opportunity to monitor and  
623 to ensure that the contract award is consistent with the  
624 requirements of s. 287.09451.

625 (e) The development of procedures to be used by an agency  
626 in deciding to contract, including, but not limited to,  
627 identifying and assessing in writing project needs and  
628 requirements, availability of agency employees, budgetary  
629 availability or constraints, availability of facility equipment,  
630 current and projected agency workload capabilities, and the  
631 ability of another state agency to perform the services.

632 (f) The development of procedures for recording and  
633 maintaining support documentation for a cost or price analysis  
634 to be performed before the award of a contract in excess of the  
635 threshold amount provided in s. 287.017 for CATEGORY FOUR. The  
636 cost or price analysis shall be used to validate the  
637 reasonableness of bids, proposals, or replies.

638 (g) The development of procedures to be used by state  
639 agencies when entering into contracts which ensure standard  
640 formats, quantifiable and measurable deliverables, performance  
641 measures, and financial consequences for nonperformance.

642 (h) The development of procedures to be used by an agency  
643 in maintaining a contract file for each contract which includes,  
644 but is not limited to, all pertinent information relating to the  
645 contract during the preparatory stages; the solicitation  
646 process, including a copy of the solicitation; the opening of  
647 bids, proposals, or replies; the evaluation and tabulation of  
648 bids, proposals, or replies; and the determination and notice of  
649 contract award.

650 (2) To prescribe the methods of securing competitive sealed



725782

651 bids, proposals, and replies. Such methods may include, but are  
652 not limited to, procedures for identifying vendors; setting  
653 qualifications; conducting conferences or written question and  
654 answer periods for purposes of responding to vendor questions;  
655 evaluating bids, proposals, and replies; ranking and selecting  
656 vendors; and conducting negotiations.

657 (3) To prescribe procedures for procuring information  
658 technology and information technology consultant services which  
659 provide for public announcement and qualification, competitive  
660 solicitations, the contract award, and a prohibition against  
661 contingent fees. Such procedures are limited to information  
662 technology consultant contracts for which the total project  
663 costs, or planning or study activities, are estimated to exceed  
664 the threshold amount provided in s. 287.017 for CATEGORY TWO.

665 (4) To govern the purchase by an agency of any commodity or  
666 contractual service and to establish standards and  
667 specifications for a commodity. The Chief Financial Officer  
668 shall establish definitions and classes of commodities and  
669 contractual services which agencies must adhere to in acquiring  
670 or purchasing commodities or contractual services. The  
671 department's authority under this section may not impair or  
672 interfere with an agency's determination of its need for, or use  
673 of, services that include particular specifications.

674 (5) To provide to agencies through an electronic medium or  
675 other means rules for purchasing commodities and contractual  
676 services. Agencies may not approve any account, or request  
677 payment of any account, for the purchase of any commodity or the  
678 procurement of any contractual service covered by a purchasing  
679 or contractual service rule except as authorized by such rule.



725782

680 The department shall furnish copies of rules adopted by the  
681 department to any county, municipality, or other local public  
682 agency requesting them.

683 (6) To establish and maintain programs that disseminate  
684 information to governmental entities, industry vendors,  
685 educational institutions, and the general public concerning  
686 policies, procedures, rules, and forms for the procurement of  
687 commodities and contractual services.

688 (7) To establish and maintain a list of vendors that are  
689 not allowed to do business with the state pursuant to ss.  
690 287.132(4) and 287.133. The department may add to the list  
691 vendors that are not compliant with federal or state laws, or  
692 that the department determines have uncollected accounts that  
693 are owed to the state.

694 Section 8. Paragraph (f) of subsection (3) and subsections  
695 (9), (14), and (16) of section 287.057, Florida Statutes, are  
696 amended, and subsection (24) is added to that section, to read:  
697 287.057 Procurement of commodities or contractual  
698 services.—

699 (3) When the purchase price of commodities or contractual  
700 services exceeds the threshold amount provided in s. 287.017 for  
701 CATEGORY TWO, no purchase of commodities or contractual services  
702 may be made without receiving competitive sealed bids,  
703 competitive sealed proposals, or competitive sealed replies  
704 unless:

705 (f) The following contractual services and commodities are  
706 not subject to the competitive-solicitation requirements of this  
707 section:

708 ~~1. Artistic services. For the purposes of this subsection,~~



725782

709 ~~the term "artistic services" does not include advertising or~~  
710 ~~typesetting. As used in this subparagraph, the term~~  
711 ~~"advertising" means the making of a representation in any form~~  
712 ~~in connection with a trade, business, craft, or profession in~~  
713 ~~order to promote the supply of commodities or services by the~~  
714 ~~person promoting the commodities or contractual services.~~

715 ~~2. Academic program reviews if the fee for such services~~  
716 ~~does not exceed \$50,000.~~

717 ~~3. Lectures by individuals.~~

718 ~~1.4.~~ Legal services, including attorney, paralegal, expert  
719 witness, appraisal, or mediator services.

720 ~~2.5.a.~~ Health services involving examination, diagnosis,  
721 treatment, prevention, medical consultation, or administration,  
722 and,

723 ~~b.~~ beginning January 1, 2011, health services, including,  
724 but not limited to, substance abuse and mental health services,  
725 involving examination, diagnosis, treatment, prevention, or  
726 medical consultation, if ~~when~~ such services are offered to  
727 eligible individuals participating in a specific program that  
728 qualifies multiple providers and uses a standard payment  
729 methodology. Reimbursement of administrative costs for providers  
730 of services purchased in this manner are ~~shall~~ also ~~be~~ exempt.  
731 For purposes of this subparagraph ~~sub-subparagraph~~, the term  
732 "providers" means health professionals, health facilities, or  
733 organizations that deliver or arrange for the delivery of health  
734 services.

735 ~~3.6.~~ Services provided to persons with mental or physical  
736 disabilities by not-for-profit corporations that ~~which~~ have  
737 obtained exemptions under ~~the provisions of~~ s. 501(c)(3) of the



725782

738 United States Internal Revenue Code or if ~~when~~ such services are  
739 governed by the provisions of Office of Management and Budget  
740 Circular A-122. However, in acquiring such services, the agency  
741 must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past  
742 performance, willingness to meet time requirements, and price.

743 ~~4.7.~~ Medicaid services delivered to an eligible Medicaid  
744 recipient, unless the agency is directed otherwise in law.

745 ~~5.8.~~ Family placement services.

746 ~~6.9.~~ Prevention services related to mental health,  
747 including drug abuse prevention programs, child abuse prevention  
748 programs, and shelters for runaways, operated by not-for-profit  
749 corporations. However, in acquiring such services, the agency  
750 must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past  
751 performance, willingness to meet time requirements, and price.

752 ~~10.~~ Training and education services provided to injured  
753 employees pursuant to s. 440.491(6).

754 ~~7.11.~~ Contracts entered into pursuant to s. 337.11.

755 ~~8.12.~~ Services or commodities provided by governmental  
756 agencies.

757 (9) An agency may ~~shall~~ not divide the solicitation of  
758 commodities or contractual services so as to avoid the  
759 requirements of subsections (1)-(3) and reduce the ability of  
760 businesses to openly compete.

761 (14) For each contractual services contract, the agency  
762 shall designate an employee to function as contract manager who  
763 shall be responsible for enforcing performance of the contract  
764 terms and conditions and serve as a liaison with the contractor.  
765 Each contract manager who is responsible for one or more  
766 contracts in excess of the threshold amount provided under s.



725782

767 287.017 for CATEGORY FIVE ~~TWO~~ must be certified pursuant to s.  
768 287.1312 ~~attend training conducted by the Chief Financial~~  
769 ~~Officer for accountability in contracts and grant management.~~  
770 The Chief Financial Officer shall establish and disseminate  
771 uniform procedures pursuant to s. 17.03(3) to ensure that  
772 contractual services have been rendered in accordance with the  
773 contract terms before the agency processes the invoice for  
774 payment. The procedures must ~~shall~~ include, but need not be  
775 limited to, procedures for monitoring and documenting contractor  
776 performance, reviewing and documenting all deliverables for  
777 which payment is requested by vendors, and providing written  
778 certification by contract managers of the agency's receipt of  
779 goods and services.

780 (16) For a contract in excess of the threshold amount  
781 provided in s. 287.017 for CATEGORY FOUR, the agency head shall  
782 appoint:

783 (a) At least three persons to evaluate proposals and  
784 replies who collectively have experience and knowledge in the  
785 program areas and service requirements for which commodities or  
786 contractual services are sought.

787 (b) At least three persons to conduct negotiations during a  
788 competitive sealed reply procurement who collectively have  
789 experience and knowledge in negotiating contracts, contract  
790 procurement, and the program areas and service requirements for  
791 which commodities or contractual services are sought. When the  
792 value of a contract is in excess of \$1 million in any fiscal  
793 year, at least one of the persons conducting negotiations must  
794 be certified as a contract negotiator based upon rules adopted  
795 by the Department of Financial Services ~~Management Services~~ in



725782

796 order to ensure that certified contract negotiators are  
797 knowledgeable about effective negotiation strategies, capable of  
798 successfully implementing those strategies, and involved  
799 appropriately in the procurement process. At a minimum, the  
800 rules must address the qualifications required for  
801 certification, the method of certification, and the procedure  
802 for involving the certified negotiator. If the value of a  
803 contract is in excess of \$10 million in any fiscal year, at  
804 least one of the persons conducting negotiations must be a  
805 Project Management Professional, as certified by the Project  
806 Management Institute.

807 (24) An agency or other eligible user may purchase  
808 commodities or services through another agency's existing  
809 contract rather than through competitive competition if the use  
810 of such contract is in the best interest of the state.

811 Section 9. Paragraph (e) of subsection (1) of section  
812 287.058, Florida Statutes, is amended, and subsections (7)  
813 through (11) are added to that section, to read:

814 287.058 Contract document.—

815 (1) Every procurement of contractual services in excess of  
816 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
817 except for the providing of health and mental health services or  
818 drugs in the examination, diagnosis, or treatment of sick or  
819 injured state employees or the providing of other benefits as  
820 required by the provisions of chapter 440, shall be evidenced by  
821 a written agreement embodying all provisions and conditions of  
822 the procurement of such services, which shall, where applicable,  
823 include, but not be limited to, a provision:

824 (e) Dividing the contract into quantifiable, measurable,



725782

825 and verifiable units of deliverables which ~~that~~ must be received  
826 and accepted in writing by the contract manager before payment.  
827 Each deliverable must be directly related to the scope of work  
828 and specify a performance measure. As used in this paragraph,  
829 the term "performance measure" means the required minimum level  
830 of service to be performed and criteria for evaluating the  
831 successful completion of each deliverable.

832  
833 In lieu of a written agreement, the department may authorize the  
834 use of a purchase order for classes of contractual services, if  
835 the provisions of paragraphs (a)-(i) are included in the  
836 purchase order or solicitation. The purchase order must include,  
837 but need not be limited to, an adequate description of the  
838 services, the contract period, and the method of payment. In  
839 lieu of printing the provisions of paragraphs (a)-(i) in the  
840 contract document or purchase order, agencies may incorporate  
841 the requirements of paragraphs (a)-(i) by reference.

842 (7) The Chief Financial Officer may review and approve  
843 contracts subject to this chapter before the execution of such  
844 contracts in accordance with rules adopted by the department.  
845 The review must ensure that all contracting laws have been met;  
846 that the contract document contains a clear statement of work,  
847 quantifiable and measureable deliverables, performance measures,  
848 financial consequences for nonperformance, and clear terms and  
849 conditions that protect the interests of the state; that  
850 documentation is available to support the contract; and that the  
851 associated costs of the contract are not unreasonable or  
852 inappropriate. A contract that does not comply with this  
853 subsection may be rejected and returned to the submitting agency



725782

854 for revision.

855 (8) The Chief Financial Officer may establish dollar  
856 thresholds and other criteria for sampling the agreements that  
857 are to be reviewed prior to execution. The Chief Financial  
858 Officer may revise such thresholds and other criteria for an  
859 agency or the unit of any agency as he or she deems appropriate.

860 (9) The department's review of contract documentation may  
861 include, but need not be limited to:

862 (a) Evidence of advertising the procurement opportunity, if  
863 applicable;

864 (b) The bid, proposal, or reply itself, whether an  
865 invitation to bid, request for proposals, or invitation to  
866 negotiate, as applicable;

867 (c) The preprocurement conference questions and answers;

868 (d) Any additional documentation provided to bidders,  
869 proposers, or repliers;

870 (e) The list of bidders, proposers, or repliers solicited;

871 (f) The evaluation instrument and process description  
872 related to the contract;

873 (g) The bid tabulation or evaluation record;

874 (h) Documentation that supports the agency's determination  
875 of vendor responsibility;

876 (i) The successful bid, proposal, or reply in addition to  
877 the unsuccessful bids, proposals, or replies;

878 (j) Documentation that supports the selection of the  
879 contractor;

880 (k) The reasonableness of the price;

881 (l) Verification that all statutory and regulatory  
882 requirements have been met; and



725782

883           (m) The proposed contract.

884           (10) The department shall verify that a competitive process  
885 was used, if required by law, and that the contract was  
886 appropriately awarded on the basis of lowest price or best value  
887 to a responsive and reasonable bidder, proposer, or replier. For  
888 contracts not competitively awarded, the procurement record  
889 shall be reviewed for restrictive specifications and the  
890 agency's justification for the noncompetitive method used in  
891 awarding the contract, including justification for the selection  
892 of the vendor and the reasonableness of the terms.

893           (11) The department has 30 days to make a final  
894 determination regarding approval of a contract. The department  
895 and the agency entering into the contract may agree to a longer  
896 review period to ensure the thorough consideration of the  
897 procurement process and its results.

898           Section 10. Section 287.1312, Florida Statutes, is created  
899 to read:

900           287.1312 Contract manager certification.—

901           (1) The Department of Financial Services shall establish a  
902 training certification program for contract and grant managers  
903 and negotiators of contracts and grants. A state employee may  
904 not manage a contract or grant agreement in excess of the  
905 threshold amount provided in s. 287.017 for CATEGORY FIVE  
906 without obtaining a valid certification from the Department of  
907 Financial Services under this section. The program must include  
908 training in the following areas:

909           (a) Procurement and the development of contracts.

910           (b) Development and administration of grant agreements  
911 involving federal and state financial assistance.



725782

912           (c) Responsibilities of a contract manager in the  
913 management of state contracts and grant agreements.  
914           (d) Federal and state audit and reporting requirements.  
915           (e) Laws and rules relating to procurement and contract  
916 administration.  
917           (f) Any other subject matter that the Chief Financial  
918 Officer determines will promote accountability in contract and  
919 grant management.  
920           (2) The program shall provide for periodic recertification,  
921 as necessary. The Department of Financial Services shall  
922 determine course requirements, maintain information on  
923 certifications, and monitor the performance of contract and  
924 grant managers. As part of such monitoring, the department shall  
925 annually publish the results of agency manager audits and error  
926 rates related to contract and grant management on its website.  
927           (3) The Department of Financial Services may revoke a  
928 manager's certification for incompetence or conduct inconsistent  
929 with the responsibilities of contract or grant management.  
930           (4) The Department of Financial Services shall adopt rules  
931 to administer this section.  
932           Section 11. Paragraph (d) of subsection (1) of section  
933 287.133, Florida Statutes, is amended to read:  
934           287.133 Public entity crime; denial or revocation of the  
935 right to transact business with public entities.—  
936           (1) As used in this section:  
937           (d) "Department" means the Department of Financial  
938 Management Services.  
939           Section 12. Paragraph (h) of subsection (3) of section  
940 255.25, Florida Statutes, is amended to read:



725782

941           255.25 Approval required prior to construction or lease of  
942 buildings.—

943           (3)

944           (h) ~~The Department of Management Services may,~~ Pursuant to  
945 s. 287.042(2)(~~a~~), the department shall procure a term contract  
946 for real estate consulting and brokerage services. A state  
947 agency may not purchase services from the contract unless the  
948 contract has been procured under s. 287.057(1) after March 1,  
949 2007, and contains the following provisions or requirements:

950           1. Awarded brokers ~~must~~ maintain an office or presence in  
951 the market served. In awarding the contract, preference must be  
952 given to brokers who ~~that~~ are licensed in this state under  
953 chapter 475 and who ~~that~~ have 3 or more years of experience in  
954 the market served. The contract may be made with up to three  
955 tenant brokers in order to serve the marketplace in the north,  
956 central, and south areas of the state.

