

By the Committee on Banking and Insurance; and Senator
Campbell

311-1629-01

1 A bill to be entitled
2 An act relating to insurance fraud; providing
3 legislative findings; creating s. 456.0375,
4 F.S., relating to clinics; defining the term
5 "clinic"; imposing registration requirements
6 for certain clinics; providing for medical
7 directors; providing for enforcement; amending
8 s. 626.989, F.S., relating to Department of
9 Insurance investigation of insurance fraud;
10 revising immunity provisions; amending s.
11 627.732, F.S., relating to definitions;
12 defining the terms "medically necessary" and
13 "broker"; amending s. 627.736, F.S.; revising
14 provisions relating to required personal injury
15 protection benefits; deleting provisions
16 specifying what medical payments insurance
17 pays; revising provisions for charges for
18 treatments; providing for presuit notice;
19 amending s. 627.739, F.S.; revising provisions
20 relating to deductibles; amending s. 817.234,
21 F.S.; revising provisions relating to false and
22 fraudulent insurance claims; amending s.
23 817.505, F.S.; providing penalties; amending s.
24 324.021, F.S.; conforming provisions to changes
25 made by the act; providing an effective date.

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

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29 Section 1. Legislative findings.--The Legislature
30 finds and declares that the purposes of the Florida Motor
31 Vehicle No-Fault Law have included providing to the public

1 affordable personal injury protection insurance, which is
2 intended to deliver to persons involved in motor vehicle
3 crashes medically necessary and appropriate medical care
4 quickly, and without undue litigation or other associated
5 costs, but that these purposes have been impeded by, among
6 other things, fraud, medically inappropriate over-utilization
7 of treatment and diagnostic services, inflated charges, and
8 other practices of a small number of health care providers,
9 entrepreneurs, and attorneys who are adding significant costs
10 to consumers, yet providing little or no real benefits. The
11 Legislature finds that some, but not all, of these practices
12 are described in the Statewide Grand Jury Report entitled
13 "Report on Insurance Fraud Related to Personal Injury
14 Protection" in case No. 95-746 in the Supreme Court of the
15 State of Florida, and the Legislature adopts and incorporates
16 in this section by reference as findings the entirety of such
17 report. The Legislature further finds that the problems
18 addressed in this report and in this act are matters of great
19 public interest and importance to public health, safety, and
20 welfare, and that the specific provisions of this act are the
21 least-restrictive reasonable means by which to solve these
22 problems.

23 Section 2. Effective October 1, 2001, section
24 456.0375, Florida Statutes, is created to read:

25 456.0375 Registration of certain clinics;
26 requirements; discipline; exemptions.--

27 (1) As used in this section, the term "clinic" means a
28 single structure or facility or group of adjacent structures
29 or facilities operating under the same business name or
30 management at which health care services are provided to
31 individuals and which tenders charges for reimbursement for

1 such services, unless it is otherwise licensed by the state
2 pursuant to chapter 390, chapter 394, chapter 395, chapter
3 400, chapter 463, chapter 465, chapter 466, chapter 478,
4 chapter 480, or chapter 484 or is exempt from federal taxation
5 under 26 U.S.C. s. 501(c)(3).

6 (2)(a) A clinic in which an entity or individual other
7 than those licensed under chapter 458, chapter 459, chapter
8 460, or chapter 461 possesses an ownership interest must
9 register with the department. The clinic must at all times
10 maintain a valid registration. Each clinic location must be
11 registered separately even though operated under the same
12 business name or management. For purposes of determining
13 registration requirements under this paragraph, a clinic owned
14 by a physician licensed under chapter 458, chapter 459,
15 chapter 460, or chapter 461 also includes any clinic owned
16 jointly by the physician and the physician's spouse, parent,
17 or child if the licensed physician supervises the services
18 performed in the clinic and is legally responsible for the
19 clinic's compliance with all federal and state laws.

20 (b) The department shall adopt rules necessary to
21 administer the registration program, including rules
22 establishing the specific registration procedures, forms, and
23 fees. Registration fees must be calculated to reasonably cover
24 the cost of registration and must be in such amount that the
25 total fees collected do not exceed the cost of administering
26 and enforcing compliance with this section. The registration
27 program must require:

28 1. The clinic to file the registration form with the
29 department within 60 days after the effective date of this
30 section or prior to the inception of operation. The
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1 registration expires automatically 2 years after its date of
2 issuance and must be renewed biennially thereafter.

3 2. The registration form to contain the name,
4 residence, and business address, phone number, and license
5 number of the medical director for the clinic.

6 3. The clinic to display the registration certificate
7 in a conspicuous location within the clinic which is readily
8 visible to all patients.

9 (3)(a) Each clinic owned by an individual other than a
10 fully licensed physician or owned by an entity other than a
11 professional corporation or limited liability company composed
12 only of fully licensed physicians must employ or contract with
13 a physician maintaining a full and unencumbered physician
14 license in accordance with chapter 458, chapter 459, chapter
15 460, or chapter 461 to serve as the medical director.

16 (b) A medical director must agree in writing to accept
17 legal responsibility for supervising the delivery of
18 appropriate health care services and supplies. The medical
19 director shall:

20 1. Have signs identifying the medical director posted
21 in a conspicuous location within the clinic which is readily
22 visible to all patients.

23 2. Ensure that all practitioners providing health care
24 services or supplies to patients maintain a current active and
25 unencumbered Florida license.

26 3. Review any patient-referral contracts or agreements
27 executed by the clinic.

28 4. Ensure that all health care practitioners at the
29 clinic have active appropriate certification or licensure for
30 the level of care being provided.

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1 5. Serve as the clinic records owner as defined in s.
2 456.057.

