

By Senator Richter

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1 A bill to be entitled
2 An act relating to motor vehicle personal injury
3 protection insurance; amending s. 26.012, F.S.;
4 providing that the circuit court has exclusive
5 jurisdiction in actions involving challenges to
6 arbitration decisions under the Florida Motor Vehicle
7 No-Fault Law; amending s. 627.4137, F.S.; requiring a
8 claimant's request about insurance coverage to be
9 appropriately served upon the disclosing entity;
10 amending s. 627.731, F.S.; providing legislative
11 intent with respect to the Florida Motor Vehicle No-
12 Fault Law; amending s. 627.736, F.S.; revising
13 requirements relating to charges for treatment;
14 specifying certain types of medical services subject
15 to reimbursement; revising requirements relating to
16 discovery; requiring the insured and assignee to
17 comply with certain provisions to recover benefits;
18 requiring the provider to produce persons having the
19 most knowledge in specified circumstances; providing
20 that an insurer that requests an examination under
21 oath in a manner that is inconsistent with the policy
22 is engaging in an unfair and deceptive trade practice;
23 providing that failure to appear for an examination
24 establishes a rebuttable presumption that such failure
25 was unreasonable; limiting attorney's fees; providing
26 that attorney's fees are calculated without regard to
27 a contingency risk multiplier; providing for
28 arbitration; authorizing an insurer to offer a policy
29 that requires or allows for arbitration before a

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30 lawsuit can be filed and in lieu of litigation;
31 providing that arbitration may not be initiated until
32 a specified number of days after certain documents are
33 received; providing for the location of arbitration
34 and the selection of an arbitrator; requiring the
35 claimant to make certain files available in specified
36 circumstances; requiring the insurer to make certain
37 evidence available in specified circumstances;
38 providing that the written decision of the arbitrator,
39 unless challenged, is binding; providing limits on the
40 arbitration award and attorney's fees and costs;
41 providing that a claimant is entitled to reimbursement
42 of attorney's fees and costs; providing for a court
43 challenge of the arbitration award; providing an
44 effective date.

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

47
48 Section 1. Subsection (2) of section 26.012, Florida
49 Statutes, is amended to read:

50 26.012 Jurisdiction of circuit court.—

51 (2) The circuit court ~~They~~ shall have exclusive original
52 jurisdiction:

53 (a) In all actions at law not cognizable by the county
54 courts. ~~†~~

55 (b) Of proceedings relating to the settlement of the
56 estates of decedents and minors, the granting of letters
57 testamentary, guardianship, involuntary hospitalization, the
58 determination of incompetency, and other jurisdiction usually

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59 pertaining to courts of probate.~~†~~

60 (c) In all cases in equity including all cases relating to
61 juveniles except traffic offenses as provided in chapters 316
62 and 985.~~†~~

63 (d) Of all felonies and of all misdemeanors arising out of
64 the same circumstances as a felony which is also charged.~~†~~

65 (e) In all cases involving legality of any tax assessment
66 or toll or denial of refund, except as provided in s. 72.011.~~†~~

67 (f) In actions of ejectment.~~†~~ and

68 (g) In all actions involving the title and boundaries of
69 real property.

70 (h) In all actions involving the Florida Motor Vehicle No-
71 Fault Law, ss. 627.730-627.7407, where arbitration is initiated
72 pursuant to s. 627.736(18) and the arbitration decision is
73 challenged.

74 Section 2. Subsection (3) is added to section 627.4137,
75 Florida Statutes, to read:

76 627.4137 Disclosure of certain information required.-

77 (3) Any request made to a self-insured corporation pursuant
78 to this section shall be sent by certified mail to the
79 registered agent of the disclosing entity.

80 Section 3. Section 627.731, Florida Statutes, is amended to
81 read:

82 627.731 Purpose; legislative intent.-

83 (1) The purpose of the Florida Motor Vehicle No-Fault Law
84 ~~ss. 627.730-627.7405~~ is to provide for medical, surgical,
85 funeral, and disability insurance benefits without regard to
86 fault, and to require motor vehicle insurance securing such
87 benefits, for motor vehicles required to be registered in this

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88 state and, with respect to motor vehicle accidents, a limitation
89 on the right to claim damages for pain, suffering, mental
90 anguish, and inconvenience.