957           2. Each contracted tenant broker works ~~shall work~~ under the  
958 direction, supervision, and authority of the state agency,  
959 subject to the rules governing lease procurements.

960           3. The department provides ~~shall provide~~ training for the  
961 awarded tenant brokers concerning the rules governing the  
962 procurement of leases.

963           4. Tenant brokers ~~must~~ comply with all applicable  
964 provisions of s. 475.278.

965           5. Real estate consultants and tenant brokers are ~~shall be~~  
966 compensated by the state agency, subject to the provisions of  
967 the term contract, and such compensation is subject to  
968 appropriation by the Legislature. A real estate consultant or  
969 tenant broker may not receive compensation directly from a



725782

970 lessor for services that are rendered under the term contract.  
971 Moneys paid by a lessor to the state agency under a facility  
972 leasing arrangement are not subject to the charges imposed under  
973 s. 215.20. All terms relating to the compensation of the real  
974 estate consultant or tenant broker must ~~shall~~ be specified in  
975 the term contract and may not be supplemented or modified by the  
976 state agency using the contract.

977 6. The department conducts ~~shall conduct~~ periodic customer-  
978 satisfaction surveys.

979 7. Each state agency reports ~~shall report~~ the following  
980 information to the department:

981 a. The number of leases that adhere to the goal of the  
982 workspace-management initiative of 180 square feet per full-time  
983 employee FTE.

984 b. The quality of space leased and the adequacy of tenant-  
985 improvement funds.

986 c. The timeliness of lease procurement, measured from the  
987 date of the agency's request to the finalization of the lease.

988 d. Whether cost-benefit analyses were performed before  
989 execution of the lease in order to ensure that the lease is in  
990 the best interest of the state.

991 e. The lease costs compared to market rates for similar  
992 types and classifications of space according to the official  
993 classifications of the Building Owners and Managers Association.

994 Section 13. Subsection (12) of section 287.012, Florida  
995 Statutes, is amended to read:

996 287.012 Definitions.—As used in this part, the term:

997 (12) "Exceptional purchase" means any purchase of  
998 commodities or contractual services excepted by law or rule from



725782

999 the requirements for competitive solicitation, including, but  
1000 not limited to, purchases from a single source; purchases upon  
1001 receipt of fewer ~~less~~ than two responsive bids, proposals, or  
1002 replies; purchases made by an agency, after receiving approval  
1003 from the department, from a contract procured, pursuant to s.  
1004 287.057(1), or by another agency; and purchases made without  
1005 advertisement in the manner required under ~~by~~ s. 287.044(1)(a)  
1006 ~~287.042(3)(b)~~.

1007 Section 14. Paragraph (a) of subsection (2) of section  
1008 402.7305, Florida Statutes, is amended to read:

1009 402.7305 Department of Children and Family Services;  
1010 procurement of contractual services; contract management.-

1011 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.-

1012 (a) Notwithstanding s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~, if  
1013 ~~whenever~~ the department intends to contract with a public  
1014 postsecondary institution to provide a service, the department  
1015 must allow all public postsecondary institutions in this state  
1016 which ~~that~~ are accredited by the Southern Association of  
1017 Colleges and Schools to bid on the contract. Thereafter,  
1018 notwithstanding any other provision of law ~~to the contrary~~, if a  
1019 public postsecondary institution intends to subcontract for any  
1020 service awarded in the contract, the subcontracted service must  
1021 be procured by competitive procedures.

1022 Section 15. Subsection (3) of section 427.0135, Florida  
1023 Statutes, is amended to read:

1024 427.0135 Purchasing agencies; duties and responsibilities.-  
1025 Each purchasing agency, in carrying out the policies and  
1026 procedures of the commission, shall:

1027 (3) Not procure transportation disadvantaged services



725782

1028 without initially negotiating with the commission, as provided  
1029 in s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~, or unless otherwise  
1030 authorized by statute. If the purchasing agency, after  
1031 consultation with the commission, determines that it cannot  
1032 reach mutually acceptable contract terms with the commission,  
1033 the purchasing agency may contract for the same transportation  
1034 services provided in a more cost-effective manner and of  
1035 comparable or higher quality and standards. The Medicaid agency  
1036 shall implement this subsection in a manner consistent with s.  
1037 409.908(18) and as otherwise limited or directed by the General  
1038 Appropriations Act.

1039 Section 16. Subsection (2) of section 946.515, Florida  
1040 Statutes, is amended to read:

1041 946.515 Use of goods and services produced in correctional  
1042 work programs.—

1043 (2) A ~~Ne~~ similar product or service of comparable price and  
1044 quality found necessary for use by any state agency may not be  
1045 purchased from any source other than the corporation if the  
1046 corporation certifies that the product is manufactured by, or  
1047 the service is provided by, inmates and the product or service  
1048 meets the comparable performance specifications and comparable  
1049 price and quality requirements as specified under s.

1050 287.042(1)(c) ~~287.042(1)(f)~~ or as determined by an individual  
1051 agency as provided in this section. The purchasing authority of  
1052 ~~any~~ such state agency may make reasonable determinations of  
1053 need, price, and quality with reference to products or services  
1054 available from the corporation. In the event of a dispute  
1055 between the corporation and a ~~any~~ purchasing authority based  
1056 upon price or quality under this section or s. 287.042(1)(c)



725782

1057 ~~287.042(1)(f)~~, either party may request a hearing with the  
1058 Department of Management Services and, if not resolved, ~~either~~  
1059 ~~party~~ may request a proceeding pursuant to ss. 120.569 and  
1060 120.57, which shall be referred to the Division of  
1061 Administrative Hearings within 60 days after such request, to  
1062 resolve any dispute under this section. A ~~No~~ party is not  
1063 entitled to any appeal pursuant to s. 120.68.

1064 Section 17. Procurement review and report.-

1065 (1) The Chief Financial Officer shall review and  
1066 investigate:

1067 (a) All current state laws that govern the state  
1068 procurement of goods, services, and facilities;

1069 (b) The procurement policies, rules, procedures, and  
1070 practices followed by the state agencies, boards, commissions,  
1071 offices, and other instrumentalities of the executive branch of  
1072 state government;

1073 (c) The organization and management processes involved in  
1074 the state procurement of goods, services, and facilities before  
1075 the award of a state procurement contract, during the  
1076 solicitation of bids, the evaluation, and the negotiation of a  
1077 contract, and subsequent to the award of the contract to  
1078 determine the extent to which these organization and management  
1079 processes facilitate the legislative policy set forth in this  
1080 act; and

1081 (d) Any other areas that the Chief Financial Officer deems  
1082 relevant to the review and investigation.

1083 (2) In order to accomplish the procurement review directed  
1084 by this section, the Chief Financial Officer may:

1085 (a) Acquire information directly from the head of any state



725782

1086 department or agency for the purpose of conducting this review.  
1087 All departments and agencies shall cooperate with the Chief  
1088 Financial Officer and furnish all information requested to the  
1089 extent permitted by law.

1090 (b) Procure the services of experts and consultants.

1091 (c) Contract with private organizations and nonprofit  
1092 institutions to carry out studies and prepare reports to  
1093 facilitate the review.

1094 (3) By December 31, 2012, the Chief Financial Officer shall  
1095 submit to the Governor, the President of the Senate, and the  
1096 Speaker of the House of Representatives a report of findings and  
1097 recommendations for changes in statutes, rules, policies,  
1098 procedures, and organization necessary to carry out the policies  
1099 set forth in this act.

1100 Section 18. The Legislature recognizes the need to reform  
1101 the purchasing cycle, from the development of a purchasing  
1102 agreement to the payment for goods or services provided to the  
1103 state. Therefore, chapter 287, Florida Statutes, is repealed  
1104 effective July 30, 2014.

1105 Section 19. (1) For the 2012-2013 fiscal year, the sum of  
1106 \$400,000 in nonrecurring funds is appropriated from the  
1107 Administrative Trust Fund in the Department of Financial  
1108 Services to contract for the Chief Financial Officer's review of  
1109 the state's procurement process.

1110 (2) For the 2012-2013 fiscal year, the sum of \$375,000 in  
1111 nonrecurring funds is appropriated from the Administrative Trust  
1112 Fund in the Department of Financial Services to contract for the  
1113 Chief Financial Officer's administration of the certified  
1114 contract manager and negotiator programs.



1115           (3) For the 2012-2013 fiscal year, the sum of \$X00,000 in  
1116 recurring funds from the General Revenue fund and full-time  
1117 equivalent positions and associated salary rate of are  
1118 appropriated to the Chief Financial Officer for the purpose of  
1119 implementing the Chief Financial Officer's expanded contract  
1120 auditing responsibilities under this act. Funds remaining  
1121 unexpended or unencumbered from this appropriation as of June  
1122 30, 2013, shall revert and be reappropriated for the same  
1123 purpose in the 2013-2014 fiscal year.

1124           Section 20. Except as otherwise expressly provided in this  
1125 act, this act shall take effect July 1, 2012.

1126  
1127 ===== T I T L E   A M E N D M E N T =====

1128 And the title is amended as follows:

1129           Delete everything before the enacting clause  
1130 and insert:

1131                           A bill to be entitled  
1132           An act relating to state contracting; amending s.  
1133           11.45, F.S.; conforming provisions to changes made by  
1134           the act; amending s. 215.971, F.S.; requiring  
1135           agreements funded with state or federal financial  
1136           assistance to include a performance measure for each  
1137           deliverable, to be reviewed and approved in accordance  
1138           with rules adopted by the Department of Financial  
1139           Services, and to have the contracting entity assign a  
1140           grants manager who is responsible for enforcing  
1141           performance of the agreement; amending s. 215.985,  
1142           F.S.; revising provisions relating to the Chief  
1143           Financial Officer's intergovernmental contract



725782

1144 tracking system under the Transparency Florida Act;  
1145 specifying the entities that are included in the  
1146 tracking system; requiring that exempt and  
1147 confidential information be redacted from contracts  
1148 and procurement documents posted on the system;  
1149 authorizing the Chief Financial Officer to make  
1150 available the information posted on the system to the  
1151 public through a secure website; authorizing the  
1152 Department of Financial Services to adopt rules;  
1153 repealing s. 216.0111, F.S., relating to a requirement  
1154 that state agencies report certain contract  
1155 information to the Department of Financial Services  
1156 and transferring that requirement to s. 215.985, F.S.;  
1157 amending s. 287.032, F.S.; dividing the  
1158 responsibilities of the Department of Management  
1159 Services under ch. 287, F.S., with the Department of  
1160 Financial Services; amending s. 287.042, F.S.;  
1161 limiting the duties of the Department of Management  
1162 Services to the procurement of commodities and  
1163 contractual services; directing the department to  
1164 develop a list of interested vendors; deleting  
1165 provisions requiring that the department perform  
1166 duties relating to procurement and contracting  
1167 policies and procedures; creating s. 287.044, F.S.;  
1168 assigning duties relating to procurement and  
1169 contracting policies and procedures to the Department  
1170 of Financial Services; requiring the department to  
1171 develop a list of vendors not allowed to do business  
1172 with the state; amending s. 287.057, F.S.; revising



1173 the list of contractual services and commodities that  
1174 are exempt from competitive solicitation to delete  
1175 certain services from the exemption; revising  
1176 provisions prohibiting an agency from dividing a  
1177 solicitation; conforming provisions to changes made by  
1178 the act; authorizing an agency or other eligible user  
1179 to purchase commodities or services through another  
1180 agency's contract; amending s. 287.058, F.S.;  
1181 requiring contracts to include a performance measure  
1182 for each deliverable; authorizing the Chief Financial  
1183 Officer to review and approve contracts; providing  
1184 requirements for such reviews; authorizing the Chief  
1185 Financial Officer to establish dollar thresholds and  
1186 another criteria for sampling agreements that are to  
1187 be reviewed before execution; providing criteria for  
1188 the department's review of contract documentation;  
1189 requiring that the department verify that a  
1190 competitive process was used and that a contract was  
1191 appropriately awarded; providing for the review of  
1192 procurement record for contracts not competitively  
1193 awarded; specifying the number of days that the  
1194 department must make its final determination regarding  
1195 the approval of a contract; authorizing the department  
1196 and the agency to agree to a longer review period;  
1197 creating s. 287.1312, F.S.; requiring certification of  
1198 contract managers by the Department of Financial  
1199 Services for contracts of more than a certain amount;  
1200 requiring the training program for the certification  
1201 to provide training in certain areas; authorizing the



725782

1202 department to adopt rules to administer the program;  
1203 amending s. 287.133, F.S.; revising the definition of  
1204 "department" to mean the Department of Financial  
1205 Services rather than the Department of Management  
1206 Services with respect to provisions governing public  
1207 entity crimes and placement on the convicted vendor  
1208 list; amending ss. 255.25, 287.012, 402.7305,  
1209 427.0135, and 946.515, F.S.; conforming cross-  
1210 references; requiring the Chief Financial Officer to  
1211 conduct a study of current procurement laws pursuant  
1212 to such policies; requiring that the Chief Financial  
1213 Officer submit a report to the Legislature and  
1214 Governor by a certain date on such study; repealing  
1215 ch. 287, F.S., on a future date; providing  
1216 appropriations; providing effective dates.



946392

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2012	.	
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	.	

The Committee on Banking and Insurance (Bennett) recommended the following:

**Senate Amendment to Amendment (725782) (with title amendment)**

Between lines 897 and 898  
insert:

Section 10. Subsection (3) of section 287.095, Florida Statutes, is repealed.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 1196  
and insert:



946392

13  
14  
15

and the agency to agree to a longer review period;  
repealing s. 287.095(3), F.S., relating to certain  
products produced by inmate labor;

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/2/12  
Meeting Date

Topic \_\_\_\_\_

Bill Number 1626  
*(if applicable)*

Name Kraig Conn

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 301 S. Bronough  
*Street*  
Tall FL 32301  
*City State Zip*

Phone 222 9684

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-2-12

Meeting Date

Topic \_\_\_\_\_

Bill Number 1626  
*(if applicable)*

Name Tarren Bragdon

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title CEO

Address 15275 Collier Blvd, ste 201-279  
*Street*

Phone 239.244.8839

Naples FL 34119  
*City State Zip*

E-mail tbragdon@FloridaFGA.org

Speaking:  For  Against  Information

Representing Foundation for Government Accountability

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.2.12  
Meeting Date

Topic Contracting

Bill Number 1626  
*(if applicable)*

Name Ashley Mayer

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Dir. Policy & Leg Affairs

Address Capitol - PL-11  
Street  
Tallahassee FL  
City State Zip

Phone 413-2863

E-mail ashley.mayer@nytkonmac.com

Speaking:  For  Against  Information

Representing CFO Atwater

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 1626

INTRODUCER: Banking and Insurance Committee and Senator Gaetz

SUBJECT: State Contracting

DATE: February 2, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	<b>Fav/CS</b>
2.			GO	
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The Department of Management Services (DMS) is responsible for promoting efficiency and to effect coordination in the purchase of commodities and contractual services for the state, providing uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by agencies and eligible users, and procuring and distributing federal surplus tangible personal property allocated to the state by the Federal Government.

The Chief Financial Officer (CFO) is the chief fiscal officer of the state and through the Department of Financial Services (DFS) examines, audits, and settles all accounts, claims, and demands against the state, arising under any law or resolution of the Legislature, and for issuing a warrant directing the payment out of the State Treasury of such amount.

The Office of the Auditor General (AG) conducts financial audits of the accounts and records of State agencies, conducts operational and performance audits of public records and information technology systems, adopts rules for financial audits performed by independent certified public accountants of local governmental entities, and reviews all audit reports of local governmental entities.