3 6. Comply with the medical recordkeeping,
4 office-surgery, and adverse-incident-reporting requirements of
5 chapter 456, the respective practice acts, and the rules
6 adopted thereunder.

7 7. Conduct systematic reviews of clinic billings to
8 ensure that the billings are not fraudulent or unlawful. Upon
9 discovery of an unlawful charge, the medical director must
10 take immediate corrective action.

11 (c) Any contract to serve as a medical director
12 entered into or renewed by a physician in violation of this
13 section is void as contrary to public policy. This section
14 applies to contracts entered into or renewed on or after
15 October 1, 2001.

16 (d) The department, in consultation with the boards,
17 shall adopt rules specifying limitations on the number of
18 registered clinics and licensees for which a medical director
19 may assume responsibility for purposes of this section. In
20 determining the quality of supervision a medical director can
21 provide, the department shall consider the number of clinic
22 employees, the clinic location, and the services provided by
23 the clinic.

24 (4)(a) All charges or reimbursement claims made by or
25 on behalf of a clinic that is required to be registered under
26 this section but that is not so registered are unlawful
27 charges and therefore are noncompensable and unenforceable.
28 Any person establishing, operating, or managing an
29 unregistered clinic otherwise required to be registered under
30 this section commits a felony of the third degree, as provided
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1 in s. 775.082, s. 775.083, or s. 775.084, in accordance with
2 s. 456.065.

3 (b) Any licensed health care practitioner who violates
4 this section is subject to discipline in accordance with
5 chapter 456 and the respective practice act.

6 (c) The department shall revoke the registration of
7 any clinic registered under this section for operating in
8 violation of the requirements of this section.

9 Section 3. Paragraph (c) of subsection (4) of section
10 626.989, Florida Statutes, is amended to read:

11 626.989 Investigation by department or Division of
12 Insurance Fraud; compliance; immunity; confidential
13 information; reports to division; division investigator's
14 power of arrest.--

15 (4)

16 (c) In the absence of fraud or bad faith, a person is
17 not subject to civil liability for libel, slander, or any
18 other relevant tort by virtue of filing reports, without
19 malice, or furnishing other information, without malice,
20 required by this section or required by the department or
21 division under the authority granted in this section, and no
22 civil cause of action of any nature shall arise against such
23 person:

24 1. For any information relating to suspected
25 fraudulent insurance acts or persons suspected of engaging in
26 such acts furnished to or received from any local, state, or
27 federal law enforcement officials, their agents, or employees;

28 2. For any information relating to suspected
29 fraudulent insurance acts or persons suspected of engaging in
30 such acts furnished to or received from other persons subject
31 to the provisions of this chapter; ~~or~~

1 3. For any such information furnished in reports to
2 the department, the division, the National Insurance Crime
3 Bureau, ~~or~~ the National Association of Insurance
4 Commissioners, or any local, state, or federal enforcement
5 officials or their agents or employees; or

6 4. For other actions taken in cooperation with any of
7 the agencies or individuals specified in this paragraph in the
8 lawful investigation of suspected fraudulent insurance acts.

9 Section 4. Section 627.732, Florida Statutes, is
10 amended to read:

11 627.732 Definitions.--As used in ss. 627.730-627.7405,
12 the term:

13 (1) "Broker" means any person not possessing a license
14 under chapter 395, chapter 400, chapter 458, chapter 459,
15 chapter 460, chapter 461, or chapter 641 who charges or
16 receives compensation for any use of medical equipment and is
17 not the 100-percent owner or the 100-percent lessee of such
18 equipment. For purposes of this section, such owner or lessee
19 may be an individual, a corporation, a partnership, or any
20 other entity and any of its 100-percent-owned affiliates and
21 subsidiaries. For purposes of this subsection, the term
22 "lessee" means a long-term lessee under a capital or operating
23 lease, but does not include a part-time lessee. The term
24 "broker" does not include a hospital or physician management
25 company whose medical equipment is ancillary to the practices
26 managed, a debt collection agency, or an entity that has
27 contracted with the insurer to obtain a discounted rate for
28 such services; nor does the term include a management company
29 that has contracted to provide general management services for
30 a licensed physician or health care facility and whose
31 compensation is not materially affected by the usage or

1 frequency of usage of medical equipment or an entity that is
2 100-percent owned by one or more hospitals or physicians.

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

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

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

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

13 (3)~~(1)~~ "Motor vehicle" means any self-propelled
14 vehicle with four or more wheels which is of a type both
15 designed and required to be licensed for use on the highways
16 of this state and any trailer or semitrailer designed for use
17 with such vehicle and includes:

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

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

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

1 (4)~~(2)~~ "Named insured" means a person, usually the
2 owner of a vehicle, identified in a policy by name as the
3 insured under the policy.

4 (5)~~(3)~~ "Owner" means a person who holds the legal
5 title to a motor vehicle; or, in the event a motor vehicle is
6 the subject of a security agreement or lease with an option to
7 purchase with the debtor or lessee having the right to
8 possession, then the debtor or lessee shall be deemed the
9 owner for the purposes of ss. 627.730-627.7405.

10 (6)~~(4)~~ "Relative residing in the same household" means
11 a relative of any degree by blood or by marriage who usually
12 makes her or his home in the same family unit, whether or not
13 temporarily living elsewhere.

14 (7)~~(5)~~ "Recovery agent" means any person or agency who
15 is licensed as a recovery agent or recovery agency and
16 authorized under s. 324.202 to seize license plates.