91 (2) The Legislature intends that:

92 (a) The provisions, schedules, and procedures authorized in
93 ss. 627.730-627.7407 be implemented by the insurers offering
94 policies pursuant to the no-fault law. These provisions,
95 schedules, and procedures have full force and effect regardless
96 of their express inclusion in an insurance policy, and an
97 insurer is not required to amend its policy to implement and
98 apply such provisions, schedules, or procedures.

99 (b) Insurers properly investigate claims, and as such, be
100 allowed to obtain examinations under oath and sworn statements
101 from any claimant seeking no-fault insurance benefits, and to
102 request mental and physical examinations of persons seeking
103 personal injury protection coverage or benefits.

104 (c) The insured's interest in obtaining competent counsel
105 must be balanced with the public's interest in preventing a no-
106 fault system that encourages litigation by allowing for
107 exorbitant attorney's fees. Courts should limit attorney fee
108 awards so as to eliminate the incentive for attorneys to
109 manufacture unnecessary litigation.

110 Section 4. Paragraph (a) of subsection (5), paragraph (b)
111 of subsection (6), paragraph (b) of subsection (7), and
112 subsection (8) of section 627.736, Florida Statutes, are
113 amended, and subsections (17) and (18) are added to that
114 section, to read:

115 627.736 Required personal injury protection benefits;
116 exclusions; priority; claims.-

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

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

142 1.2. The insurer may limit reimbursement to 80 percent of
143 the following schedule of maximum charges:

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

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

149 c. For emergency services and care as defined by s.
150 395.002~~(9)~~ provided in a facility licensed under chapter 395
151 rendered by a physician or dentist, and related hospital
152 inpatient services rendered by a physician or dentist, the usual
153 and customary charges in the community.

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

158 e. For hospital outpatient services, other than emergency
159 services and care, 200 percent of the Medicare Part A Ambulatory
160 Payment Classification for the specific hospital providing the
161 outpatient services.

162 f. For all other medical services, supplies, and care,
163 including durable medical equipment, care, and services rendered
164 by a clinical laboratory, 200 percent of the allowable amount
165 under the participating physicians schedule of Medicare Part B.
166 However, if such services, supplies, or care is not reimbursable
167 under Medicare Part B, or if the care and services are rendered
168 in an ambulatory surgical center, the insurer may limit
169 reimbursement to 80 percent of the maximum reimbursable
170 allowance under workers' compensation, as determined under s.
171 440.13 and rules adopted thereunder which are in effect at the
172 time such services, supplies, or care is provided. Services,
173 supplies, or care that is not reimbursable under Medicare or
174 workers' compensation is not required to be reimbursed by the

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175 insurer.

176 ~~2.3.~~ For purposes of subparagraph 1. 2., the applicable fee
177 schedule or payment limitation under Medicare is the fee
178 schedule or payment limitation in effect on January 1 of the
179 year in which ~~at the time~~ the services, supplies, or care was
180 rendered and for the area in which such services were rendered,
181 notwithstanding any subsequent changes made to such fee schedule
182 or payment limitation, except that it may not be less than the
183 allowable amount under the participating physicians schedule of
184 Medicare Part B for 2007 for medical services, supplies, and
185 care subject to Medicare Part B.

186 ~~3.4.~~ Subparagraph 1. 2. does not allow the insurer to apply
187 any limitation on the number of treatments or other utilization
188 limits that apply under Medicare or workers' compensation. An
189 insurer that applies the allowable payment limitations of
190 subparagraph 1. 2. must reimburse a provider who lawfully
191 provided care or treatment under the scope of his or her
192 license, regardless of whether such provider is ~~would be~~
193 entitled to reimbursement under Medicare due to restrictions or
194 limitations on the types or discipline of health care providers
195 who may be reimbursed for particular procedures or procedure
196 codes.

197 ~~4.5.~~ If an insurer limits payment as authorized by
198 subparagraph 1. 2., the person providing such services,
199 supplies, or care may not bill or attempt to collect from the
200 insured any amount in excess of such limits, except for amounts
201 that are not covered by the insured's personal injury protection
202 coverage due to the coinsurance amount or maximum policy limits.