Under the bill the duties of the Department of Management Services (DMS) are limited to the procurement of commodities and contractual services, collecting data, and preparing statistical reports on the agencies' use of methods of procurement. The responsibility and authority to develop procurement related rules, policy, and practice will be transferred to the Department of Financial Services (DFS). Provisions relating to the Chief Financial Officer's (CFO) intergovernmental contract tracking system under the Transparency Florida Act are revised by the bill. The bill also requires the CFO to conduct a study of current procurement laws to be submitted to the Legislature and Governor.

This bill substantially amends the following sections of the Florida Statutes: 11.45, 215.971, 215.985, 255.25, 287.012, 287.032, 287.042, 287.057, 287.058, 287.095, 287.133, 402.7305, 427.0135, and 946.515.

This bill repeals the following sections of the Florida Statutes: 216.0111, and ch. 287 (effective July 30, 2014).

This bill creates the following sections of the Florida Statutes: 287.044, and 287.1312.

## II. Present Situation:

### Department of Management Services and Chapter 287, F.S.

Under ch. 287, F.S., the Division of State Purchasing in the Department of Management Services (DMS) is responsible for developing and administering standardized procurement policies, procedures, and practices to be used by state agencies in acquiring commodities, contractual services, and information technology. A variety of procurement methods are available for use by the agencies depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. To guide the procedures for the procurement method to be used, the type of review required, and the method for the award of any contract the following purchasing categories with threshold amounts have been established:

- Category one: \$20,000
- Category two: \$35,000
- Category three: \$65,000
- Category four: \$195,000
- Category five: \$325,000<sup>1</sup>

The DMS prescribes methods of securing competitive sealed bids, proposals, and replies.<sup>2</sup> The competitive solicitation process must be used for procurement of commodities or contractual services in excess of the category two threshold amount, and include the following solicitation methods: invitations to bid, requests of proposals, and invitations to negotiate.<sup>3</sup> Many services procured by state agencies are exempt from competitive solicitation requirements regardless of

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<sup>1</sup> Section 287.017, F.S.

<sup>2</sup> Rule 60A-1.041, F.A.C.

<sup>3</sup> Section 287.057, F.S.

whether the purchase exceeds the applicable cost threshold, including artistic services, auditing services, and legal services.<sup>4</sup> Agencies currently must seek approval from the DMS to use an alternate contract source to purchase commodities or services from term contracts or requirements contracts competitively established by other governmental entities. In approving the alternate contract source, the DMS determines that the contract source is cost-effective and in the best interest of the State.<sup>5</sup>

All agreements in excess of the category two threshold must be evidenced by a written agreement and include provisions for the required minimum level of service to be performed by the contractor, criteria for evaluating the successful completion of each deliverable, and financial consequences for nonperformance. There must also be a provision dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and criteria for evaluating the successful completion of each deliverable.<sup>6</sup>

Each agency is required to appoint at least one contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who serves as a liaison with the contract managers and the DMS.<sup>7</sup> The DMS designates certain minimum required documentation that must be in the contract file. Additionally, for each contractual services contract the agency must designate an employee to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor, but there is no similar requirement for grants. Each contract manager who is responsible for contracts in excess of the threshold amount for category two (\$35,000) must attend training conducted by the CFO for accountability in contracts and grant management.<sup>8</sup> Additional certifications were later required for contracts in excess of category four threshold<sup>9</sup> and \$250,000 annual funding was appropriated to accomplish the certification, however no funding has been appropriated for this purpose for the past fiscal year.<sup>10</sup> The DMS currently offers several training and certification programs including an optional Florida Certified Contract Manager designation.

Under s. 287.057(18), F.S., agencies must establish a review and approval process to be completed before contracts exceeding category three threshold (\$65,000) are executed. Under s. 216.3475, F.S., each agency shall maintain records to support a cost analysis, which includes a detailed budget submitted by the person or entity awarded funding and the agency's documented review of individual cost elements from the submitted budget for allowability, reasonableness, and necessity.

Using these various procurement methods the DMS also negotiates state term contracts and purchasing agreements that are intended to leverage the states' buying power. The DMS is also

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<sup>4</sup> Section 287.057(3)(f), F.S.

<sup>5</sup> Rule 60A-1.047, F.A.C.

<sup>6</sup> Section 287.058(1), F.S.

<sup>7</sup> Section 287.057(15), F.S.

<sup>8</sup> Section 287.057(14), F.S.

<sup>9</sup> Section 287.057(16)(b), F.S.

<sup>10</sup> Department of Management Services SB1626 Bill Analysis, January 23, 2012.

responsible for compiling statistical procurement data concerning the method of procurement, terms, usage, and disposition of commodities and contractual services by agencies.<sup>11</sup> This data is available in the Florida Accounting Information Resource Subsystem (FLAIR) and the State's My Florida Market Place (MFMP) centralized e-procurement system.<sup>12</sup>

The DMS facilitates the production and processing of these competitive solicitations through the MFMP system, which is the state's e-procurement system, and provides a standardized process for developing and processing solicitations. The MFMP system has four modules: the Buyer Module, Invoicing Module, Vendor Registration Module, and Sourcing Module. However, according to the DMS, the individual state agencies determine whether to use the MFMP e-procurement system.<sup>13</sup> The DMS develops procedures to be used by agencies for advertising and issuing solicitations through the Vendor Bid System. Currently all solicitations and procurement related decisions/intended decisions are required to be posted on the Vendor Bid System.<sup>14</sup> The DMS currently posts lists of firms not permitted to do business with the state online.<sup>15</sup> The DMS also maintains a list of vendors by classes of commodities within the MFMP system.<sup>16</sup>

In August 2011, the DMS with the participation of eight agencies and nine local government representatives initiated the Procurement Process Improvement Project to examine the policy, procedure, practice, and technology for conducting procurements. The intent of the project is to improve the effectiveness and efficiency of state purchasing through establishing standardized processes and procedures, better leveraging the MFMP sourcing module, and developing a continuous improvement protocol to better monitor and actively manage sourcing activities.<sup>17</sup>

### **Chief Fiscal Officer**

The CFO is the chief fiscal officer of the state and is responsible for examining, auditing, settling, and approving payment of all accounts against the state and keeping all state funds and securities.<sup>18</sup> The CFO functions are carried out by the Department of Financial Services (DFS). The DFS's Division of Accounting and Auditing pays all the state's bills, including employees' salaries, payments for goods and a service used by state agencies and benefit payments, promotes financial accountability throughout state government by providing information about its fiscal soundness, and investigates allegations of waste, fraud and abuse of taxpayers' money.<sup>19</sup>

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<sup>11</sup> Section 287.042(10), F.S.

<sup>12</sup> Department of Management Services Operational Audit, Report No. 2011-075, January 2011.

<sup>13</sup> Department of Management Services SB 1626 Bill Analysis, January 23, 2012.

<sup>14</sup> [http://myflorida.com/apps/vbs/vbs\\_www.main\\_menu](http://myflorida.com/apps/vbs/vbs_www.main_menu)

<sup>15</sup> [http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/convicted\\_suspended\\_discriminatory\\_complaints\\_vendor\\_lists](http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists)

<sup>16</sup> Department of Management Services SB1626 Bill Analysis, January 23, 2012.

<sup>17</sup> Department of Management Services Bill Analysis, January 23, 2012.

<sup>18</sup> Section 17.001, F.S.

<sup>19</sup> Department of Financial Services website, <http://www.myfloridacfo.com/sitePages/agency/sections/AccountingAuditing.aspx>, (last viewed January 31, 2012).

## **Transparency Florida Act**

Section 215.985, F.S., (Transparency Florida Act) authorized the establishment of a public access website to financial information of governmental entities, including state, regional, county, municipal, special district, or other political subdivisions whether executive, judicial, or legislative, any department, division, bureau, commission, authority, district, or agency thereof, or any public school, Florida College System institution, state university, or associated board.<sup>20</sup> The initial phase included appropriations data and expenditure data for all branches of state government. Under the Act, the CFO must provide public access to a state contract management system that provides information and documentation relating to contracts procured by governmental entities.<sup>21</sup> The data collected in the system must include the specified information including the name of the contracting agency, the procurement method, the contract dates, and the type of commodity or service. Within 30 days after a major change to an existing contract, the affected state governmental entity or agency must update the necessary information in the system. A major change to a contract includes, but is not limited to, a renewal, termination, or extension of the contract or an amendment to the contract.

## **Office of the Auditor General**

The Office of the Auditor General (AG) conducts financial audits of the accounts and records of State agencies, conducts operational and performance audits of public records and information technology systems, adopts rules for financial audits performed by independent certified public accountants of local governmental entities, and reviews all audit reports of local governmental entities.<sup>22</sup> The AG must annually notify the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services of all educational entities and water management districts that have failed to comply with transparency requirements as identified in audit reports.<sup>23</sup>

## **Prison Rehabilitative Industries and Diversified Enterprise, Inc (Pride)**

In 1981 the Prison Rehabilitative Industries and Diversified Enterprises, Inc. (Pride) was created as a 501(c) 3, non-profit corporation. Pride effectively transferred the administrative and operational control of Florida's prison industries from the Florida Department of Corrections to Pride. One of the missions of Pride is to provide a joint effort between the department, the correctional work programs, and other vocational training programs to reinforce relevant education, training, and post-release job placement and help reduce recommitment of inmates.<sup>24</sup> Under s. 287.095, F.S., all products offered for purchase to a state agency by Pride must be produced in majority part by inmate labor, except for products not made by inmates which products are contractually allied to products made by inmates which are offered by the corporation, provided the value of the products not made by inmates do not exceed 2 percent of the total sales of the corporation in any year.

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<sup>20</sup> Section 215.985(2)(a), F.S.

<sup>21</sup> Section 215.985(16), F.S.

<sup>22</sup> Section 11.45(2), F.S.

<sup>23</sup> Section 11.45(7)(i), F.S.

<sup>24</sup> Section 946.501(2), F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 11.45(7)(a) and (7)(i), F.S., to require the AG to provide notification of certain governmental entities' failure to comply with the requirements of s. 215.985, F.S., (Transparency Florida Act), in addition to s. 218.39, F.S., (annual financial audit reports).

**Section 2** amends s. 215.971, F.S., to require an agency agreement funded with federal or state financial assistance to specify a "performance measure," defined as the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable. Effective October 1, 2012, before execution the agreements are required to undergo review and approval, in accordance with rules adopted by the DFS, to ensure the agreement contains a clear statement of work, quantifiable deliverables, performance measures, and financial consequences for nonperformance. Under the bill the CFO may establish dollar thresholds and criteria for sampling the agreements that are to be reviewed prior to execution. The DFS has 30 days to make a final determination regarding approval of the agreement; this review period may be extended to ensure a thorough review. The contracting agency is also required to designate an employee as the grant manager responsible for enforcing performance of the agreement terms and serve as a liaison with the recipient. The bill also requires certification of grant managers responsible for agreements in excess of category five (\$325,000) and authorizes the CFO to establish uniform procedures for payment requests. According to the DMS, since s. 287.057(18), F.S., requires agencies to establish a review and approval process for contracts exceeding category three (\$65,000), this external review requirement would slow the contracting process and create an administrative burden on existing contracting resources.<sup>25</sup>

**Section 3** amends s. 215.985(16), F.S., (Transparency Florida Act) to require the CFO to establish and maintain a secure, shared, intergovernmental contract tracking system. The bill requires certain state entities and effective November 1, 2013, local governmental entities, independent special districts, district school boards, board of governors of the state university system, and the board of trustees for each Florida college system to post within 30 calendar days after executing a contract certain specified information and documentation, with any exempt or confidential information properly redacted, on the contract tracking system. Within 30 calendar days of a major modification or amendment to an existing contract, as determined by the CFO, the agency must update the information in the system. The bill provides for a party to a contract to request exempt or confidential information on the system to be redacted through a written request submitted by approved means. The bill provides a disclaimer from liability for the failure to redact information properly for the CFO and the DFS. The bill allows the CFO to make information posted on the system available for viewing and downloading by the public. The CFO may prohibit the posting of records on the public website that could jeopardize the health, safety, or welfare of the public. Additionally the bill requires certain disclosures to be conspicuously displayed on the website. The bill provides the DFS authority to adopt rules to administer the subsection. According to the DMS the MFMP system will be required to be adapted to assist in the collection of data necessary.<sup>26</sup>

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<sup>25</sup> Department of Management Services SB 1626 Bill Analysis, January 23, 2012.

<sup>26</sup> Department of Management Services SB 1626 Bill Analysis, January 23, 2012.

**Section 4** repeals s. 216.0111, F.S., and transfers the list of certain information agencies are required to provide to the DFS regarding the agencies' contracted activities to s. 215.985, F.S.

**Section 5** amends s. 287.032, F.S., to limit the responsibility of the DMS, effective October 1, 2013, to coordinating the purchase of commodities and contractual services for the state and procuring and distributing federal surplus tangible personal property allocated to the state by the federal government. The bill transfers the responsibility of providing uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by agencies and eligible users to the DFS. The DFS is also required to monitor agencies compliance.

**Section 6** amends s. 287.042, F.S., effective October 1, 2013, to list the revised power, duties, and functions of the DMS in procuring commodities and contractual services for agencies. The bill revises certain references from the DMS to the DFS. Under the bill, the DMS is not responsible for the establishment of policies or procedures for procurement and contracting, therefore provisions relating to these are deleted from s. 287.042, F.S. The bill requires the DMS to develop and maintain a list of interested vendors, of which vendors barred by the CFO may not be included. Under the bill the DMS continues to be responsible for preparing statistical data concerning the method of procurement, terms, usage, and disposition of commodities and contractual services by agencies. The DMS indicates that it is currently engaged in a pilot program to revise its spend analytics function used to enhance the agencies' ability to identify needs and assess the market for their product or service and its procurement process improvement project is in the process of developing new initiatives that will be piloted for state purchasing contracts. However, these will would be delayed or cancelled as a result of the transition of responsibilities.<sup>27</sup>

**Section 7** creates s. 287.044, F.S., effective October 1, 2013, and transfers the powers, duties, and functions associated with establishing a system of coordinated and uniform procurement policies, procedures, and practices to be used by agencies when acquiring commodities and contractual services from the DMS to the DFS. The bill requires the DFS to develop numerous procurement procedures to be used by an agency including procedures for advertising solicitations, issuing requests for information and quotes, procuring information technology commodities or contractual services, entering contracts to ensure standard formats and measurable deliverables, and maintaining a contract file. The bill removes the requirement that state agencies provide an explanation to unsuccessful bidders and the requirement that DFS develop a methodology to calculate cost savings achieved under a contract. The bill requires the DFS to establish a list of vendors that are not allowed to do business with the state.

**Section 8** amends and creates certain subsections to s. 287.057, F.S. The bill changes reference to the DMS in s. 287.057(16), F.S., to the DFS; therefore requiring the DFS to adopt rules for certifying contract negotiators. The bill deletes the exemptions from competitive solicitation requirements for artistic services, academic program reviews, lectures by individuals, and training and education services provided to injured employees. The bill removes the language requiring state agencies consider all purchases of the same commodity or service during one year to be part of a single purchase. The bill adds a provision to the section that allows agencies to

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<sup>27</sup> Department of Management Services SB 1626 Bill Analysis, January 23, 2012.

purchase commodities or services through another agency's existing contract if in the best interest of the state.

**Section 9** amends s. 287.058, F.S., by defining the minimum level of service to be performed and criteria for evaluating the successful completion of each deliverable specified in a contract as a performance measure. The bill provides that the CFO may review and approve contracts prior to execution in accordance with rules adopted by the DFS. The CFO may establish dollar thresholds and criteria for sampling the agreements that are to be reviewed prior to execution. The bill also provides a list of documentation the DFS may search for when reviewing contracts. The DFS has 30 days to make a final determination regarding approval of a contract, which may be extended to ensure a thorough review.

**Section 10** repeals s. 287.095(3), F.S., which required the products offered for purchase to a state agency by the non-profit corporation organized to lease and manage the correctional work programs under ch. 946, F.S., be produced in majority part by inmate labor.

**Section 11** creates s. 287.1312, F.S., requiring the DFS to establish a certification program for managers and negotiators of contracts and grants. In order to manage an agreement in excess of the category five threshold (\$325,000), contract and grant managers must hold a valid certification from the DFS. The bill lists the areas of training that must be included in the certification program. The bill requires the DFS to monitor the program and annually publish results of agency manager audits and error rates related to contract and grant management on its website.