17 Section 5. Subsections (1), (4), (5), (7), (8), and
18 (9) of section 627.736, Florida Statutes, are amended, and
19 subsections (11) and (12) are added to that section, to read:

20 627.736 Required personal injury protection benefits;
21 exclusions; priority; claims.--

22 (1) REQUIRED BENEFITS.--Every insurance policy
23 complying with the security requirements of s. 627.733 shall
24 provide personal injury protection to the named insured,
25 relatives residing in the same household, persons operating
26 the insured motor vehicle, passengers in such motor vehicle,
27 and other persons struck by such motor vehicle and suffering
28 bodily injury while not an occupant of a self-propelled
29 vehicle, subject to the provisions of subsection (2) and
30 paragraph (4)(d), to a limit of \$10,000 for loss sustained by
31 any such person as a result of bodily injury, sickness,

1 disease, or death arising out of the ownership, maintenance,
2 or use of a motor vehicle as follows:

3 (a) Medical benefits.--Eighty percent of all
4 reasonable expenses for medically necessary medical, surgical,
5 X-ray, dental, and rehabilitative services, including
6 prosthetic devices, and medically necessary ambulance,
7 hospital, and nursing services. Such benefits shall also
8 include necessary remedial treatment and services recognized
9 and permitted under the laws of the state for an injured
10 person who relies upon spiritual means through prayer alone
11 for healing, in accordance with his or her religious beliefs;
12 however, this sentence does not affect the determination of
13 what other services or procedures are medically necessary.

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

23 (c) Death benefits.--Death benefits of \$5,000 per
24 individual. The insurer may pay such benefits to the executor
25 or administrator of the deceased, to any of the deceased's
26 relatives by blood or legal adoption or connection by
27 marriage, or to any person appearing to the insurer to be
28 equitably entitled thereto.

29
30 Only insurers writing motor vehicle liability insurance in
31 this state may provide the required benefits of this section,

1 and no such insurer shall require the purchase of any other
2 motor vehicle coverage other than the purchase of property
3 damage liability coverage as required by s. 627.7275 as a
4 condition for providing such required benefits. Insurers may
5 not require that property damage liability insurance in an
6 amount greater than \$10,000 be purchased in conjunction with
7 personal injury protection. Such insurers shall make benefits
8 and required property damage liability insurance coverage
9 available through normal marketing channels. Any insurer
10 writing motor vehicle liability insurance in this state who
11 fails to comply with such availability requirement as a
12 general business practice shall be deemed to have violated
13 part X of chapter 626, and such violation shall constitute an
14 unfair method of competition or an unfair or deceptive act or
15 practice involving the business of insurance; and any such
16 insurer committing such violation shall be subject to the
17 penalties afforded in such part, as well as those which may be
18 afforded elsewhere in the insurance code.

19 (4) BENEFITS; WHEN DUE.--Benefits due from an insurer
20 under ss. 627.730-627.7405 shall be primary, except that
21 benefits received under any workers' compensation law shall be
22 credited against the benefits provided by subsection (1) and
23 shall be due and payable as loss accrues, upon receipt of
24 reasonable proof of such loss and the amount of expenses and
25 loss incurred which are covered by the policy issued under ss.
26 627.730-627.7405. When the Agency for Health Care
27 Administration provides, pays, or becomes liable for medical
28 assistance under the Medicaid program related to injury,
29 sickness, disease, or death arising out of the ownership,
30 maintenance, or use of a motor vehicle, benefits under ss.

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1 627.730-627.7405 shall be subject to the provisions of the
2 Medicaid program.

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

7 (b) Personal injury protection insurance benefits paid
8 pursuant to this section shall be overdue if not paid within
9 30 days after the insurer is furnished written notice of the
10 fact of a covered loss and of the amount of same. If such
11 written notice is not furnished to the insurer as to the
12 entire claim, any partial amount supported by written notice
13 is overdue if not paid within 30 days after such written
14 notice is furnished to the insurer. Any part or all of the
15 remainder of the claim that is subsequently supported by
16 written notice is overdue if not paid within 30 days after
17 such written notice is furnished to the insurer. However,
18 notwithstanding the fact that written notice has been
19 furnished to the insurer, any payment shall not be deemed
20 overdue when the insurer has reasonable proof to establish
21 that the insurer is not responsible for the payment;
22 ~~notwithstanding that written notice has been furnished to the~~
23 ~~insurer.~~ An insurer shall have an additional 30 days from the
24 date the claim would otherwise have become overdue under this
25 subsection to pay a claim that the insurer refers within 30
26 days from the date of the claim to the Department of Insurance
27 pursuant to s. 626.989(6). An insurer may refer a claim to the
28 Department of Insurance for investigation only when the
29 insurer has reasonable evidence to establish that the claim is
30 in violation of s. 626.989 or is a criminal act. The insurer
31 shall provide the department with any information in support

1 of the referral, and shall, except when the department agrees
2 that it would compromise the investigation, notify the person
3 submitting the claim that the claim has been referred to the
4 Department of Insurance for investigation. Any insurer who
5 engages in a general business practice of forwarding claims
6 for investigation under this section commits an unfair trade
7 practice under the Insurance Code.For the purpose of
8 calculating the extent to which any benefits are overdue,
9 payment shall be treated as being made on the date a draft or
10 other valid instrument which is equivalent to payment was
11 placed in the United States mail in a properly addressed,
12 postpaid envelope or, if not so posted, on the date of
13 delivery. This paragraph does not preclude or limit the
14 ability of the insurer to assert that the claim was unrelated,
15 was not medically necessary, or was unreasonable or that the
16 amount of the charge was in excess of that permitted under, or
17 in violation of, subsection (5). Such assertion by the insurer
18 may be made at any time, including after payment of the claim
19 or after the 30-day time period for payment set forth in this
20 paragraph.

21 (c) All overdue payments shall bear ~~simple~~ interest at
22 the rate established by the Comptroller under s. 55.03 or the
23 rate established in the insurance contract, whichever is
24 greater, for the year in which the payment became overdue and
25 for claims referred to the Department of Insurance for
26 investigation under paragraph (b), calculated from the date
27 the insurer was furnished with written notice of the amount of
28 covered loss. Interest shall be due at the time payment of the
29 overdue claim is made of 10 percent per year.