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

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204 (b) Every physician, hospital, clinic, or other medical
205 institution providing, before or after bodily injury upon which
206 a claim for personal injury protection insurance benefits is
207 based, any products, services, or accommodations in relation to
208 that or any other injury, or in relation to a condition claimed
209 to be connected with that or any other injury, shall, if
210 requested to do so by the insurer against whom the claim has
211 been made, furnish ~~forthwith~~ a written report of the history,
212 condition, treatment, dates, and costs of such treatment of the
213 injured person and why the items identified by the insurer were
214 reasonable in amount and medically necessary, together with a
215 sworn statement that the treatment or services rendered were
216 reasonable and necessary with respect to the bodily injury
217 sustained and identifying which portion of the expenses for such
218 treatment or services was incurred as a result of such bodily
219 injury, and produce forthwith, and permit the inspection and
220 copying of, his or her or its records regarding such history,
221 condition, treatment, dates, and costs of treatment if; ~~provided~~
222 ~~that~~ this does ~~shall~~ not limit the introduction of evidence at
223 trial. Such sworn statement must ~~shall~~ read as follows: "Under
224 penalty of perjury, I declare that I have read the foregoing,
225 and the facts alleged are true, to the best of my knowledge and
226 belief." A ~~No~~ cause of action for violation of the physician-
227 patient privilege or invasion of the right of privacy may not be
228 brought ~~shall be permitted~~ against any physician, hospital,
229 clinic, or other medical institution complying with ~~the~~
230 ~~provisions~~ of this section. The person requesting such records
231 and such sworn statement shall pay all reasonable costs
232 connected therewith. If an insurer makes a written request for

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233 documentation or information under this paragraph within 30 days
234 after having received notice of the amount of a covered loss
235 under paragraph (4) (a), the amount or the partial amount that
236 ~~which~~ is the subject of the insurer's inquiry is ~~shall become~~
237 overdue if the insurer does not pay in accordance with paragraph
238 (4) (b) or within 10 days after the insurer's receipt of the
239 requested documentation or information, whichever occurs later.
240 For purposes of this paragraph, the term "receipt" includes, but
241 is not limited to, inspection and copying pursuant to this
242 paragraph. An ~~Any~~ insurer that requests documentation or
243 information pertaining to reasonableness of charges or medical
244 necessity under this paragraph without a reasonable basis for
245 such requests as a general business practice is engaging in an
246 unfair trade practice under the insurance code. In all
247 circumstances, the insured seeking to recover benefits pursuant
248 to ss. 627.730-627.7407 and any person or entity to whom the
249 insured has assigned the contractual rights to such benefits or
250 payment must comply with the terms of the policy, including, but
251 not limited to, submitting to examinations under oath.
252 Compliance with this paragraph is a condition precedent to
253 recovery of benefits pursuant to ss. 627.730-627.7407. If an
254 insurer requests an examination under oath of a medical
255 provider, the provider must produce the persons having the most
256 knowledge of the issues identified by the insurer in the request
257 for examination. All claimants must produce and provide for
258 inspection all documents requested by the insurer which are
259 reasonably obtainable by the claimants. Examinations under oath
260 may be recorded by audio, video, court reporter, or any
261 combination thereof. An insurer that, as a general practice,

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262 requests examinations under oath in a manner that is
263 inconsistent with the terms of the applicable insurance policy,
264 is engaging in an unfair and deceptive trade practice.

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

267 (b) If requested by the person examined, a party causing an
268 examination to be made shall deliver to him or her a copy of
269 every written report concerning the examination rendered by an
270 examining physician, at least one of which reports must set out
271 the examining physician's findings and conclusions in detail.
272 After such request and delivery, the party causing the
273 examination to be made is entitled, upon request, to receive
274 from the person examined every written report available to him
275 or her or his or her representative concerning any examination,
276 previously or thereafter made, of the same mental or physical
277 condition. By requesting and obtaining a report of the
278 examination so ordered, or by taking the deposition of the
279 examiner, the person examined waives any privilege he or she may
280 have, in relation to the claim for benefits, regarding the
281 testimony of every other person who has examined, or may
282 thereafter examine, him or her in respect to the same mental or
283 physical condition. If a person unreasonably refuses to submit
284 to an examination, the personal injury protection carrier is no
285 longer liable for ~~subsequent~~ personal injury protection benefits
286 incurred after the date of the first request for examination.
287 Failure to appear for an examination raises a rebuttable
288 presumption that such failure was unreasonable. Submission to an
289 examination is a condition precedent to benefits.