**Sections 12 -17** provide technical, conforming changes.

**Section 18** requires the CFO to review and investigate current procurement and submit the report findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012.

**Section 19** provides for the repeal of ch. 287, F.S., effective July 30, 2014.

**Section 20** provides an appropriation to implement the provisions of the bill. See Government Sector Impact.

**Section 21** provides an effective date of July 1, 2012, except as otherwise expressly provided.

**Other Potential Implications:**

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18, Florida Constitution:

“No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds

unless the legislature has determined that such law fulfills an important state interest...”

If the Florida Transparency Act posting requirement for local governmental entities under the bill will result in additional expenditures for the local entities then one of the additional requirements under Article VII, s. 18, Florida Constitution, must be met.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

It is indeterminate whether the transfer of duties from DMS to DFS will impact potential vendors with the state.

**C. Government Sector Impact:**

The bill provides for an appropriation during the 2012-13 fiscal year of \$400,000 in nonrecurring funds from the Administrative Trust Fund in the DFS for the CFO’s review of the state’s procurement process. The bill also provides for \$375,000 in nonrecurring funds from the Administrative Trust Fund in the DFS to contract for the CFO’s administration of the certified contract manager and negotiator program. For the 2012-13 fiscal year an indeterminate amount of recurring funds from the General Revenue fund and an indeterminate number of full-time positions are appropriated to the CFO for the purpose of implementing the CFO’s expanded contract auditing responsibilities. At the end of the 2013-14 fiscal year any remaining funds shall revert and be re-appropriated for the same purpose.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

With the transition of the responsibility to establish and enforce procurement policies, procedures, and practices to be used by agencies when acquiring commodities and contractual services to the DFS; it is unclear whether the DMS would lose the transaction fees assessed for use of the MFMP system.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 2, 2012:**

The bill retains many of the same provisions of the bill as filed and makes the following major changes:

- Provides for the establishment, by the CFO, of dollar thresholds and criteria for determining agreements funded with state or federal assistance that are to be reviewed prior to execution.
- Provides that the CFO may review and approve contracts prior to execution in accordance with rules adopted by the DFS.
- Allots 30 days for the DFS to make a final determination regarding approval of the agreement; which may be extended to ensure a thorough review.
- Provides a list of records the DFS may search for when reviewing contracts.
- Requires the DFS to establish a training certification program for negotiators of contracts and grants.
- Inserts and revises effective dates for certain provisions.
- Makes drafting changes to the bill by inserting and revising sections and deleting certain language.

- B. **Amendments:**

None.

By Senator Gaetz

4-00922C-12

20121626\_\_

1 A bill to be entitled  
 2 An act relating to state contracting; amending s.  
 3 11.45, F.S.; conforming provisions to changes made by  
 4 the act; amending s. 215.971, F.S.; requiring  
 5 agreements funded with state or federal financial  
 6 assistance to include a performance measure for each  
 7 deliverable, to be reviewed and approved in accordance  
 8 with rules adopted by the Department of Financial  
 9 Services, and to have the contracting entity assign a  
 10 grants manager who is responsible for enforcing  
 11 performance of the agreement; amending s. 215.985,  
 12 F.S.; revising provisions relating to the Chief  
 13 Financial Officer's intergovernmental contract  
 14 tracking system under the Transparency Florida Act;  
 15 specifying the entities that are included in the  
 16 tracking system; requiring that exempt and  
 17 confidential information be redacted from contracts  
 18 and procurement documents posted on the system;  
 19 authorizing the Chief Financial Officer to make  
 20 available the information posted on the system to the  
 21 public through a secure website; repealing s.  
 22 216.0111, F.S., relating to a requirement that state  
 23 agencies report certain contract information to the  
 24 Department of Financial Services and transferring that  
 25 requirement to s. 215.985, F.S.; amending s. 287.032,  
 26 F.S.; dividing the responsibilities of the Department  
 27 of Management Services under ch. 287, F.S., with the  
 28 Department of Financial Services; amending s. 287.042,  
 29 F.S.; limiting the duties of the Department of

Page 1 of 45

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

4-00922C-12

20121626\_\_

30 Management Services to the procurement of commodities  
 31 and contractual services; directing the department to  
 32 develop a list of interested vendors; deleting  
 33 provisions requiring that the department perform  
 34 duties relating to procurement and contracting  
 35 policies and procedures; creating s. 287.044, F.S.;  
 36 assigning duties relating to procurement and  
 37 contracting policies and procedures to the Department  
 38 of Financial Services; requiring the department to  
 39 develop a list of vendors not allowed to do business  
 40 with the state; requiring the department to review and  
 41 approve contracts in accordance with rules adopted by  
 42 the department; providing that the department have  
 43 authority to waive procedures under certain  
 44 circumstances; providing that the department have  
 45 flexibility in accomplishing its duties and  
 46 responsibilities including the use of different  
 47 contracting methods on a pilot basis; amending s.  
 48 287.057, F.S.; revising the list of contractual  
 49 services and commodities that are exempt from  
 50 competitive solicitation to delete certain services  
 51 from the exemption; revising provisions prohibiting an  
 52 agency from dividing a solicitation; authorizing an  
 53 agency to purchase commodities or services through  
 54 another agency's contract; amending s. 287.058, F.S.;  
 55 requiring contracts to include a performance measure  
 56 for each deliverable; creating s. 287.1312, F.S.;  
 57 requiring certification of contract managers by the  
 58 Department of Financial Services for contracts of more

Page 2 of 45

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

4-00922C-12

20121626\_\_

59 than a certain amount; requiring the training program  
 60 for the certification to provide training in certain  
 61 areas; authorizing the department to adopt rules to  
 62 administer the program; amending s. 287.133, F.S.;  
 63 revising the definition of "department" to mean the  
 64 Department of Financial Services rather than the  
 65 Department of Management Services with respect to  
 66 provisions governing public entity crimes and  
 67 placement on the convicted vendor list; amending ss.  
 68 255.25, 287.012, 402.7305, 427.0135, and 946.515,  
 69 F.S.; conforming cross-references; providing state  
 70 policies with regards to procurement and requiring the  
 71 Chief Financial Officer to conduct a study of current  
 72 procurement laws pursuant to such policies; requiring  
 73 that the Chief Financial Officer submit a report to  
 74 the Legislature and Governor by a certain date on such  
 75 study; repealing ch. 287, F.S., on a future date;  
 76 providing an appropriation; providing an effective  
 77 date.

78  
 79 WHEREAS, during the 2010-2011 fiscal year, the state spent  
 80 nearly \$51 billion, or approximately 57 percent, of the state  
 81 budget on contracts and agreements for goods and services, and

82 WHEREAS, during the same fiscal year, the Department of  
 83 Financial Services reviewed 364 contract and grant agreements,  
 84 each valued at \$1 million or more, and found that 26 percent had  
 85 significant deficiencies in their scope of work, deliverables,  
 86 or performance standards, and

87 WHEREAS, if this 26 percent error rate applied to the total

4-00922C-12

20121626\_\_

88 contractual amount spent during the fiscal year, approximately  
 89 \$13 billion in taxpayer dollars was obligated to poorly written  
 90 contracts, and

91 WHEREAS, the state does not have uniform standards for  
 92 state contracts which incorporate a comprehensive and precise  
 93 scope of work, clearly defined deliverables, and minimum  
 94 performance standards that include financial consequences for  
 95 failing to deliver goods and services, and

96 WHEREAS, the Legislature believes that there is an acute  
 97 need to initiate reforms that ensure that the state contracting  
 98 process reflects the highest ethical and fiscal standards; is  
 99 clear, consistent, and measurable; and is conducted in the most  
 100 efficient manner possible while delivering goods and services to  
 101 state residents, and

102 WHEREAS, the Legislature recognizes that the poor  
 103 management of a good contract could lead to the waste and misuse  
 104 of tax dollars, and

105 WHEREAS, the Legislature believes that state residents  
 106 deserve to receive the goods and services for which they are  
 107 paying, and

108 WHEREAS, the Legislature also believes that this state is a  
 109 business-friendly state where people doing business with the  
 110 state provide goods and services in good faith and deserve to  
 111 know what is expected of them, and

112 WHEREAS, there remains an acute need to provide greater  
 113 transparency and accountability in public transactions, and

114 WHEREAS, the Legislature supports additional high-level  
 115 training and certification of state contract managers,  
 116 especially as it relates to contracts valued at \$325,000 or

4-00922C-12 20121626\_\_

117 more, and

118 WHEREAS, the Legislature believes that a thorough review of

119 the state's procurement system to evaluate its efficiency and

120 effectiveness has not been performed for many years, and

121 WHEREAS, the Legislature has determined that the Chief

122 Financial Officer should conduct an evaluation of the state

123 procurement process of the executive branch of government, and

124 WHEREAS, the Legislature fully supports promoting the

125 value, integrity, transparency, accountability of, and the

126 public confidence in, the state's procurement and contracting

127 processes, NOW, THEREFORE,

128

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

130

131 Section 1. Paragraphs (a) and (i) of subsection (7) of

132 section 11.45, Florida Statutes, are amended to read:

133 11.45 Definitions; duties; authorities; reports; rules.—

134 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

135 (a) The Auditor General must ~~shall~~ notify the Legislative

136 Auditing Committee of any local governmental entity, district

137 school board, charter school, or charter technical career center

138 that does not comply with the reporting requirements of s.

139 215.985 or s. 218.39.

140 (i) Beginning in 2012, the Auditor General shall annually

141 transmit by July 15, to the President of the Senate, the Speaker

142 of the House of Representatives, and the Department of Financial

143 Services, a list of all school districts, charter schools,

144 charter technical career centers, Florida College System

145 institutions, state universities, and water management districts

4-00922C-12 20121626\_\_

146 that have failed to comply with the transparency requirements of

147 s. 215.985 as identified in the audit reports reviewed pursuant

148 to paragraph (b) and those conducted pursuant to subsection (2).

149 Section 2. Section 215.971, Florida Statutes, is amended to

150 read:

151 215.971 Agreements funded with federal and state

152 assistance.—

153 (1) For an agency agreement that provides state financial

154 assistance to a recipient or subrecipient, as those terms are

155 defined in s. 215.97, or that provides federal financial

156 assistance to a subrecipient, as defined by applicable United

157 States Office of Management and Budget circulars, the agreement

158 must ~~shall~~ include a provision:

159 (a) ~~(1) A provision~~ Specifying a scope of work that clearly

160 establishes the tasks that the recipient or subrecipient is

161 required to perform; and

162 (b) ~~(2) A provision~~ Dividing the agreement into quantifiable

163 units of deliverables which ~~that~~ must be received and accepted

164 in writing by the agency before payment. Each deliverable must

165 be directly related to the scope of work and ~~must~~ specify a

166 performance measure. As used in this paragraph, the term

167 "performance measure" means the required minimum level of

168 service to be performed and the criteria for evaluating the

169 successful completion of each deliverable.

170 (2) Before execution, agreements to be funded with state or

171 federal financial assistance must be submitted for review and

172 approval in accordance with rules adopted by the Department of

173 Financial Services. The review must ensure that the agreement

174 document contains a clear statement of work, quantifiable and

4-00922C-12 20121626

175 measureable deliverables, performance measures, and financial  
 176 consequences for nonperformance. An agreement that does not  
 177 comply with this subsection may be rejected and returned to the  
 178 submitting agency for revision.

179 (3) For each agreement funded with federal or state  
 180 assistance, the contracting agency shall designate an employee  
 181 to function as grant manager who shall be responsible for  
 182 enforcing performance of the agreement terms and conditions and  
 183 serve as a liaison with the recipient. A grant manager who is  
 184 responsible for one or more agreements in excess of the  
 185 threshold amount provided in s. 287.017 for CATEGORY FIVE must  
 186 be certified under s. 287.1312. The Chief Financial Officer  
 187 shall establish and disseminate uniform procedures for payment  
 188 requests pursuant to s. 17.03(3) to ensure that services are  
 189 rendered in accordance with the agreement terms before the  
 190 agency processes an invoice for payment. The procedures must  
 191 include, but need not be limited to, procedures for monitoring  
 192 and documenting a recipient's performance, reviewing and  
 193 documenting all deliverables for which payment is requested by  
 194 the recipient, and providing written certification by the grant  
 195 manager of the agency's receipt of goods and services.

196 Section 3. Subsection (16) of section 215.985, Florida  
 197 Statutes, is amended to read:

198 215.985 Transparency in government spending.—

199 (16) The Chief Financial Officer shall establish a secure,  
 200 shared, intergovernmental contract tracking provide public  
 201 access to a state contract management system.

202 (a) Within 30 calendar days after executing a contract,  
 203 each state agency as defined in s. 216.011(1), and, effective

4-00922C-12 20121626

204 October 1, 2013, each local governmental entity and independent  
 205 special district as defined in s. 218.31, each district school  
 206 board as described in s. 1001.32, the Board of Governors of the  
 207 State University System as described in s. 1001.70, and each  
 208 Florida College System institution board of trustees as  
 209 described in s. 1001.61 must post the following ~~that provides~~  
 210 information and documentation relating to that contract on the  
 211 contract tracking system: ~~contracts procured by governmental~~  
 212 entities.

213 1. The name of the contracting entities;

214 2. The procurement method;

215 3. The contract beginning and ending dates;

216 4. The nature or type of the commodities or services  
 217 purchased;

218 5. Applicable contract unit prices and deliverables;

219 6. Total compensation to be paid or received under the  
 220 contract;

221 7. All payments made to the contract vendor to date;

222 8. All commodities or services received from the contract  
 223 vendor to date;

224 9. Applicable contract performance measures;

225 10. Contract extensions or renewals, if any;

226 11. The justification for not using competitive  
 227 solicitation to procure the contract, including citation to any  
 228 statutory exemption or exception from competitive solicitation,  
 229 if applicable;

230 12. Electronic copies of the contract and procurement  
 231 documents, including any provision that may have been redacted  
 232 to conceal exempt or confidential information; and

4-00922C-12

20121626\_\_

233 13. Any other information regarding the contract or the  
 234 procurement which may be required by the Department of Financial  
 235 Services.

236 ~~(a) The data collected in the system must include, but need~~  
 237 ~~not be limited to, the contracting agency; the procurement~~  
 238 ~~method; the contract beginning and ending dates; the type of~~  
 239 ~~commodity or service; the purpose of the commodity or service;~~  
 240 ~~the compensation to be paid; compliance information, such as~~  
 241 ~~performance metrics for the service or commodity; contract~~  
 242 ~~violations; the number of extensions or renewals; and the~~  
 243 ~~statutory authority for providing the service.~~

244 (b) Within 30 calendar days after a major modification or  
 245 amendment ~~change~~ to an existing contract, ~~or the execution of a~~  
 246 ~~new contract, agency procurement staff of the affected state~~  
 247 ~~governmental entity must shall~~ update the necessary information  
 248 described in paragraph (a) in the state contract tracking  
 249 management system. A major modification or amendment ~~change~~ to a  
 250 contract includes, but is not limited to, a renewal,  
 251 termination, or extension of the contract, or an amendment to  
 252 the contract as determined by the Chief Financial Officer.

253 (c) Each entity identified in paragraph (a) must redact, as  
 254 defined in s. 119.011, any exempt or confidential information,  
 255 including trade secrets as defined in s. 688.002 or s. 812.081,  
 256 from the contract or procurement documents before posting an  
 257 electronic copy of such documents on the contract tracking  
 258 system.

259 1. If an entity becomes aware that an electronic copy of a  
 260 contract or procurement document that it posted has not been  
 261 properly redacted, the entity must replace the electronic copy

Page 9 of 45

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4-00922C-12

20121626\_\_

262 of the documents with a redacted copy.

263 2. If a party to a contract, or an authorized  
 264 representative thereof, discovers that an electronic copy of a  
 265 contract or procurement document on the system has not been  
 266 properly redacted, the party or representative may request the  
 267 entity that posted the document to redact the exempt or  
 268 confidential information. Upon receipt of a request in  
 269 compliance with this subparagraph, the entity that posted the  
 270 document shall redact the exempt or confidential information.