30 (d) The insurer of the owner of a motor vehicle shall
31 pay personal injury protection benefits for:

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

5 2. Accidental bodily injury sustained outside this
6 state, but within the United States of America or its
7 territories or possessions or Canada, by the owner while
8 occupying the owner's motor vehicle.

9 3. Accidental bodily injury sustained by a relative of
10 the owner residing in the same household, under the
11 circumstances described in subparagraph 1. or subparagraph 2.,
12 provided the relative at the time of the accident is domiciled
13 in the owner's household and is not himself or herself the
14 owner of a motor vehicle with respect to which security is
15 required under ss. 627.730-627.7405.

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

22 a. The owner of a motor vehicle with respect to which
23 security is required under ss. 627.730-627.7405; or

24 b. Entitled to personal injury benefits from the
25 insurer of the owner or owners of such a motor vehicle.

26 (e) If two or more insurers are liable to pay personal
27 injury protection benefits for the same injury to any one
28 person, the maximum payable shall be as specified in
29 subsection (1), and any insurer paying the benefits shall be
30 entitled to recover from each of the other insurers an

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1 equitable pro rata share of the benefits paid and expenses
2 incurred in processing the claim.

3 ~~(f) Medical payments insurance, if available in a~~
4 ~~policy of motor vehicle insurance, shall pay the portion of~~
5 ~~any claim for personal injury protection medical benefits~~
6 ~~which is otherwise covered but is not payable due to the~~
7 ~~coinsurance provision of paragraph (1)(a), regardless of~~
8 ~~whether the full amount of personal injury protection coverage~~
9 ~~has been exhausted. The benefits shall not be payable for the~~
10 ~~amount of any deductible which has been selected.~~

11 ~~(f)(g)~~ It is a violation of the insurance code for an
12 insurer to fail to timely provide benefits as required by this
13 section with such frequency as to constitute a general
14 business practice.

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

16 (a) Any physician, hospital, clinic, or other person
17 or institution lawfully rendering treatment to an injured
18 person for a bodily injury covered by personal injury
19 protection insurance may charge only a reasonable amount for
20 the ~~products, services, and supplies accommodations~~ rendered,
21 and the insurer providing such coverage may pay for such
22 charges directly to such person or institution lawfully
23 rendering such treatment, if the insured receiving such
24 treatment or his or her guardian has countersigned the
25 invoice, bill, or claim form approved by the Department of
26 Insurance upon which such charges are to be paid for as having
27 actually been rendered, to the best knowledge of the insured
28 or his or her guardian. In no event, however, may such a
29 charge be in excess of the amount the person or institution
30 customarily charges for like ~~products, services, or supplies~~
31 ~~accommodations~~ in cases involving no insurance. An insurer is

1 not required to pay a claim made by a broker or by a person
2 making a claim on behalf of a broker.

3 (b)1. Charges, provided that charges for medically
4 necessary cephalic thermograms, and peripheral thermograms,
5 spinal ultrasounds, extremity ultrasounds, video fluoroscopy,
6 surface electromyography, and nerve conduction testing
7 (including motor and sensory nerves as well as F waves, H
8 reflexes, somatosensory evoked potentials, and dermatomal
9 studies) shall not exceed the maximum reimbursement allowance
10 for such procedures as set forth in the applicable fee
11 schedule or other payment methodology established pursuant to
12 s. 440.13.

13 2. Charges for medically necessary magnetic resonance
14 imaging service may not exceed 75 percent of the Ingenix
15 Customized Fee Analyzer for the Zip Code prefix 330 for
16 Florida year 2000 plus annual increases equal to the medical
17 Consumer Price Index for Florida. Procedures not reimbursed
18 under the Ingenix Customized Fee Analyzer for Zip Code prefix
19 330 shall not be reimbursed for magnetic resonance imaging
20 centers or magnetic resonance imaging leasing companies in
21 Florida to reduce costs and prevent fraud. This subparagraph
22 does not apply to charges for magnetic resonance imaging
23 services billed and collected by facilities licensed under
24 chapter 395.

25 (c)(b) With respect to any treatment or service, other
26 than medical services billed by a hospital or other provider
27 for emergency services as defined in s. 395.002 or inpatient
28 services rendered at a hospital-owned facility, the statement
29 of charges must be furnished to the insurer by the provider
30 and may not include, and the insurer is not required to pay,
31 charges for treatment or services rendered more than 35 ~~30~~

1 days before the postmark date of the statement, except for
2 past due amounts previously billed on a timely basis under
3 this paragraph, and except that, if the provider submits to
4 the insurer a notice of initiation of treatment within 21 days
5 after its first examination or treatment of the claimant, the
6 statement may include charges for treatment or services
7 rendered up to, but not more than, 75 ~~60~~ days before the
8 postmark date of the statement. The injured party is not
9 liable for, and the provider shall not bill the injured party
10 for, charges that are unpaid because of the provider's failure
11 to comply with this paragraph. Any agreement requiring the
12 injured person or insured to pay for such charges is
13 unenforceable. If, however, the insured fails to furnish the
14 provider with the correct name and address of the insured's
15 personal injury protection insurer, the provider has 35 days
16 from the date the provider obtains the correct information to
17 furnish the insurer with a statement of the charges. The
18 insurer is not required to pay for such charges unless the
19 provider includes with the statement documentary evidence that
20 was provided by the insured during the 35-day period
21 demonstrating that the provider reasonably relied on erroneous
22 information from the insured and either:
23 1. A denial letter from the incorrect insurer; or
24 2. Proof of mailing, which may include an affidavit
25 under penalty of perjury, reflecting timely mailing to the
26 incorrect address or insurer.For emergency services and care
27 as defined in s. 395.002 rendered in a hospital emergency
28 department or for transport and treatment rendered by an
29 ambulance provider licensed pursuant to part III of chapter
30 401, the provider is not required to furnish the statement of
31 charges within the time periods established by this paragraph;