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

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291 With respect to any dispute under the provisions of ss. 627.730-
292 627.7407 ~~ss. 627.730-627.7405~~ between the insured and the
293 insurer, or between an assignee of an insured's rights and the
294 insurer, the provisions of s. 627.428 ~~shall~~ apply, except as
295 provided in subsections (10) and (15), and except that any
296 attorney's fees recovered are limited to the lesser of \$10,000
297 or three times any disputed amount recovered by the attorney
298 under ss. 627.730-627.7407. Attorney's fees in a class action
299 under ss. 627.730-627.7407 are limited to the lesser of \$50,000
300 or three times the total of any disputed amount recovered in the
301 class action proceeding.

302 (17) ATTORNEY'S FEES.-Notwithstanding s. 627.428, the
303 attorney's fees recovered under ss. 627.730-627.7407, shall be
304 calculated without regard to a contingency risk multiplier.

305 (18) ARBITRATION.-In order to expedite the resolution of
306 disputes arising from contracts involving personal injury
307 protection benefits, an insurer may offer a policy that requires
308 or allows the insurer or claimant to demand arbitration of any
309 claims dispute involving personal injury protection benefits
310 before filing a lawsuit and in lieu of litigating the issues.
311 This demand must be in writing and mailed to the insurer or
312 claimant by certified mail. Arbitration is subject to the
313 Florida Arbitration Code, except as otherwise provided in this
314 section. In addition:

315 (a) Arbitration may not be initiated until 30 days after
316 the request for arbitration is received by the nonrequesting
317 party and 20 days after documents are received pursuant to
318 paragraphs (d) and (e).

319 (b) Arbitration shall take place in the county in which the

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320 treatment was rendered. If the treatment was rendered outside
321 the state, arbitration shall take place in the county in which
322 the insured resides unless the parties agree to another
323 location.

324 (c) The arbitration shall be conducted by one arbitrator
325 selected by mutual agreement between the parties. If the parties
326 are unable to mutually agree on an arbitrator within 20 days
327 after the arbitration request, the chief judge of the circuit in
328 which the arbitration is pending shall select the arbitrator
329 based on a rotating schedule.

330 (d) Upon written request submitted before arbitration, the
331 claimant must make the entire file, including medical records,
332 pertaining to the insured who is the subject of arbitration
333 available for inspection or copying.

334 (e) Upon written request submitted before arbitration, the
335 insurer must make the evidence upon which it is relying in
336 adjusting or rejecting the claim available for inspection or
337 copying. Discovery is available only for items relating to
338 insurance coverage. The insurer is not required to produce from
339 its claims privileged items, underwriting files, or documents it
340 does not intend to rely on as evidence supporting its adjustment
341 or rejection of the claim. Discovery is not available pertaining
342 to issues of potential bad faith claims handling.

343 (f) The written decision of the arbitrator, unless
344 challenged under paragraph (i), is binding on each party. The
345 decision shall be furnished in writing to each party.

346 (g) An arbitration award may not exceed the applicable
347 limits of coverage remaining on the policy.

348 (h) The claimant is entitled to reimbursement of attorney's

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349 fees and costs directly associated with the arbitration, subject
350 to subsection (8).

351 (i) Either party may challenge the arbitration decision by
352 filing a complaint in the circuit court, with a copy of the
353 arbitration disposition attached. A challenge to the decision is
354 limited to review of the record and not de novo review. If the
355 insurer pays the amount due as determined in the arbitration but
356 the insured challenges the arbitration award in circuit court,
357 s. 627.428 does not apply, and interest on the amount in dispute
358 does not accrue during the course of litigation.

359 Section 5. This act shall take effect upon becoming a law.