271 a. Such request must be in writing and delivered by mail,  
 272 facsimile, or electronic transmission, or in person to the  
 273 entity that posted the information. The request must identify  
 274 the specific document, the page numbers that include the exempt  
 275 or confidential information, the information that is exempt or  
 276 confidential, and the relevant statutory exemption. A fee may  
 277 not be charged for a redaction made pursuant to such request.

278 b. If necessary, a party to the contract may petition the  
 279 circuit court for an order directing compliance with this  
 280 paragraph.

281 3. The Chief Financial Officer, the Department of Financial  
 282 Services, or any officer, employee, or contractor thereof, is  
 283 not responsible for redacting exempt or confidential information  
 284 from an electronic copy of a contract or procurement document  
 285 posted by another entity on the system, and is not liable for  
 286 the failure of the entity to redact the exempt or confidential  
 287 information. The Department of Financial Services may notify the  
 288 posting entity if it discovers that a document posted on the  
 289 tracking system contains exempt or confidential information.

290 (d) Pursuant to ss. 119.01 and 119.07, the Chief Financial

Page 10 of 45

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4-00922C-12 20121626\_\_

291 Officer may make information posted on the contract tracking  
 292 system available for viewing and downloading by the public  
 293 through a secure website. Unless otherwise provided by law,  
 294 information retrieved electronically pursuant to this paragraph  
 295 is not admissible in court as an authenticated document.

296 1. The Chief Financial Officer may regulate and prohibit  
 297 the posting of records that could facilitate identity theft or  
 298 fraud, such as signatures; compromise or reveal an agency  
 299 investigation; reveal the identity of undercover personnel;  
 300 reveal proprietary confidential business information or trade  
 301 secrets; reveal an individual's medical information; or reveal  
 302 any other record or information that the Chief Financial Officer  
 303 believes may jeopardize the health, safety, or welfare of the  
 304 public. However, such prohibition does not eliminate the duty of  
 305 an entity to provide a copy of a public record upon request. The  
 306 Chief Financial Officer shall use appropriate Internet security  
 307 measures to ensure that no person has the ability to alter or  
 308 modify records available on the website.

309 2. Records made available on the website, including  
 310 electronic copies of contracts or procurement documents, may not  
 311 reveal information made exempt or confidential by law. Notice of  
 312 the right of an affected party to request redaction of exempt or  
 313 confidential information pursuant to paragraph (c) must be  
 314 conspicuously and clearly displayed on the website. This  
 315 includes, but is not limited to:

- 316 a. Criminal intelligence or criminal investigative  
 317 information as defined in s. 119.011;  
 318 b. Surveillance techniques or procedures or personnel;  
 319 c. The identity of a confidential informant or confidential

4-00922C-12 20121626\_\_

320 source;  
 321 d. The identify of undercover personnel of a criminal  
 322 justice agency;

323 e. A security system plan; or  
 324 f. Trade secret as defined in s. 688.002 or s. 812.081.

325 (e) The posting of information on the contract tracking  
 326 system or the provision of contract information on a website for  
 327 public viewing and downloading does not eliminate the duty of an  
 328 entity to respond to a public record request for such  
 329 information or to a subpoena for such information.

330 1. A request for a copy of a contract or procurement  
 331 document or a certified copy of a contract or procurement  
 332 document shall be made to the entity that is party to the  
 333 contract and that maintains the original documents. Such request  
 334 may not be made to the Chief Financial Officer or the Department  
 335 of Financial Services or any officer, employee, or contractor  
 336 thereof unless the Chief Financial Officer or the department is  
 337 a party to the contract.

338 2. A subpoena for a copy of a contract or procurement  
 339 document or certified copy of a contract or procurement document  
 340 must be served on the entity that is a party to the contract and  
 341 that maintains the original documents. The Chief Financial  
 342 Officer or the Department of Financial Services or any officer,  
 343 employee, or contractor thereof may not be served a subpoena for  
 344 those records unless the Chief Financial Officer or the  
 345 department is a party to the contract.

346 (f) The Department of Financial Services may adopt rules to  
 347 administer this subsection.

348 Section 4. Section 216.0111, Florida Statutes, is repealed.

4-00922C-12

20121626\_\_

349 Section 5. Section 287.032, Florida Statutes, is amended to  
350 read:

351 287.032 Departmental responsibility purpose of department.  
352 Pursuant to the administration of this chapter:

353 (1) It shall be The responsibility purpose of the  
354 Department of Management Services is to:

355 (a)(1) To Promote efficiency, economy, and the conservation  
356 of energy and coordinate to effect coordination in the purchase  
357 of commodities and contractual services for the state.

358 (2) To provide uniform commodity and contractual service  
359 procurement policies, rules, procedures, and forms for use by  
360 agencies and eligible users.

361 (b)(3) To Procure and distribute federal surplus tangible  
362 personal property allocated to the state by the Federal  
363 Government.

364 (2) The responsibility of the Department of Financial  
365 Services is to:

366 (a) Provide uniform commodity and contractual service  
367 procurement policies, rules, procedures, and forms for use by  
368 agencies and eligible users.

369 (b) Monitor agencies with respect to compliance with  
370 established policies, rules, and procedures.

371 Section 6. Section 287.042, Florida Statutes, is amended to  
372 read:

373 287.042 Powers, duties, and functions of the Department of  
374 Management Services.The department is responsible for the  
375 procurement of commodities and contractual services for agencies  
376 and has shall have the following powers, duties, and functions:

377 (1)(a) To canvass all sources of supply, establish and

4-00922C-12

20121626\_\_

378 maintain a vendor list, and contract for the purchase, lease, or  
379 acquisition, including purchase by installment sales or lease-  
380 purchase contracts which may provide for the payment of interest  
381 on unpaid portions of the purchase price, of all commodities and  
382 contractual services required by an any agency under this  
383 chapter. A Any contract providing for deferred payments and the  
384 payment of interest is shall be subject to specific rules  
385 adopted by the Department of Financial Services.

386 (a)(b) The department shall develop a list of interested  
387 vendors to be maintained by classes of commodities and  
388 contractual services. The list may not be used to prequalify a  
389 vendor or to exclude an interested vendor from bidding. However,  
390 a vendor barred by the Chief Financial Officer pursuant to s.  
391 287.044(7) may not be included on the list. The department may  
392 remove from the its vendor list any source of supply which fails  
393 to fulfill any of its duties specified in a contract with the  
394 state. The department It may reinstate any such source of supply  
395 if the department when it is satisfied that further instances of  
396 default will not occur.

397 (b)(e) In order to promote the cost-effective procurement  
398 of commodities and contractual services, the department or an  
399 agency may enter into contracts that limit the liability of a  
400 vendor consistent with s. 672.719.

401 (d) The department shall issue commodity numbers for all  
402 products of the corporation operating the correctional industry  
403 program which meet or exceed department specifications.

404 (c)(e) The department shall include the products offered by  
405 the corporation operating the correctional industry program on  
406 any listing prepared by the department which lists state term

4-00922C-12

20121626

407 contracts executed by the department. The products or services  
 408 shall be placed on such list in a category based upon  
 409 specification criteria developed through a joint effort of the  
 410 department and the corporation and approved by the department.

411 ~~1. (f)~~ The corporation may submit products and services to  
 412 the department for testing, analysis, and review relating to the  
 413 quality and cost comparability. If, after review and testing,  
 414 the department approves ~~of~~ the products and services, the  
 415 department shall give written notice ~~thereof~~ to the corporation.  
 416 The corporation shall pay a reasonable fee ~~charged~~ for the  
 417 testing of its products by the Department of Agriculture and  
 418 Consumer Services.

419 2. The department shall issue a commodity number for all  
 420 products of the corporation which meet or exceed department  
 421 specifications.

422 ~~(d) (g)~~ The department shall include products and services  
 423 that are offered by a qualified nonprofit agency for the blind  
 424 or for the other severely handicapped ~~organized pursuant to~~  
 425 ~~chapter 413~~ and that have been determined to be suitable for  
 426 purchase pursuant to s. 413.035 on a any department listing of  
 427 state term contracts. The products and services shall be placed  
 428 on such list in a category based upon specification criteria  
 429 developed by the department in consultation with the ~~qualified~~  
 430 nonprofit agency.

431 ~~(e) (h)~~ The department may collect fees for the use of its  
 432 electronic information services. The fees may be imposed on an  
 433 individual transaction basis or as a fixed subscription for a  
 434 designated period of time. At a minimum, the fees shall be  
 435 determined in an amount sufficient to cover the department's

4-00922C-12

20121626

436 projected costs for ~~of~~ the services, including overhead, in  
 437 accordance with the policies of the department ~~of Management~~  
 438 ~~Services~~ for computing its administrative assessment. All fees  
 439 collected under this paragraph shall be deposited in the  
 440 Operating Trust Fund for disbursement as provided by law.

441 ~~(2) (a)~~ To establish purchasing agreements and procure state  
 442 term contracts for commodities and contractual services,  
 443 pursuant to s. 287.057, under which state agencies shall, and  
 444 eligible users may, make purchases pursuant to s. 287.056.

445 (a) The department may restrict purchases by ~~from some term~~  
 446 ~~contracts to state agencies~~ from ~~only for those~~ term contracts  
 447 if ~~where~~ the inclusion of other governmental entities will have  
 448 an adverse effect on competition or on ~~to these~~ federal  
 449 facilities located in this state. In such planning or  
 450 purchasing, the office ~~of Supplier Diversity~~ may monitor to  
 451 ensure that opportunities are afforded for contracting with  
 452 minority business enterprises. The department, for state term  
 453 contracts, and all agencies, for multiyear contractual services  
 454 or term contracts, shall explore reasonable and economical means  
 455 to use ~~utilize~~ certified minority business enterprises.  
 456 Purchases by any county, municipality, private nonprofit  
 457 community transportation coordinator designated pursuant to  
 458 chapter 427, ~~while~~ conducting business related solely to the  
 459 Commission for the Transportation Disadvantaged, or other local  
 460 public agency under the provisions in the state purchasing  
 461 contracts, and purchases, from the corporation operating the  
 462 correctional work programs, of products or services that are  
 463 subject to paragraph (1) (c) ~~(1) (f)~~, are exempt from the  
 464 competitive solicitation requirements otherwise applying to

4-00922C-12 20121626\_\_

465 their purchases.

466 (b) As an alternative to ~~any provision in~~ s. 120.57(3) (c),  
 467 the department may proceed with the competitive solicitation or  
 468 contract award process of a term contract ~~if when~~ the secretary  
 469 of the department or his or her designee sets forth in writing  
 470 particular facts and circumstances ~~that which~~ demonstrate that  
 471 the delay incident to staying the solicitation or contract award  
 472 process would be detrimental to the interests of the state. If,  
 473 after the award of the a contract resulting from a competitive  
 474 solicitation in which a timely protest was received and in which  
 475 the state did not prevail, the contract may be canceled and  
 476 reawarded.

477 (c) Any person who files an action protesting a decision or  
 478 intended decision pertaining to contracts administered by the  
 479 department, a water management district, or an agency pursuant  
 480 to s. 120.57(3)(b) shall, at the same time, also post a bond  
 481 equal to 1 percent of the estimated contract amount with, and  
 482 payable to, the department, the water management district, or  
 483 the agency, as applicable at the time of filing the formal  
 484 ~~written protest a bond payable to the department, the water~~  
 485 ~~management district, or agency in an amount equal to 1 percent~~  
 486 ~~of the estimated contract amount.~~ For protests of decisions or  
 487 intended decisions pertaining to exceptional purchases, the bond  
 488 ~~must shall be in an amount equal to~~ 1 percent of the estimated  
 489 contract amount for the exceptional purchase.

490 1. The estimated contract amount shall be based upon the  
 491 contract price submitted by the protestor or, if no contract  
 492 price was submitted, the department, water management district,  
 493 or agency shall estimate the contract amount based on factors,

4-00922C-12 20121626\_\_

494 including, but not limited to, the price of previous or existing  
 495 contracts for similar commodities or contractual services, the  
 496 amount appropriated by the Legislature for the contract, or the  
 497 fair market value of similar commodities or contractual  
 498 services. The agency shall provide the estimated contract amount  
 499 to the vendor within 72 hours, excluding Saturdays, Sundays, and  
 500 state holidays, after the filing of the notice of protest by the  
 501 vendor. The estimated contract amount is not subject to protest  
 502 pursuant to s. 120.57(3).

503 2. The bond shall be conditioned upon the payment of all  
 504 costs and charges that are adjudged against the protestor in the  
 505 administrative hearing in which the action is brought and in any  
 506 subsequent appellate court proceeding.

507 3. In lieu of a bond, the department, ~~the~~ water management  
 508 district, or agency may, ~~in either case,~~ accept a cashier's  
 509 check, official bank check, or money order in the amount of the  
 510 bond.

511 4. If, after completion of the administrative hearing  
 512 process and any appellate court proceedings, the department,  
 513 water management district, or agency prevails, it shall recover  
 514 all costs and charges, which must shall be included in the final  
 515 order or judgment, excluding attorney attorney's fees. ~~This~~  
 516 ~~section shall not apply to protests filed by the Office of~~  
 517 ~~Supplier Diversity.~~ Upon payment of such costs and charges by  
 518 the protestor, the bond, cashier's check, official bank check,  
 519 or money order shall be returned to the protestor. If, after the  
 520 completion of the administrative hearing process and any  
 521 appellate court proceedings, the protestor prevails, the  
 522 protestor may shall recover from the department, water

4-00922C-12 20121626

523 management district, or agency all costs and charges that are  
 524 ~~which shall be~~ included in the final order or judgment,  
 525 excluding attorney ~~attorney's~~ fees.

526 5. This paragraph does not apply to protests filed by the  
 527 office.