1 and the insurer shall not be considered to have been furnished
2 with notice of the amount of covered loss for purposes of
3 paragraph (4)(b) until it receives a statement complying with
4 paragraph (e)~~(5)(d)~~, or copy thereof, which specifically
5 identifies the place of service to be a hospital emergency
6 department or an ambulance in accordance with billing
7 standards recognized by the Health Care Finance
8 Administration. Each notice of insured's rights under s.
9 627.7401 must include the following statement in type no
10 smaller than 12 points:

11 BILLING REQUIREMENTS.--Florida Statutes provide
12 that with respect to any treatment or services,
13 other than certain hospital and emergency
14 services, the statement of charges furnished to
15 the insurer by the provider may not include,
16 and the insurer and the injured party are not
17 required to pay, charges for treatment or
18 services rendered more than 35 ~~30~~ days before
19 the postmark date of the statement, except for
20 past due amounts previously billed on a timely
21 basis, and except that, if the provider submits
22 to the insurer a notice of initiation of
23 treatment within 21 days after its first
24 examination or treatment of the claimant, the
25 statement may include charges for treatment or
26 services rendered up to, but not more than, 75
27 ~~60~~ days before the postmark date of the
28 statement.

29 (d)~~(c)~~ Every insurer shall include a provision in its
30 policy for personal injury protection benefits for binding
31 arbitration of any claims dispute involving medical benefits

1 arising between the insurer and any person providing medical
2 services or supplies if that person has agreed to accept
3 assignment of personal injury protection benefits. The
4 provision shall specify that the provisions of chapter 682
5 relating to arbitration shall apply. The prevailing party
6 shall be entitled to attorney's fees and costs. For purposes
7 of the award of attorney's fees and costs, the prevailing
8 party shall be determined as follows:

9 1. When the amount of personal injury protection
10 benefits determined by arbitration exceeds the sum of the
11 amount offered by the insurer at arbitration plus 50 percent
12 of the difference between the amount of the claim asserted by
13 the claimant at arbitration and the amount offered by the
14 insurer at arbitration, the claimant is the prevailing party.

15 2. When the amount of personal injury protection
16 benefits determined by arbitration is less than the sum of the
17 amount offered by the insurer at arbitration plus 50 percent
18 of the difference between the amount of the claim asserted by
19 the claimant at arbitration and the amount offered by the
20 insurer at arbitration, the insurer is the prevailing party.

21 3. When neither subparagraph 1. nor subparagraph 2.
22 applies, there is no prevailing party. For purposes of this
23 paragraph, the amount of the offer or claim at arbitration is
24 the amount of the last written offer or claim made at least 30
25 days prior to the arbitration.

26 4. In the demand for arbitration, the party requesting
27 arbitration must include a statement specifically identifying
28 the issues for arbitration for each examination or treatment
29 in dispute. The other party must subsequently issue a
30 statement specifying any other examinations or treatment and
31 any other issues that it intends to raise in the arbitration.

1 The parties may amend their statements up to 30 days prior to
2 arbitration, provided that arbitration shall be limited to
3 those identified issues and neither party may add additional
4 issues during arbitration.

5 (e)~~(d)~~ All statements and bills for medical services
6 rendered by any physician, hospital, clinic, or other person
7 or institution shall be submitted to the insurer on a Health
8 Care Finance Administration 1500 form, UB 92 forms, or any
9 other standard form approved by the department for purposes of
10 this paragraph. All billings for such services shall, to the
11 extent applicable, follow the Physicians' Current Procedural
12 Terminology (CPT) in the year in which services are rendered.
13 No statement of medical services may include charges for
14 medical services of a person or entity that performed such
15 services without possessing the valid licenses required to
16 perform such services. For purposes of paragraph (4)(b), an
17 insurer shall not be considered to have been furnished with
18 notice of the amount of covered loss or medical bills due
19 unless the statements or bills comply with this paragraph.

20 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;
21 REPORTS.--

22 (a) Whenever the mental or physical condition of an
23 injured person covered by personal injury protection is
24 material to any claim that has been or may be made for past or
25 future personal injury protection insurance benefits, such
26 person shall, upon the request of an insurer, submit to mental
27 or physical examination by a physician or physicians. The
28 costs of any examinations requested by an insurer shall be
29 borne entirely by the insurer. Such examination shall be
30 conducted within the municipality where the insured is
31 receiving treatment, or in a location reasonably accessible to

1 the insured, which, for purposes of this paragraph, means any
2 location within the municipality in which the insured resides,
3 or any location within 10 miles by road of the insured's
4 residence, provided such location is within the county in
5 which the insured resides. If the examination is to be
6 conducted in a location reasonably accessible to the insured,
7 and if there is no qualified physician to conduct the
8 examination in a location reasonably accessible to the
9 insured, then such examination shall be conducted in an area
10 of the closest proximity to the insured's residence. Personal
11 protection insurers are authorized to include reasonable
12 provisions in personal injury protection insurance policies
13 for mental and physical examination of those claiming personal
14 injury protection insurance benefits. An insurer may not
15 withdraw payment of a treating physician without the consent
16 of the injured person covered by the personal injury
17 protection, unless the insurer first obtains a valid report by
18 a physician licensed under the same chapter as the treating
19 physician whose treatment authorization is sought to be
20 withdrawn, stating that treatment was not reasonable, related,
21 or necessary. A valid report is one that is prepared and
22 signed by the physician examining the injured person or
23 reviewing the treatment records of the injured person and is
24 factually supported by the examination and treatment records
25 if reviewed and that has not been modified by anyone other
26 than the physician. The physician preparing the report must be
27 in active practice, unless the physician is physically
28 disabled. Active practice means that during the 3 years
29 immediately preceding the date of the physical examination or
30 review of the treatment records the physician must have
31 devoted professional time to the active clinical practice of

1 evaluation, diagnosis, or treatment of medical conditions or
2 to the instruction of students in an accredited health
3 professional school or accredited residency program or a
4 clinical research program that is affiliated with an
5 accredited health professional school or teaching hospital or
6 accredited residency program.

7 (b) If requested by the person examined, a party
8 causing an examination to be made shall deliver to him or her
9 a copy of every written report concerning the examination
10 rendered by an examining physician, at least one of which
11 reports must set out the examining physician's findings and
12 conclusions in detail. After such request and delivery, the
13 party causing the examination to be made is entitled, upon
14 request, to receive from the person examined every written
15 report available to him or her or his or her representative
16 concerning any examination, previously or thereafter made, of
17 the same mental or physical condition. By requesting and
18 obtaining a report of the examination so ordered, or by taking
19 the deposition of the examiner, the person examined waives any
20 privilege he or she may have, in relation to the claim for
21 benefits, regarding the testimony of every other person who
22 has examined, or may thereafter examine, him or her in respect
23 to the same mental or physical condition. If a person
24 unreasonably refuses to submit to an examination, the personal
25 injury protection carrier is no longer liable for subsequent
26 personal injury protection benefits.

27 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S
28 FEES.--With respect to any dispute under the provisions of ss.
29 627.730-627.7405 between the insured and the insurer, or
30 between an assignee of an insured's rights and the insurer,
31

1 the provisions of s. 627.428 shall apply, except as provided
2 in subsection (11).

3 (9) REPORTING REQUIREMENTS.--

4 (a) Each insurer which has issued a policy providing
5 personal injury protection benefits shall report the renewal,
6 cancellation, or nonrenewal thereof to the Department of
7 Highway Safety and Motor Vehicles within 45 days from the
8 effective date of the renewal, cancellation, or nonrenewal.
9 Upon the issuance of a policy providing personal injury
10 protection benefits to a named insured not previously insured
11 by the insurer thereof during that calendar year, the insurer
12 shall report the issuance of the new policy to the Department
13 of Highway Safety and Motor Vehicles within 30 days. The
14 report shall be in such form and format and contain such
15 information as may be required by the Department of Highway
16 Safety and Motor Vehicles which shall include a format
17 compatible with the data processing capabilities of said
18 department, and the Department of Highway Safety and Motor
19 Vehicles is authorized to adopt rules necessary with respect
20 thereto. Failure by an insurer to file proper reports with the
21 Department of Highway Safety and Motor Vehicles as required by
22 this subsection or rules adopted with respect to the
23 requirements of this subsection constitutes a violation of the
24 Florida Insurance Code. Reports of cancellations and policy
25 renewals and reports of the issuance of new policies received
26 by the Department of Highway Safety and Motor Vehicles are
27 confidential and exempt from the provisions of s. 119.07(1).
28 These records are to be used for enforcement and regulatory
29 purposes only, including the generation by the department of
30 data regarding compliance by owners of motor vehicles with
31 financial responsibility coverage requirements. In addition,

1 the Department of Highway Safety and Motor Vehicles shall
2 release, upon a written request by a person involved in a
3 motor vehicle accident, by the person's attorney, or by a
4 representative of the person's motor vehicle insurer, the name
5 of the insurance company and the policy number for the policy
6 covering the vehicle named by the requesting party. The
7 written request must include a copy of the appropriate
8 accident form as provided in s. 316.065, s. 316.066, or s.
9 316.068. Electronic access to the vehicle insurer information
10 maintained in the vehicle database of the Department of
11 Highway Safety and Motor Vehicles may be provided by an
12 approved third-party provider to insurers, lawyers, and
13 financial institutions for subrogation and claims purposes
14 only. The compilation of and retention of this information is
15 strictly prohibited.

16 (b) Every insurer with respect to each insurance
17 policy providing personal injury protection benefits shall
18 notify the named insured or in the case of a commercial fleet
19 policy, the first named insured in writing that any
20 cancellation or nonrenewal of the policy will be reported by
21 the insurer to the Department of Highway Safety and Motor
22 Vehicles. The notice shall also inform the named insured that
23 failure to maintain personal injury protection and property
24 damage liability insurance on a motor vehicle when required by
25 law may result in the loss of registration and driving
26 privileges in this state, and the notice shall inform the
27 named insured of the amount of the reinstatement fees required
28 by s. 627.733(7). This notice is for informational purposes
29 only, and no civil liability shall attach to an insurer due to
30 failure to provide this notice.

31 (11) PRESUIT NOTICE.--

1 (a) As a condition precedent to filing any action for
2 an overdue claim for benefits under paragraph (4)(b) for any
3 claim that is not more than 45 days overdue, an insured or an
4 assignee of an insured's rights must first provide the insurer
5 with written notice of intent to initiate litigation. Such
6 notice may not be sent until the claim is overdue, including
7 any additional time the insurer has to pay the claim pursuant
8 to paragraph (4)(b).

9 (b) This notice must be on a form approved by the
10 department and must state with specificity:

11 1. The name of the insured with respect to whom such
12 benefits are being sought;

13 2. The claim number or policy number under which such
14 claim was originally submitted to the insurer; and

15 3. To the extent applicable, the name of any medical
16 provider who rendered the treatment, services, accommodations,
17 or supplies to an insured which form the basis of such claim;
18 and an itemized statement specifying the exact amount, the
19 dates of treatment, services, or accommodations, and the types
20 of benefits claimed to be due.