528 ~~(3) To establish a system of coordinated, uniform~~  
 529 ~~procurement policies, procedures, and practices to be used by~~  
 530 ~~agencies in acquiring commodities and contractual services,~~  
 531 ~~which shall include, but not be limited to:~~

532 ~~(a) Development of a list of interested vendors to be~~  
 533 ~~maintained by classes of commodities and contractual services.~~  
 534 ~~This list shall not be used to prequalify vendors or to exclude~~  
 535 ~~any interested vendor from bidding.~~

536 ~~(b)1. Development of procedures for advertising~~  
 537 ~~solicitations. These procedures must provide for electronic~~  
 538 ~~posting of solicitations for at least 10 days before the date~~  
 539 ~~set for receipt of bids, proposals, or replies, unless the~~  
 540 ~~department or other agency determines in writing that a shorter~~  
 541 ~~period of time is necessary to avoid harming the interests of~~  
 542 ~~the state. The Office of Supplier Diversity may consult with the~~  
 543 ~~department regarding the development of solicitation~~  
 544 ~~distribution procedures to ensure that maximum distribution is~~  
 545 ~~afforded to certified minority business enterprises as defined~~  
 546 ~~in s. 288.703.~~

547 ~~2. Development of procedures for electronic posting. The~~  
 548 ~~department shall designate a centralized website on the Internet~~  
 549 ~~for the department and other agencies to electronically post~~  
 550 ~~solicitations, decisions or intended decisions, and other~~  
 551 ~~matters relating to procurement.~~

4-00922C-12 20121626

552 ~~(e) Development of procedures for the receipt and opening~~  
 553 ~~of bids, proposals, or replies by an agency. Such procedures~~  
 554 ~~shall provide the Office of Supplier Diversity an opportunity to~~  
 555 ~~monitor and ensure that the contract award is consistent with~~  
 556 ~~the requirements of s. 287.09451.~~

557 ~~(d) Development of procedures to be used by an agency in~~  
 558 ~~deciding to contract, including, but not limited to, identifying~~  
 559 ~~and assessing in writing project needs and requirements,~~  
 560 ~~availability of agency employees, budgetary constraints or~~  
 561 ~~availability, facility equipment availability, current and~~  
 562 ~~projected agency workload capabilities, and the ability of any~~  
 563 ~~other state agency to perform the services.~~

564 ~~(e) Development of procedures to be used by an agency in~~  
 565 ~~maintaining a contract file for each contract which shall~~  
 566 ~~include, but not be limited to, all pertinent information~~  
 567 ~~relating to the contract during the preparatory stages; a copy~~  
 568 ~~of the solicitation; documentation relating to the solicitation~~  
 569 ~~process; opening of bids, proposals, or replies; evaluation and~~  
 570 ~~tabulation of bids, proposals, or replies; and determination and~~  
 571 ~~notice of award of contract.~~

572 ~~(f) Development of procedures to be used by an agency for~~  
 573 ~~issuing solicitations that include requirements to describe~~  
 574 ~~commodities, services, scope of work, and deliverables in a~~  
 575 ~~manner that promotes competition.~~

576 ~~(g) Development of procedures to be used by an agency when~~  
 577 ~~issuing requests for information and requests for quotes.~~

578 ~~(h) Development of procedures to be used by state agencies~~  
 579 ~~when procuring information technology commodities and~~  
 580 ~~contractual services that ensure compliance with public records~~

4-00922C-12 20121626

581 ~~requirements and records retention and archiving requirements.~~

582 ~~(4) (a) To prescribe the methods of securing competitive~~  
 583 ~~sealed bids, proposals, and replies. Such methods may include,~~  
 584 ~~but are not limited to, procedures for identifying vendors;~~  
 585 ~~setting qualifications; conducting conferences or written~~  
 586 ~~question and answer periods for purposes of responding to vendor~~  
 587 ~~questions; evaluating bids, proposals, and replies; ranking and~~  
 588 ~~selecting vendors; and conducting negotiations.~~

589 ~~(b) To prescribe procedures for procuring information~~  
 590 ~~technology and information technology consultant services that~~  
 591 ~~provide for public announcement and qualification, competitive~~  
 592 ~~solicitations, contract award, and prohibition against~~  
 593 ~~contingent fees. Such procedures are limited to information~~  
 594 ~~technology consultant contracts for which the total project~~  
 595 ~~costs, or planning or study activities, are estimated to exceed~~  
 596 ~~the threshold amount provided in s. 287.017, for CATEGORY TWO.~~

597 ~~(3) (5) To prescribe specific commodities and quantities to~~  
 598 ~~be purchased locally.~~

599 ~~(6) (a) To govern the purchase by any agency of any~~  
 600 ~~commodity or contractual service and to establish standards and~~  
 601 ~~specifications for any commodity.~~

602 ~~(4) (b) Except for the purchase of insurance, to the~~  
 603 ~~department may delegate to agencies the authority for the~~  
 604 ~~procurement of and contracting for commodities or contractual~~  
 605 ~~services.~~

606 ~~(7) To establish definitions and classes of commodities and~~  
 607 ~~contractual services. Agencies shall follow the definitions and~~  
 608 ~~classes of commodities and contractual services established by~~  
 609 ~~the department in acquiring or purchasing commodities or~~

4-00922C-12 20121626

610 ~~contractual services. The authority of the department under this~~  
 611 ~~section shall not be construed to impair or interfere with the~~  
 612 ~~determination by state agencies of their need for, or their use~~  
 613 ~~of, services including particular specifications.~~

614 ~~(8) To provide any commodity and contractual service~~  
 615 ~~purchasing rules to the Chief Financial Officer and all agencies~~  
 616 ~~through an electronic medium or other means. Agencies may not~~  
 617 ~~approve any account or request any payment of any account for~~  
 618 ~~the purchase of any commodity or the procurement of any~~  
 619 ~~contractual service covered by a purchasing or contractual~~  
 620 ~~service rule except as authorized therein. The department shall~~  
 621 ~~furnish copies of rules adopted by the department to any county,~~  
 622 ~~municipality, or other local public agency requesting them.~~

623 ~~(5) (9) To require that every agency furnish information~~  
 624 ~~relative to its commodity and contractual services purchases and~~  
 625 ~~methods of purchasing commodities and contractual services to~~  
 626 ~~the department when so requested.~~

627 ~~(6) (10) To prepare statistical data concerning the method~~  
 628 ~~of procurement, terms, usage, and disposition of commodities and~~  
 629 ~~contractual services by agencies. All agencies shall furnish~~  
 630 ~~such information for this purpose to the office and to the~~  
 631 ~~department, as the department or office may call for, but at~~  
 632 ~~least no less frequently than annually, on such forms or in such~~  
 633 ~~manner as the department may prescribe.~~

634 ~~(11) To establish and maintain programs for the purpose of~~  
 635 ~~disseminating information to government, industry, educational~~  
 636 ~~institutions, and the general public concerning policies,~~  
 637 ~~procedures, rules, and forms for the procurement of commodities~~  
 638 ~~and contractual services.~~

4-00922C-12

20121626

639 ~~(7)(12)~~ Except as otherwise provided in this section  
 640 ~~herein~~, to adopt rules necessary to carry out the purposes of  
 641 this section, including the authority to delegate to any agency  
 642 any and all of the responsibility conferred by this section,  
 643 retaining to the department any and all authority for  
 644 supervision thereof. Such purchasing of commodities and  
 645 procurement of contractual services by state agencies must also  
 646 ~~shall~~ be in strict accordance with the rules and procedures  
 647 prescribed by the Department of Financial Services.

648 ~~(8)(13)~~ If the department determines in writing that it is  
 649 in the best interest of the state, to award to multiple  
 650 suppliers contracts for commodities and contractual services  
 651 established by the department for use by all agencies. Such  
 652 awards may be on a statewide or regional basis. If regional  
 653 contracts are established by the department, multiple supplier  
 654 awards may be based upon multiple awards for regions. Agencies  
 655 may award contracts to a responsible and responsive vendor on a  
 656 statewide or regional basis.

657 ~~(9)(14)~~ To procure and distribute federal surplus tangible  
 658 personal property allocated to the state by the Federal  
 659 Government.

660 ~~(10)(15)~~ To enter into joint agreements with governmental  
 661 agencies, as defined in s. 163.3164, for the purpose of pooling  
 662 funds for the purchase of commodities or information technology  
 663 that can be used by multiple agencies.

664 (a) Each agency that has been appropriated or has existing  
 665 funds for such purchase, shall, upon contract award by the  
 666 department, transfer their portion of the funds into the  
 667 department's Operating Trust Fund for payment by the department.

Page 23 of 45

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4-00922C-12

20121626

668 The funds shall be transferred by the Executive Office of the  
 669 Governor pursuant to the agency budget amendment request  
 670 provisions in chapter 216.

671 (b) Agencies that sign the joint agreements are financially  
 672 obligated for their portion of the agreed-upon funds. If an  
 673 agency becomes more than 90 days delinquent in paying the funds,  
 674 the department shall certify to the Chief Financial Officer the  
 675 amount due, and the Chief Financial Officer shall transfer the  
 676 amount due to the Operating Trust Fund of the department from  
 677 any of the agency's available funds. The Chief Financial Officer  
 678 shall report these transfers and the reasons for the transfers  
 679 to the Executive Office of the Governor and the legislative  
 680 appropriations committees.

681 ~~(11)(16)~~ To evaluate contracts let by the Federal  
 682 Government, another state, or a political subdivision for the  
 683 provision of commodities and contract services, and, if it is  
 684 determined in writing to be cost-effective and in the best  
 685 interest of the state, to enter into a written agreement  
 686 authorizing an agency to make purchases under such contract.

687 ~~(12)(17)(a)~~ To enter into contracts pursuant to chapter 957  
 688 for the designing, financing, acquiring, leasing, constructing,  
 689 or operating of private correctional facilities. The department  
 690 shall enter into such a contract or contracts with one  
 691 contractor per facility ~~for the designing, acquiring, financing,~~  
 692 ~~leasing, constructing, and operating of that facility~~ or may, if  
 693 specifically authorized by the Legislature, separately contract  
 694 for each of any such services.

695 ~~(a)(b)~~ The department shall also ~~to~~ manage and enforce  
 696 compliance with existing or future contracts entered into

Page 24 of 45

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4-00922C-12

20121626\_\_

697 pursuant to chapter 957.

698 (b) The department may not delegate the responsibilities  
699 conferred by this subsection.

700 Section 7. Section 287.044, Florida Statutes, is created to  
701 read:

702 287.044 Powers, duties, and functions of the Department of  
703 Financial Services.—The Department of Financial Services is  
704 responsible for establishing and enforcing procurement and  
705 contracting policies and procedures for the Department of  
706 Management Services and all agencies. The Department of  
707 Financial Services has the following powers, duties, and  
708 functions:

709 (1) To establish a system of coordinated and uniform  
710 procurement policies, procedures, and practices to be used by  
711 agencies when acquiring commodities and contractual services,  
712 which includes, but is not limited to:

713 (a) The development of procedures to be used by an agency  
714 for issuing or advertising solicitations which include  
715 requirements for the agency to describe commodities, services,  
716 scope of work, and deliverables in a manner that promotes  
717 competition.

718 1. Such procedures must provide for electronic posting of  
719 solicitations at least 10 days before the date set for receipt  
720 of bids, proposals, or replies, unless the agency determines in  
721 writing that a shorter period of time is necessary to avoid  
722 harming the interests of the state.

723 2. The office may consult with the department regarding the  
724 development of solicitation distribution procedures to ensure  
725 that maximum distribution is afforded to certified minority

4-00922C-12

20121626\_\_

726 business enterprises as defined in s. 288.703.

727 3. The department shall designate a centralized website on  
728 the Internet for the department and other agencies to  
729 electronically post solicitations, decisions or intended  
730 decisions, and other matters relating to procurement.

731 4. State agencies shall be prepared to provide an  
732 explanation to unsuccessful bidders, if requested, of the  
733 reasons for which the bidders did not win a bid, in order to  
734 improve the bidders' chances for future success and encourage  
735 greater competition in the marketplace.

736 (b) The development of procedures to be used by an agency  
737 when issuing requests for information and requests for quotes.

738 (c) The development of procedures to be used by state  
739 agencies when procuring information technology commodities and  
740 contractual services which ensure compliance with public records  
741 requirements and records retention and archiving requirements.

742 (d) The development of procedures for the receipt and  
743 opening of bids, proposals, or replies by an agency. Such  
744 procedures must provide the office an opportunity to monitor and  
745 to ensure that the contract award is consistent with the  
746 requirements of s. 287.09451.

747 (e) The development of procedures to be used by an agency  
748 in deciding to contract, including, but not limited to,  
749 identifying and assessing in writing project needs and  
750 requirements, availability of agency employees, budgetary  
751 availability or constraints, availability of facility equipment,  
752 current and projected agency workload capabilities, and the  
753 ability of another state agency to perform the services.

754 (f) The development of a methodology to calculate cost

4-00922C-12 20121626\_\_  
 755 savings or cost avoidance achieved under a contract. Each agency  
 756 must annually report any action taken and the amount of cost  
 757 savings or cost avoidance which resulted from using the  
 758 methodology developed by the department. At a minimum, the  
 759 methodology should address:

- 760 1. The assessment of financial consequences for  
 761 nonperformance.
- 762 2. Criteria for renegotiating the contract.
- 763 3. Refinement of the scope of work or deliverables.
- 764 4. The use of additional competition during the procurement  
 765 process which results in awarding the contract at a lower price  
 766 than the previous award.

767 (g) The development of procedures for recording and  
 768 maintaining support documentation for a cost or price analysis  
 769 to be performed before the award of a contract in excess of the  
 770 threshold amount provided in s. 287.017 for CATEGORY FOUR. The  
 771 cost or price analysis shall be used to validate the  
 772 reasonableness of bids, proposals, or replies.

773 (h) The development of procedures to be used by state  
 774 agencies when entering into contracts which ensure standard  
 775 formats, quantifiable and measurable deliverables, performance  
 776 measures, and financial consequences for nonperformance.

777 (i) The development of procedures to be used by an agency  
 778 in maintaining a contract file for each contract which includes,  
 779 but is not limited to, all pertinent information relating to the  
 780 contract during the preparatory stages; the solicitation  
 781 process, including a copy of the solicitation; the opening of  
 782 bids, proposals, or replies; the evaluation and tabulation of  
 783 bids, proposals, or replies; and the determination and notice of

4-00922C-12 20121626\_\_  
 784 contract award.

785 (2) To prescribe the methods of securing competitive sealed  
 786 bids, proposals, and replies. Such methods may include, but are  
 787 not limited to, procedures for identifying vendors; setting  
 788 qualifications; conducting conferences or written question and  
 789 answer periods for purposes of responding to vendor questions;  
 790 evaluating bids, proposals, and replies; ranking and selecting  
 791 vendors; and conducting negotiations.

792 (3) To prescribe procedures for procuring information  
 793 technology and information technology consultant services which  
 794 provide for public announcement and qualification, competitive  
 795 solicitations, the contract award, and a prohibition against  
 796 contingent fees. Such procedures are limited to information  
 797 technology consultant contracts for which the total project  
 798 costs, or planning or study activities, are estimated to exceed  
 799 the threshold amount provided in s. 287.017 for CATEGORY TWO.

800 (4) To govern the purchase by an agency of any commodity or  
 801 contractual service and to establish standards and  
 802 specifications for a commodity. The Chief Financial Officer  
 803 shall establish definitions and classes of commodities and  
 804 contractual services which agencies must adhere to in acquiring  
 805 or purchasing commodities or contractual services. The  
 806 department's authority under this section may not impair or  
 807 interfere with an agency's determination of its need for, or use  
 808 of, services that include particular specifications.

809 (5) To provide to agencies through an electronic medium or  
 810 other means rules for purchasing commodities and contractual  
 811 services. Agencies may not approve any account, or request  
 812 payment of any account, for the purchase of any commodity or the

4-00922C-12 20121626

813 procurement of any contractual service covered by a purchasing  
 814 or contractual service rule except as authorized by such rule.  
 815 The department shall furnish copies of rules adopted by the  
 816 department to any county, municipality, or other local public  
 817 agency requesting them.

818 (6) To establish and maintain programs that disseminate  
 819 information to governmental entities, industry vendors,  
 820 educational institutions, and the general public concerning  
 821 policies, procedures, rules, and forms for the procurement of  
 822 commodities and contractual services.

823 (7) To establish and maintain a list of vendors that are  
 824 not allowed to do business with the state pursuant to ss.  
 825 287.132(4) and 287.133. The department may add to the list  
 826 vendors that are not compliant with federal or state laws, or  
 827 that the department determines have uncollected accounts that  
 828 are owed to the state.

829 (8) To review and approve contracts subject to this chapter  
 830 before the execution of such contracts in accordance with rules  
 831 adopted by the department. The review must ensure that all  
 832 contracting laws have been met; that the contract document  
 833 contains a clear statement of work, quantifiable and measureable  
 834 deliverables, performance measures, financial consequences for  
 835 nonperformance, and clear terms and conditions that protect the  
 836 interests of the state; that documentation is available to  
 837 support the contract; and that the associated costs of the  
 838 contract are not unreasonable or inappropriate. A contract that  
 839 does not comply with this subsection may be rejected and  
 840 returned to the submitting agency for revision.

841 (a) For contracts in excess of the threshold amount

4-00922C-12 20121626

842 provided in s. 287.017 for CATEGORY THREE, the review must  
 843 include, but need not be limited to:

844 1. Evidence of advertising the procurement opportunity, if  
 845 applicable;

846 2. The bid, proposal, or reply itself, whether an  
 847 invitation to bid, request for proposals, or invitation to  
 848 negotiate, as applicable;

849 3. The preprocurement conference questions and answers;

850 4. Any additional documentation provided to bidders,  
 851 proposers, or repliers;

852 5. The list of bidders, proposers, or repliers solicited;

853 6. The evaluation instrument and process description  
 854 related to the contract;

855 7. The bid tabulation or evaluation record;

856 8. Documentation that supports the agency's determination  
 857 of vendor responsibility;

858 9. The successful bid, proposal, or reply in addition to  
 859 the unsuccessful bids, proposals, or replies;

860 10. Documentation that supports the selection of the  
 861 contractor;

862 11. The reasonableness of the price;

863 12. Verification that all statutory and regulatory  
 864 requirements have been met; and

865 13. The proposed contract.