21 (c) Each notice required by this section must be
22 delivered to the insurer by U.S. certified or registered mail,
23 return receipt requested, which postal costs are to be
24 reimbursed by the insurer if so requested by the provider in
25 the notice. Such notice must be sent to the insurer at the
26 address to which the claim in issue was sent, or current
27 address, if known, and to the attention of the adjuster
28 handling the claim, if known.

29 (d) If, within 7 business days after receipt of notice
30 by the insurer, the overdue claim specified in the notice is
31 paid by the insurer along with applicable interest, no action

1 for nonpayment or late payment may be brought against the
2 insurer. For purposes of this subsection, payment is
3 considered to have been made on the date a draft or other
4 valid instrument that is equivalent to payment has been placed
5 in the U.S. mail in a properly addressed, postpaid envelope,
6 or if not so posted, on the date of delivery. The insurer is
7 not obligated to pay any attorney's fees if the insurer pays
8 the claim within the time prescribed by this subsection.

9 (e) The applicable statute of limitation for an action
10 under this section shall be tolled for a period of 15 business
11 days by the mailing of the notice required by this subsection.

12 (f) Any insurer who engages in a general business
13 practice of taking no action to pay, deny, or reduce claims
14 until receipt of the notice required by this section commits
15 an unfair trade practice under the Insurance Code.

16 (12) CIVIL ACTION AGAINST PERSONS CONVICTED OF
17 FRAUD.--An insurer shall have a cause of action against any
18 person who, as a result of or in connection with a claim for
19 personal injury protection benefits under s. 627.736, is found
20 guilty of or pleads guilty or nolo contendere to, regardless
21 of adjudication of guilt, a violation of s. 817.234, s.
22 817.505, or s. 456.054. An insurer prevailing in an action
23 brought under this subsection may recover compensatory,
24 consequential, and punitive damages subject to the
25 requirements and limitations of part II of chapter 768, and
26 attorney's fees and costs incurred in litigating a cause of
27 action.

28 Section 6. Subsection (2) of section 627.739, Florida
29 Statutes, is amended, and subsection (6) is added to that
30 section, to read:

31

1 627.739 Personal injury protection; optional
2 limitations; deductibles.--

3 (2) Insurers shall offer to each applicant and to each
4 policyholder, upon the renewal of an existing policy,
5 deductibles, in amounts of \$250, \$500, and \$1,000, ~~and \$2,000,~~
6 such amount to be deducted from the benefits otherwise due
7 each person subject to the deduction. However, at the time of
8 application or renewal, each applicant and each policyholder
9 must offer proof of health insurance to such insurer in order
10 to obtain a deductible of more than \$500. However, this
11 subsection shall not be applied to reduce the amount of any
12 benefits received in accordance with s. 627.736(1)(c).

13 (6) An insurer is not required to pay any charge as to
14 which the provider has failed to bill a copayment or
15 deductible, except that this does not apply when a provider
16 has waived a copayment or deductible in individual infrequent
17 cases (not as a general business practice) related to a
18 specific patient's ability to pay.

19 Section 7. Subsections (8), (9), and (11) of section
20 817.234, Florida Statutes, are amended to read:

21 817.234 False and fraudulent insurance claims.--

22 (8) It is unlawful for any person, in his or her
23 individual capacity or in his or her capacity as a public or
24 private employee, or for any firm, corporation, partnership,
25 or association, to solicit or cause to be solicited any
26 business from a person involved in a motor vehicle crash by
27 any means of communication other than advertising directed to
28 the public in or about city receiving hospitals, city and
29 county receiving hospitals, county hospitals, justice courts,
30 or municipal courts; in any public institution; in any public
31 place; upon any public street or highway; in or about private

1 ~~hospitals, sanitariums, or any private institution; or upon~~
2 ~~private property of any character whatsoever~~ for the purpose
3 of making motor vehicle tort claims or claims for personal
4 injury protection benefits required by s. 627.736. Charges
5 for any services rendered by a health care provider or
6 attorney who violates this subsection in regard to the person
7 for whom such services were rendered are noncompensable and
8 unenforceable as a matter of law. Any person who violates the
9 provisions of this subsection commits a felony of the third
10 degree, punishable as provided in s. 775.082, s. 775.083, or
11 s. 775.084. A person who is convicted of a violation of this
12 subsection shall be sentenced to a minimum term of
13 imprisonment of 6 months.

14 (9) It is unlawful for any attorney to solicit any
15 business relating to the representation of a person involved
16 ~~persons injured~~ in a motor vehicle accident for the purpose of
17 filing a motor vehicle tort claim or a claim for personal
18 injury protection benefits required by s. 627.736. The
19 solicitation by advertising of any business by an attorney
20 relating to the representation of a person injured in a
21 specific motor vehicle accident is prohibited by this section.
22 Any attorney who violates the provisions of this subsection
23 commits a felony of the third degree, punishable as provided
24 in s. 775.082, s. 775.083, or s. 775.084. A person who is
25 convicted of a violation of this subsection shall be sentenced
26 to a minimum term of imprisonment of 6 months. Whenever any
27 circuit or special grievance committee acting under the
28 jurisdiction of the Supreme Court finds probable cause to
29 believe that an attorney is guilty of a violation of this
30 section, such committee shall forward to the appropriate state
31 attorney a copy of the finding of probable cause and the

1 report being filed in the matter. This section shall not be
2 interpreted to prohibit advertising by attorneys which does
3 not entail a solicitation as described in this subsection and
4 which is permitted by the rules regulating The Florida Bar as
5 promulgated by the Florida Supreme Court.

6 (11) If the value of any property involved in a
7 violation of this section:

8 (a) Is less than \$20,000, the offender commits a
9 felony of the third degree, punishable as provided in s.
10 775.082, s. 775.083, or s. 775.084, and a convicted offender
11 shall be sentenced to a minimum term of imprisonment of 6
12 months.

13 (b) Is \$20,000 or more, but less than \$100,000, the
14 offender commits a felony of the second degree, punishable as
15 provided in s. 775.082, s. 775.083, or s. 775.084, and a
16 convicted offender shall be sentenced to a minimum term of
17 imprisonment of 1 year.

18 (c) Is \$100,000 or more, the offender commits a felony
19 of the first degree, punishable as provided in s. 775.082, s.
20 775.083, or s. 775.084, and a convicted offender shall be
21 sentenced to a minimum term of imprisonment of 2 years.

22 Section 8. Subsection (4) of section 817.505, Florida
23 Statutes, is amended to read:

24 817.505 Patient brokering prohibited; exceptions;
25 penalties.--

26 (4) Any person, including an officer, partner, agent,
27 attorney, or other representative of a firm, joint venture,
28 partnership, business trust, syndicate, corporation, or other
29 business entity, who violates any provision of this section
30 commits a felony of the third degree, punishable as provided
31 in s. 775.082, s. 775.083, or s. 775.084. A person who is

1 convicted of a violation of this section shall be sentenced to
2 a minimum term of imprisonment of 6 months.

3 Section 9. Subsection (1) of section 324.021, Florida
4 Statutes, is amended to read:

5 324.021 Definitions; minimum insurance required.--The
6 following words and phrases when used in this chapter shall,
7 for the purpose of this chapter, have the meanings
8 respectively ascribed to them in this section, except in those
9 instances where the context clearly indicates a different
10 meaning:

11 (1) MOTOR VEHICLE.--Every self-propelled vehicle which
12 is designed and required to be licensed for use upon a
13 highway, including trailers and semitrailers designed for use
14 with such vehicles, except traction engines, road rollers,
15 farm tractors, power shovels, and well drillers, and every
16 vehicle which is propelled by electric power obtained from
17 overhead wires but not operated upon rails, but not including
18 any bicycle or moped. However, the term "motor vehicle" shall
19 not include any motor vehicle as defined in s. 627.732(3)~~s.~~
20 ~~627.732(1)~~when the owner of such vehicle has complied with
21 the requirements of ss. 627.730-627.7405, inclusive, unless
22 the provisions of s. 324.051 apply; and, in such case, the
23 applicable proof of insurance provisions of s. 320.02 apply.

24 Section 10. Except as otherwise expressly provided in
25 this act, this act shall take effect upon becoming a law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1092

4 Deletes the provision that a person who commits motor vehicle
5 insurance fraud shall serve a minimum mandatory prison term of
6 1 year.

7 Requires certain clinics to register with the Department of
8 Health and employ a physician as medical director with
9 specified exceptions. Provides for responsibilities of the
10 medical director and mandate penalties for unregistered
11 clinics as well as discipline as to licensed health care
12 practitioners who violate certain provisions.

13 Adds five additional diagnostic tests to the one now subject
14 to the workers' compensation fee schedule and limits the
15 maximum reimbursement for medically necessary magnetic
16 resonance imaging (MRIs) services to 75 percent of the
17 "Ingenix Customized Fee Analyzer." Hospitals are excluded from
18 this provision.

19 Provides for the definition of "broker" and states, with
20 certain exceptions, that insurance companies are not required
21 to pay claims made by brokers or by persons making claims on
22 behalf of brokers. Also defines "medically necessary" as used
23 in the motor vehicle no-fault law.

24 Allows an insurer an additional 30 days from the date a claim
25 would otherwise become overdue to refer such claim for
26 investigation to the Department of Insurance (Fraud Division).
27 Such referrals must be made within 30 days from the date of
28 the claim. However, the insurer may only refer such claims
29 when it has "reasonable evidence" to establish that the claim
30 violates s. 626.989, F.S., or is a criminal act.

31 Mandates "presuit notice" as a condition precedent to filing
an action for overdue claims against an insurer. However, such
notice only applies to claims which are not greater than 45
days overdue. Clarifies that the notice of intent to initiate
litigation may not be sent until a claim is overdue and
specifies the notice is to be sent to the insurer at the
address to which the claim in issue was sent and to the
insurance adjuster. This provision allows insurers 7 business
days after receipt of a notice of an overdue claim to pay the
claim without being potentially subject to payment of
attorney's fees.

Creates a civil cause of action to allow insurers to sue a
person who, in connection with a claim for PIP benefits, is
found guilty of or plead guilty or nolo contendere to
specified violations, regardless of adjudication of guilt.

Provides minimum mandatory sentences for persons who solicit
persons involved in motor vehicle accidents, insurance fraud,
and patient brokering.

Expands immunity from civil liability for individuals
reporting insurance fraud to the Department of Insurance.

1 Eliminates the \$2,000 deductible and requires proof of health
2 insurance in order to obtain a deductible above \$500. Keeps
3 the \$250, \$500, and \$1,000 deductible.
4 Provides that the "spiritual healing" provision does not
5 affect determinations of what other services or procedures are
6 medically necessary.
7 Eliminates the medical payments provision which currently
8 requires that medical payment insurance fill the 20 percent
9 PIP co-insurance.
10 Changes the interest rate for overdue payments from a fixed
11 rate to the rate established by the Comptroller under s.
12 55.03, F.S.
13 Helps remedy the current practice of insurers utilizing
14 "paper" independent medical examinations (IMEs) by requiring
15 "valid" reports by experienced physicians or a physical
16 examination by a physician who meets certain active practice
17 criteria. Also provides that such report may not be modified
18 by anyone other than the physician.
19 Allows providers up to 75 days under specified conditions to
20 submit a statement of charges to insurance companies.
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