866 (b) The department shall verify that a competitive process  
 867 was used if required by law and that the contract was  
 868 appropriately awarded on the basis of lowest price or best value  
 869 to a responsive and reasonable bidder, proposer, or replier. For  
 870 contracts not competitively awarded, the procurement record

4-00922C-12

20121626\_\_

871 shall be reviewed for restrictive specifications and the  
 872 agency's justification for the noncompetitive method used in  
 873 awarding the contract, including justification for the selection  
 874 of the vendor and the reasonableness of the terms.

875 (c) The department has 90 days to make a final  
 876 determination regarding approval of a contract. The department  
 877 and the agency entering into the contract may agree to a longer  
 878 review period to ensure the thorough consideration of the  
 879 procurement process and its results.

880 (d) In order to ensure that the parties to the contract are  
 881 aware that a contract is not effective unless approved by the  
 882 department, the following language must be included in each  
 883 state contract or amendment to such contract:

884  
 885 If this contract, or an amendment to a contract, is  
 886 valued at or greater than \$65,000 or if the state  
 887 agrees to give something other than money, which  
 888 consideration has a value or reasonably estimated  
 889 value at or greater than \$35,000, the contract or  
 890 amendment is not valid, effective, or binding upon the  
 891 state unless the contract or amendment has been  
 892 approved by the Chief Financial Officer.

893  
 894 (e) Contracts and grants or grants-type contracts must be  
 895 treated similarly. Therefore, if a for-profit entity joins the  
 896 competition for a grant, normal contract rules apply even though  
 897 they may not be appropriate for a grant procurement.

898 (9) To waive minor deviations from current procedures in  
 899 order to prevent a delay in awarding an otherwise favorable

4-00922C-12

20121626\_\_

900 contract if a vendor is not adversely affected and current law  
 901 is not violated. The Chief Financial Officer shall provide  
 902 recommendations to the Legislature to resolve such deviations,  
 903 where appropriate, at the next regular legislative session.

904 (10) To have flexibility in accomplishing the intent of  
 905 this section. If situations arise that current law does not  
 906 anticipate, the department may work with state agencies to use  
 907 different contracting methods on a pilot basis for the remainder  
 908 of the calendar year. The Chief Financial Officer must provide  
 909 recommendations to the Legislature to resolve such situations,  
 910 where appropriate, at the next regular legislative session.

911 Section 8. Paragraph (f) of subsection (3), subsection (9),  
 912 and subsection (14) of section 287.057, Florida Statutes, are  
 913 amended, and subsection (24) is added to that section, to read:  
 914 287.057 Procurement of commodities or contractual  
 915 services.—

916 (3) When the purchase price of commodities or contractual  
 917 services exceeds the threshold amount provided in s. 287.017 for  
 918 CATEGORY TWO, no purchase of commodities or contractual services  
 919 may be made without receiving competitive sealed bids,  
 920 competitive sealed proposals, or competitive sealed replies  
 921 unless:

922 (f) The following contractual services and commodities are  
 923 not subject to the competitive-solicitation requirements of this  
 924 section:

925 ~~1. Artistic services. For the purposes of this subsection,~~  
 926 ~~the term "artistic services" does not include advertising or~~  
 927 ~~typesetting. As used in this subparagraph, the term~~  
 928 ~~"advertising" means the making of a representation in any form~~

4-00922C-12

20121626

929 ~~in connection with a trade, business, craft, or profession in~~  
 930 ~~order to promote the supply of commodities or services by the~~  
 931 ~~person promoting the commodities or contractual services.~~  
 932 ~~2. Academic program reviews if the fee for such services~~  
 933 ~~does not exceed \$50,000.~~  
 934 ~~3. Lectures by individuals.~~  
 935 1.4. Legal services, including attorney, paralegal, expert  
 936 witness, appraisal, or mediator services.  
 937 2.5-a. Health services involving examination, diagnosis,  
 938 treatment, prevention, medical consultation, or administration,  
 939 and,  
 940 ~~b.~~ beginning January 1, 2011, health services, including,  
 941 but not limited to, substance abuse and mental health services,  
 942 involving examination, diagnosis, treatment, prevention, or  
 943 medical consultation, if when such services are offered to  
 944 eligible individuals participating in a specific program that  
 945 qualifies multiple providers and uses a standard payment  
 946 methodology. Reimbursement of administrative costs for providers  
 947 of services purchased in this manner are shall also be exempt.  
 948 For purposes of this subparagraph ~~sub-subparagraph~~, the term  
 949 "providers" means health professionals, health facilities, or  
 950 organizations that deliver or arrange for the delivery of health  
 951 services.  
 952 3.6. Services provided to persons with mental or physical  
 953 disabilities by not-for-profit corporations that which have  
 954 obtained exemptions under ~~the provisions of~~ s. 501(c)(3) of the  
 955 United States Internal Revenue Code or if when such services are  
 956 governed by the provisions of Office of Management and Budget  
 957 Circular A-122. However, in acquiring such services, the agency

Page 33 of 45

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4-00922C-12

20121626

958 ~~must shall~~ consider the vendor's ability ~~of the vendor~~, past  
 959 performance, willingness to meet time requirements, and price.  
 960 ~~4.7.~~ Medicaid services delivered to an eligible Medicaid  
 961 recipient, unless the agency is directed otherwise in law.  
 962 ~~5.8.~~ Family placement services.  
 963 ~~6.9.~~ Prevention services related to mental health,  
 964 including drug abuse prevention programs, child abuse prevention  
 965 programs, and shelters for runaways, operated by not-for-profit  
 966 corporations. However, in acquiring such services, the agency  
 967 ~~must shall~~ consider the vendor's ability ~~of the vendor~~, past  
 968 performance, willingness to meet time requirements, and price.  
 969 ~~10. Training and education services provided to injured~~  
 970 ~~employees pursuant to s. 440.491(6).~~  
 971 ~~7.11.~~ Contracts entered into pursuant to s. 337.11.  
 972 ~~8.12.~~ Services or commodities provided by governmental  
 973 agencies.  
 974 (9) An agency may shall not divide the solicitation of  
 975 commodities or contractual services so as to avoid the  
 976 requirements of subsections (1)-(3) and reduce the ability of  
 977 businesses to openly compete. For the purposes of this  
 978 subsection, state agencies shall consider all purchases of the  
 979 same commodity or service during one year to be part of a single  
 980 purchase.  
 981 (14) For each contractual services contract, the agency  
 982 shall designate an employee to function as contract manager who  
 983 shall be responsible for enforcing performance of the contract  
 984 terms and conditions and serve as a liaison with the contractor.  
 985 Each contract manager who is responsible for one or more  
 986 contracts in excess of the threshold amount provided under s.

Page 34 of 45

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4-00922C-12 20121626

987 287.017 for CATEGORY ~~FIVE TWO~~ must be certified pursuant to s.  
 988 287.1312 attend training conducted by the Chief Financial  
 989 Officer for accountability in contracts and grant management.  
 990 The Chief Financial Officer shall establish and disseminate  
 991 uniform procedures pursuant to s. 17.03(3) to ensure that  
 992 contractual services have been rendered in accordance with the  
 993 contract terms before the agency processes the invoice for  
 994 payment. The procedures must ~~shall~~ include, but need not be  
 995 limited to, procedures for monitoring and documenting contractor  
 996 performance, reviewing and documenting all deliverables for  
 997 which payment is requested by vendors, and providing written  
 998 certification by contract managers of the agency's receipt of  
 999 goods and services.

1000 (24) An agency may purchase commodities or services through  
 1001 another agency's existing contract rather than through  
 1002 competitive competition if the use of such contract is in the  
 1003 best interest of the state.

1004 Section 9. Paragraph (e) of subsection (1) of section  
 1005 287.058, Florida Statutes, is amended to read:

1006 287.058 Contract document.—

1007 (1) Every procurement of contractual services in excess of  
 1008 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
 1009 except for the providing of health and mental health services or  
 1010 drugs in the examination, diagnosis, or treatment of sick or  
 1011 injured state employees or the providing of other benefits as  
 1012 required by the provisions of chapter 440, shall be evidenced by  
 1013 a written agreement embodying all provisions and conditions of  
 1014 the procurement of such services, which shall, where applicable,  
 1015 include, but not be limited to, a provision:

Page 35 of 45

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4-00922C-12 20121626

1016 (e) Dividing the contract into quantifiable, measurable,  
 1017 and verifiable units of deliverables which that must be received  
 1018 and accepted in writing by the contract manager before payment.  
 1019 Each deliverable must be directly related to the scope of work  
 1020 and specify a performance measure. As used in this paragraph,  
 1021 the term "performance measure" means the required minimum level  
 1022 of service to be performed and criteria for evaluating the  
 1023 successful completion of each deliverable.

1024  
 1025 In lieu of a written agreement, the department may authorize the  
 1026 use of a purchase order for classes of contractual services, if  
 1027 the provisions of paragraphs (a)-(i) are included in the  
 1028 purchase order or solicitation. The purchase order must include,  
 1029 but need not be limited to, an adequate description of the  
 1030 services, the contract period, and the method of payment. In  
 1031 lieu of printing the provisions of paragraphs (a)-(i) in the  
 1032 contract document or purchase order, agencies may incorporate  
 1033 the requirements of paragraphs (a)-(i) by reference.

1034 Section 10. Section 287.1312, Florida Statutes, is created  
 1035 to read:

1036 287.1312 Contract manager certification.—

1037 (1) The Department of Financial Services shall establish a  
 1038 certification program for contract and grant managers. A state  
 1039 employee may not manage a contract or grant agreement in excess  
 1040 of the threshold amount provided in s. 287.017 for CATEGORY FIVE  
 1041 without obtaining a valid certification from the Department of  
 1042 Financial Services under this section. The program must include  
 1043 training in the following areas:

1044 (a) Procurement and the development of contracts.

Page 36 of 45

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4-00922C-12 20121626\_\_

1045 (b) Development and administration of grant agreements  
 1046 involving federal and state financial assistance.  
 1047 (c) Responsibilities of a contract manager in the  
 1048 management of state contracts and grant agreements.  
 1049 (d) Federal and state audit and reporting requirements.  
 1050 (e) Laws and rules relating to procurement and contract  
 1051 administration.  
 1052 (f) Any other subject matter that the Chief Financial  
 1053 Officer determines will promote accountability in contract and  
 1054 grant management.  
 1055 (2) The program shall provide for periodic recertification,  
 1056 as necessary. The Department of Financial Services shall  
 1057 determine course requirements, maintain information on  
 1058 certifications, and monitor the performance of contract and  
 1059 grant managers. As part of such monitoring, the department shall  
 1060 annually publish the results of agency manager audits and error  
 1061 rates related to contract and grant management on its website.  
 1062 (3) The Department of Financial Services may revoke a  
 1063 manager's certification for incompetence or conduct inconsistent  
 1064 with the responsibilities of contract or grant management.  
 1065 (4) The Department of Financial Services shall adopt rules  
 1066 to administer this section.  
 1067 Section 11. Paragraph (d) of subsection (1) of section  
 1068 287.133, Florida Statutes, is amended to read:  
 1069 287.133 Public entity crime; denial or revocation of the  
 1070 right to transact business with public entities.-  
 1071 (1) As used in this section:  
 1072 (d) "Department" means the Department of Financial  
 1073 Management Services.

Page 37 of 45

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4-00922C-12 20121626\_\_

1074 Section 12. Paragraph (h) of subsection (3) of section  
 1075 255.25, Florida Statutes, is amended to read:  
 1076 255.25 Approval required prior to construction or lease of  
 1077 buildings.-  
 1078 (3)  
 1079 ~~(h) The Department of Management Services may,~~ Pursuant to  
 1080 s. 287.042(2)(a), the department shall procure a term contract  
 1081 for real estate consulting and brokerage services. A state  
 1082 agency may not purchase services from the contract unless the  
 1083 contract has been procured under s. 287.057(1) after March 1,  
 1084 2007, and contains the following provisions or requirements:  
 1085 1. Awarded brokers ~~must~~ maintain an office or presence in  
 1086 the market served. In awarding the contract, preference must be  
 1087 given to brokers who ~~that~~ are licensed in this state under  
 1088 chapter 475 and who ~~that~~ have 3 or more years of experience in  
 1089 the market served. The contract may be made with up to three  
 1090 tenant brokers in order to serve the marketplace in the north,  
 1091 central, and south areas of the state.  
 1092 2. Each contracted tenant broker works ~~shall work~~ under the  
 1093 direction, supervision, and authority of the state agency,  
 1094 subject to the rules governing lease procurements.  
 1095 3. The department provides ~~shall provide~~ training for the  
 1096 awarded tenant brokers concerning the rules governing the  
 1097 procurement of leases.  
 1098 4. Tenant brokers ~~must~~ comply with all applicable  
 1099 provisions of s. 475.278.  
 1100 5. Real estate consultants and tenant brokers are ~~shall be~~  
 1101 compensated by the state agency, subject to the provisions of  
 1102 the term contract, and such compensation is subject to

Page 38 of 45

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

4-00922C-12 20121626\_\_  
 1103 appropriation by the Legislature. A real estate consultant or  
 1104 tenant broker may not receive compensation directly from a  
 1105 lessor for services that are rendered under the term contract.  
 1106 Moneys paid by a lessor to the state agency under a facility  
 1107 leasing arrangement are not subject to the charges imposed under  
 1108 s. 215.20. All terms relating to the compensation of the real  
 1109 estate consultant or tenant broker must ~~shall~~ be specified in  
 1110 the term contract and may not be supplemented or modified by the  
 1111 state agency using the contract.

1112 6. The department conducts ~~shall conduct~~ periodic customer-  
 1113 satisfaction surveys.

1114 7. Each state agency reports ~~shall report~~ the following  
 1115 information to the department:

1116 a. The number of leases that adhere to the goal of the  
 1117 workspace-management initiative of 180 square feet per full-time  
 1118 employee FTE.

1119 b. The quality of space leased and the adequacy of tenant-  
 1120 improvement funds.

1121 c. The timeliness of lease procurement, measured from the  
 1122 date of the agency's request to the finalization of the lease.

1123 d. Whether cost-benefit analyses were performed before  
 1124 execution of the lease in order to ensure that the lease is in  
 1125 the best interest of the state.

1126 e. The lease costs compared to market rates for similar  
 1127 types and classifications of space according to the official  
 1128 classifications of the Building Owners and Managers Association.

1129 Section 13. Subsection (12) of section 287.012, Florida  
 1130 Statutes, is amended to read:

1131 287.012 Definitions.—As used in this part, the term:

4-00922C-12 20121626\_\_  
 1132 (12) "Exceptional purchase" means any purchase of  
 1133 commodities or contractual services excepted by law or rule from  
 1134 the requirements for competitive solicitation, including, but  
 1135 not limited to, purchases from a single source; purchases upon  
 1136 receipt of fewer ~~less~~ than two responsive bids, proposals, or  
 1137 replies; purchases made by an agency, after receiving approval  
 1138 from the department, from a contract procured, pursuant to s.  
 1139 287.057(1), or by another agency; and purchases made without  
 1140 advertisement in the manner required under ~~by~~ s. 287.044(1)(a)  
 1141 287.042(3)(b).

1142 Section 14. Paragraph (a) of subsection (2) of section  
 1143 402.7305, Florida Statutes, is amended to read:

1144 402.7305 Department of Children and Family Services;  
 1145 procurement of contractual services; contract management.—

1146 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.—

1147 (a) Notwithstanding s. 287.057(3)(f)8. ~~287.057(3)(f)12,~~ if  
 1148 ~~whenever~~ the department intends to contract with a public  
 1149 postsecondary institution to provide a service, the department  
 1150 must allow all public postsecondary institutions in this state  
 1151 which ~~that~~ are accredited by the Southern Association of  
 1152 Colleges and Schools to bid on the contract. Thereafter,  
 1153 notwithstanding any other provision of law to the contrary, if a  
 1154 public postsecondary institution intends to subcontract for any  
 1155 service awarded in the contract, the subcontracted service must  
 1156 be procured by competitive procedures.

1157 Section 15. Subsection (3) of section 427.0135, Florida  
 1158 Statutes, is amended to read:

1159 427.0135 Purchasing agencies; duties and responsibilities.—  
 1160 Each purchasing agency, in carrying out the policies and

4-00922C-12

20121626\_\_

1161 procedures of the commission, shall:

1162 (3) Not procure transportation disadvantaged services  
 1163 without initially negotiating with the commission, as provided  
 1164 in s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~, or unless otherwise  
 1165 authorized by statute. If the purchasing agency, after  
 1166 consultation with the commission, determines that it cannot  
 1167 reach mutually acceptable contract terms with the commission,  
 1168 the purchasing agency may contract for the same transportation  
 1169 services provided in a more cost-effective manner and of  
 1170 comparable or higher quality and standards. The Medicaid agency  
 1171 shall implement this subsection in a manner consistent with s.  
 1172 409.908(18) and as otherwise limited or directed by the General  
 1173 Appropriations Act.

1174 Section 16. Subsection (2) of section 946.515, Florida  
 1175 Statutes, is amended to read:

1176 946.515 Use of goods and services produced in correctional  
 1177 work programs.—

1178 (2) A ~~No~~ similar product or service of comparable price and  
 1179 quality found necessary for use by any state agency may not be  
 1180 purchased from any source other than the corporation if the  
 1181 corporation certifies that the product is manufactured by, or  
 1182 the service is provided by, inmates and the product or service  
 1183 meets the comparable performance specifications and comparable  
 1184 price and quality requirements as specified under s.  
 1185 287.042(1)(c) ~~287.042(1)(f)~~ or as determined by an individual  
 1186 agency as provided in this section. The purchasing authority of  
 1187 ~~any~~ such state agency may make reasonable determinations of  
 1188 need, price, and quality with reference to products or services  
 1189 available from the corporation. In the event of a dispute

Page 41 of 45

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4-00922C-12

20121626\_\_

1190 between the corporation and a ~~any~~ purchasing authority based  
 1191 upon price or quality under this section or s. 287.042(1)(c)  
 1192 ~~287.042(1)(f)~~, either party may request a hearing with the  
 1193 Department of Management Services and, if not resolved, ~~either~~  
 1194 ~~party~~ may request a proceeding pursuant to ss. 120.569 and  
 1195 120.57, which shall be referred to the Division of  
 1196 Administrative Hearings within 60 days after such request, to  
 1197 resolve any dispute under this section. A ~~No~~ party is not  
 1198 entitled to any appeal pursuant to s. 120.68.

1199 Section 17. Procurement review and report.—

1200 (1) It is the policy of this state to promote the effective  
 1201 procurement of goods, services, and facilities by and for the  
 1202 executive branch of state government through the following:

1203 (a) Establishment of policies, procedures, and practices  
 1204 that require the state to procure goods, services, and  
 1205 facilities in a timely manner, of requisite quality, and at the  
 1206 lowest reasonable cost, using competitive bidding to the maximum  
 1207 extent possible.

1208 (b) Improvement in the quality, efficiency, economy, and  
 1209 performance of organizations and personnel involved in the  
 1210 procurement of goods, services, and facilities by the state.

1211 (c) Elimination of unnecessary, overlapping, or duplication  
 1212 of procurement and related activities, such as in contract  
 1213 administration.

1214 (d) Elimination of unnecessary or redundant requirements  
 1215 placed on contractors or on officials in charge of state  
 1216 procurement procedures.

1217 (e) Identification of gaps, omissions, or inconsistencies  
 1218 in state laws, rules, and directives relating to state

Page 42 of 45

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4-00922C-12 20121626\_\_

1219 procurement which should be brought to the attention of the  
 1220 Legislature.

1221 (f) Attainment of greater uniformity in and simplification  
 1222 of procurement procedures, whenever appropriate.

1223 (g) Coordination of the procurement policies and programs  
 1224 of the various state agencies, whenever possible.

1225 (h) Conformation of procurement policies and programs to  
 1226 other successfully established state policies and programs,  
 1227 whenever appropriate.

1228 (i) Minimization of the possible disruptive effects of  
 1229 state procurement on particular industries, areas, or  
 1230 occupations.

1231 (j) Improvement of training with respect to, and the  
 1232 understanding of, the laws and policies of the state relating to  
 1233 state procurement, not only within state government but on the  
 1234 part of organizations and individuals doing business with the  
 1235 state.

1236 (k) Promotion of fair dealing and equitable relationships  
 1237 among the parties to state contracting.

1238 (l) Promotion of economy, efficiency, and effectiveness in  
 1239 state procurement organizations, operations, and the uniform  
 1240 reporting of procurement activities by any means that the Chief  
 1241 Financial Officer deems beneficial and appropriate.

1242 (m) Special consideration given to the procurement laws,  
 1243 policies, procedures, practices, organization, staffing,  
 1244 leadership, and controls of the procurement processes of the  
 1245 Federal Government and other states.

1246 (n) Promotion of economy, efficiency, and effectiveness in  
 1247 procurement, contract management, and project management

4-00922C-12 20121626\_\_

1248 operations.

1249 (2) In keeping with the policies expressed in subsection  
 1250 (1), the Chief Financial Officer shall review and investigate:

1251 (a) All current state laws that govern the state  
 1252 procurement of goods, services, and facilities;

1253 (b) The procurement policies, rules, procedures, and  
 1254 practices followed by the state agencies, boards, commissions,  
 1255 offices, and other instrumentalities of the executive branch of  
 1256 state government;

1257 (c) The organization and management processes involved in  
 1258 the state procurement of goods, services, and facilities before  
 1259 the award of a state procurement contract, during the  
 1260 solicitation of bids, the evaluation, and the negotiation of a  
 1261 contract, and subsequent to the award of the contract to  
 1262 determine the extent to which these organization and management  
 1263 processes facilitate the legislative policy set forth in this  
 1264 act; and

1265 (d) Any other areas that the Chief Financial Officer deems  
 1266 relevant to facilitating the policies expressed in subsection  
 1267 (1).

1268 (3) In order to accomplish the procurement review directed  
 1269 by this section, the Chief Financial Officer may:

1270 (a) Acquire information directly from the head of any state  
 1271 department or agency for the purpose of conducting this review.  
 1272 All departments and agencies shall cooperate with the Chief  
 1273 Financial Officer and furnish all information requested to the  
 1274 extent permitted by law.

1275 (b) Procure the services of experts and consultants.

1276 (c) Contract with private organizations and nonprofit

4-00922C-12 20121626\_\_

1277 institutions to carry out studies and prepare reports to  
1278 facilitate the review.

1279 (4) By December 31, 2012, the Chief Financial Officer shall  
1280 submit to the Governor, the President of the Senate, and the  
1281 Speaker of the House of Representatives a report of findings and  
1282 recommendations for changes in statutes, rules, policies,  
1283 procedures, and organization necessary to carry out the policies  
1284 set forth in this act.

1285 Section 18. The Legislature recognizes the need to reform  
1286 the purchasing cycle, from the development of a purchasing  
1287 agreement to the payment for goods or services provided to the  
1288 state. Therefore, chapter 287, Florida Statutes, is repealed  
1289 effective July 30, 2014.

1290 Section 19. (1) For the 2012-2013 fiscal year, the sum of  
1291 \$400,000 in nonrecurring funds is appropriated from the  
1292 Administrative Trust Fund in the Department of Financial  
1293 Services to contract for the Chief Financial Officer's review of  
1294 the state's procurement process.

1295 (2) For the 2012-2013 fiscal year, the sum of \$400,000 in  
1296 recurring funds from the General Revenue fund and \_\_\_\_\_ full-time  
1297 equivalent positions and associated salary rate of \_\_\_\_\_ are  
1298 appropriated to the Chief Financial Officer for the purpose of  
1299 implementing the Chief Financial Officer's expanded contract  
1300 auditing responsibilities under this act. Funds remaining  
1301 unexpended or unencumbered from this appropriation as of June  
1302 30, 2013, shall revert and be reappropriated for the same  
1303 purpose in the 2013-2014 fiscal year.

1304 Section 20. This act shall take effect July 1, 2012.

# CourtSmart Tag Report

Room: KN 412

Case:

Caption: Senate Banking and Insurance Committee - 3:15 - 5:15 412kb

Type:

Judge:

Started: 2/2/2012 3:19:23 PM

Ends: 2/2/2012 5:14:20 PM Length: 01:54:58

3:19:35 PM Senator Richter calls meeting to order  
3:20:40 PM Roll call  
3:22:24 PM Tab 1 SB 1844  
3:23:38 PM Tab 1 SB 1844  
3:23:41 PM Tab 1 SB 1844  
3:24:37 PM Roll call on SB 1844 -- passed  
3:25:58 PM Tab 2 SB 1860 - Motor Vehicle Personal Injury Protection  
3:26:58 PM Sen. Richter turns chair over to Vice Chair Smith  
3:39:06 PM Senator Negron explains the bill  
3:40:06 PM Senator Hays with question for Sen. Negron  
3:43:14 PM Sen. Bennett with question to sponsor  
3:44:15 PM Amendment 527256 by Sen. Richter  
3:44:51 PM Sen. Richter explains the amendment  
3:46:48 PM Substitute Amd. 104666 offered by Senator Gaetz--amendment withdrawn  
3:53:08 PM Senator Sobel with question to Sen. Richter  
3:54:09 PM Bill Newton, Executive Director, FI Consumer Action Network speaks against amendment  
3:58:14 PM Kim Driggers, Lawyer, FL Justice Assn. speaking against amendment  
3:59:14 PM voice vote on Amd. 527256 -- passed  
4:01:06 PM voice vote on Amd. 527256 -- passed  
4:01:07 PM Amendment 220258 by Sen. Richter -- Amendment WD  
4:04:37 PM Amd. 791184 by Sen. Richter--amendment withdrawn  
4:07:45 PM Amd. 791184 by Sen. Richter--amendment withdrawn  
4:07:49 PM Amd. to Amend. by Margolis -- both withdrawn  
4:09:33 PM Michael Carlson, Executive Director, Personal Insurance Federation  
4:15:27 PM Gerald Wester, American Insurance Association  
4:16:27 PM Jeff Morrison D.C., FI Chiropractice Association  
4:17:58 PM Mr. Lazega, Responsive Insurance Company  
4:19:02 PM Dr. Chip Smith, Chiropractor, FI. Chiropractic Association  
4:19:53 PM Cheryl Amundsen representing Put the Brakes on Accident Fraud Coalition  
4:21:24 PM Janet Mabry, Consultant, FL State Massage Therapy Association  
4:23:24 PM Bill Newton, FL Consumer Action Network  
4:24:14 PM Motion by Senator Smith--motion for time certain vote at 4:40 -- passed  
4:25:53 PM Rutledge Bradford, attorney  
4:28:10 PM William Large, FL Justice Reform Institute  
4:30:03 PM Mark Delegal, State Farm Mutual Automobile Ins.  
4:31:03 PM Pat Mixson, Governmental Consultant  
4:43:54 PM Sen. Richter moves time certain vote on bill to 4:45 -- adopted  
4:44:55 PM Sen. Smith moves for CS -- adopted  
4:45:06 PM Roll call on SB 1860--passed  
4:45:47 PM Tab 3 SB 1862 by Sen. Negron  
4:46:06 PM roll call -- passed  
4:46:34 PM TAB 8 SB 1626 by Sen. Gaetz State contracting  
4:46:59 PM Explanation of bill by Sen. Gaetz  
4:49:08 PM Amendment 725782 - delete all amendment  
4:50:08 PM Amd to Amend. Adopted  
4:50:29 PM Kraig Conn, FL League of Cities  
4:53:37 PM Senator Oelrich with question for Kraig Conn  
4:54:38 PM Amd. 725782 - adopted  
4:54:56 PM Sen. Smith moves CS for SB 1626 --  
4:55:09 PM roll call -- adopted cs  
4:56:48 PM Sen. Richter turns chair over to Senator Smith  
4:56:49 PM TAB 4 SB 1620 relating to Insurance

**4:57:37 PM** Amd. 160704 -- without objection -- adopted  
**4:57:53 PM** Amd. 929464 by Sen. Richter --without objection -- adopted  
**4:58:37 PM** Amd. 604062 by Sen. Richter -- without objection -- adopted  
**4:59:09 PM** Amd. 377322 -- WD  
**4:59:15 PM** Amd. 467786 -- technical -- adopted  
**4:59:27 PM** Amd. 464792 -- technical -- without objection -- adopted  
**4:59:56 PM** Late filed amend. by Sen. Sobel (227828) --without objection -- adopted  
**5:00:43 PM** Motion by Sen. Sobel -- CS -- adopted  
**5:01:44 PM** Roll Call vote: Passed  
**5:02:11 PM** Chair returned to Sen. Richter  
**5:02:31 PM** Tab 6 - SB 1428 by Sen. Smith  
**5:02:40 PM** Amd. 144930 by Sen. Smith -- without objection -- adopted  
**5:03:34 PM** Sen. Hays moves CS -- adopted  
**5:03:45 PM** Roll call on SB 1428 -- passed  
**5:04:13 PM** TAB 7 SB 1814 by Sen Smith  
**5:04:51 PM** Roll Call on SB 1814 -- passed  
**5:05:15 PM** TAB 5 by Sen. Hays  
**5:05:44 PM** Amd. 708624 - delete all amendment  
**5:06:43 PM** Amd. to Amd. by Sen. Hays 935180 --without objection -- adopted  
**5:07:30 PM** Amd. 708624 -- adopted  
**5:08:15 PM** Matt Puckett, FL Police Benevolent Association  
**5:09:21 PM** Lisa Henning, Director Legislative Affairs -- Fraternal Order of Police  
**5:10:07 PM** Kraig Conn, FL League of Cities  
**5:11:31 PM** Robert Suarez, VP, FL Professional Firefighters  
**5:12:24 PM** Senator Negron has question for sponsor of bill  
**5:12:41 PM** Sen. Oelrich has question for Sen. Hays  
**5:12:58 PM** Sen. Hays recognized to close on bill  
**5:13:11 PM** Sen. Bennett moves for CS--adopted  
**5:13:20 PM** Roll call -- adopted  
**5:13:49 PM** meeting adjourned.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Transportation and Economic Development  
Appropriations, *Chair*  
Banking and Insurance  
Communications, Energy, and Public Utilities  
Ethics and Elections  
Governmental Operations - Policy and Steering  
Governmental Oversight and Accountability  
Judiciary  
Transportation  
Ways and Means - Policy and Steering

**JOINT COMMITTEE:**  
Legislative Budget Commission

### SENATOR MIKE FASANO

*President Pro Tempore*  
11th District

February 2, 2012

The Honorable Garrett Richter, Chairman  
Senate Committee on Banking and Insurance  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Senator Richter,

Please excuse my absence at the Committee Meeting scheduled for today, as I am unable to attend. Thank you very much and please let me know if there is anything I can do for you.

Sincerely,

A handwritten signature in black ink that reads "Mike".

Mike Fasano  
Florida State Senator, District 11

MF/gc

**REPLY TO:**

- 8217 Massachusetts Avenue, New Port Richey, Florida 34653-3111 (727) 848-5885
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5062

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**JEFF ATWATER**  
President of the Senate

**MIKE FASANO**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Budget, *Chair*  
Rules, *Vice Chair*  
Agriculture  
Banking and Insurance  
Budget - Subcommittee on Finance and Tax  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Education Pre-K - 12  
Rules - Subcommittee on Ethics and Elections

### JOINT COMMITTEE:

Legislative Budget Commission, *Chair*

**SENATOR JD ALEXANDER**

17th District

February 1, 2012

Senator Garrett S. Richter, Chair  
Committee on Banking & Insurance  
322 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Senator Richter,

I respectfully request permission to be absent from the Committee on Banking & Insurance, tomorrow, February 2, 2012. I will not be able to attend this meeting.

Thank you for your approval in this request.

Sincerely,

A handwritten signature in black ink, appearing to read "JD Alexander".

JD Alexander  
Senator, District 17

Xc: Steve Burgess

### REPLY TO:

- 201 Central Avenue West, Suite 115, City Hall Complex, Lake Wales, Florida 33853 (863) 679-4847
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5044

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**MIKE HARIDOPOLOS**  
President of the Senate

**MICHAEL S. "MIKE" BENNETT**  
President Pro Tempore