

By Senator Sanderson

31-938-01

1                                   A bill to be entitled  
2           An act relating to motor vehicle insurance;  
3           creating the "Personal Injury Protection  
4           Insurance Reform Act"; providing legislative  
5           findings with respect to the Florida Motor  
6           Vehicle No-Fault Law; amending s. 626.989,  
7           F.S.; extending civil immunity to law  
8           enforcement officials for providing information  
9           about suspected acts of insurance fraud;  
10          providing immunity for other actions taken in  
11          cooperation with certain agencies or officials;  
12          amending s. 627.731, F.S.; specifying the  
13          purpose of the Motor Vehicle No-Fault Law with  
14          respect to limitations on the right to claim  
15          damages; amending s. 627.732, F.S.; providing  
16          definitions; amending s. 627.736, F.S.;  
17          specifying medical expenses that are payable  
18          under personal injury protection benefits;  
19          providing for payment of interest on overdue  
20          benefits; revising requirements for determining  
21          when payment is overdue; revising the interest  
22          rate for overdue payments; providing for  
23          calculating the rate; limiting the amount  
24          charged by providers for specified treatments  
25          and procedures for injuries covered by personal  
26          injury protection; revising the period within  
27          which a provider must furnish charges to an  
28          insurer; providing for tolling the period for  
29          overdue payment if the insurer requests an  
30          examination of the injured person; revising  
31          circumstances under which an insurer is

1 prohibited from withdrawing payment of a  
2 treating physician; revising conditions under  
3 which attorney's fees are awarded; limiting the  
4 award of attorney's fees; providing that the  
5 act does not limit a person's ability to file  
6 an offer of judgment; requiring that PIP  
7 clinics register with the Agency for Health  
8 Care Administration; requiring such clinics to  
9 file specified information, pay a fee, and  
10 maintain a bond; providing that there is no  
11 obligation to pay certain unlawful charges of a  
12 clinic; providing for a civil cause of action  
13 against persons who aid and abet in certain  
14 unlawful actions; providing for damages;  
15 amending s. 627.737, F.S.; revising the amount  
16 of damages that may be recovered for certain  
17 injuries; requiring a plaintiff's attorney to  
18 certify certain information as a condition to  
19 bringing action against an insurer; amending  
20 ss. 817.234, 817.505, F.S.; revising provisions  
21 prohibiting the solicitation of a person in a  
22 motor vehicle crash for certain purposes;  
23 specifying that a charge for service following  
24 a prohibited solicitation is an unlawful  
25 charge; providing minimum terms of imprisonment  
26 for unlawful actions with respect to insurance  
27 claims; amending s. 324.021, F.S.; conforming  
28 provisions to changes made by the act;  
29 providing an effective date.

30  
31 Be It Enacted by the Legislature of the State of Florida:

1           Section 1. This act may be cited as the "Personal  
2 Injury Protection Insurance Reform Act."

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

27           Section 3. Paragraph (c) of subsection (4) of section  
28 626.989, Florida Statutes, is amended to read:

29           626.989 Investigation by department or Division of  
30 Insurance Fraud; compliance; immunity; confidential  
31

1 information; reports to division; division investigator's  
2 power of arrest.--  
3 (4)  
4 (c) In the absence of fraud or bad faith, a person is  
5 not subject to civil liability for libel, slander, or any  
6 other relevant tort by virtue of filing reports, without  
7 malice, or furnishing other information, without malice,  
8 required by this section or required by the department or  
9 division under the authority granted in this section, and no  
10 civil cause of action of any nature shall arise against such  
11 person:  
12 1. For any information relating to suspected  
13 fraudulent insurance acts furnished to or received from any  
14 local, state, or federal law enforcement officials, their  
15 agents, or employees;  
16 2. For any information relating to suspected  
17 fraudulent insurance acts furnished to or received from other  
18 persons subject to the provisions of this chapter; ~~or~~  
19 3. For any such information furnished in reports to  
20 the department, division, the National Insurance Crime Bureau,  
21 ~~or~~ the National Association of Insurance Commissioners, or to  
22 any local, state, or federal law enforcement officials, their  
23 agents, or employees; or  
24 4. For other actions taken in cooperation with any of  
25 the agencies or individuals specified in this section in the  
26 lawful investigation of suspected acts of insurance fraud.  
27 Section 4. Section 627.731, Florida Statutes, is  
28 amended to read:  
29 627.731 Purpose.--The purpose of ss. 627.730-627.7405  
30 is to provide for medical, surgical, funeral, and disability  
31 insurance benefits without regard to fault, and to require

1 motor vehicle insurance securing such benefits, for motor  
2 vehicles required to be registered in this state and, with  
3 respect to motor vehicle accidents, a limitation on the right  
4 to claim noneconomic or general damages, including, but not  
5 limited to, damages for pain, suffering, mental anguish,  
6 physical impairment, loss of capacity to enjoy life, and  
7 inconvenience.

8 Section 5. Section 627.732, Florida Statutes, is  
9 amended to read:

10 627.732 Definitions.--As used in ss. 627.730-627.7405:

11 (1) "Medically necessary" means a particular supply or  
12 service that is generally recognized by prudent health care  
13 providers treating similar conditions as acceptable and  
14 appropriate for the intended purpose in accordance with the  
15 prevailing professional standard of care. Unless such supply  
16 or service is compensable for such purpose under both Medicare  
17 Part B and chapter 440, it is presumed not to be medically  
18 necessary unless proven to be medically necessary by clear and  
19 convincing evidence.

20 (2)~~(1)~~ "Motor vehicle" means any self-propelled  
21 vehicle with four or more wheels which is of a type both  
22 designed and required to be licensed for use on the highways  
23 of this state and any trailer or semitrailer designed for use  
24 with such vehicle and includes:

25 (a) A "private passenger motor vehicle," which is any  
26 motor vehicle which is a sedan, station wagon, or jeep-type  
27 vehicle and, if not used primarily for occupational,  
28 professional, or business purposes, a motor vehicle of the  
29 pickup, panel, van, camper, or motor home type.

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

1  
2 The term "motor vehicle" does not include a mobile home or any  
3 motor vehicle which is used in mass transit, other than public  
4 school transportation, and designed to transport more than  
5 five passengers exclusive of the operator of the motor vehicle  
6 and which is owned by a municipality, a transit authority, or  
7 a political subdivision of the state.

8 (3)~~(2)~~ "Named insured" means a person, usually the  
9 owner of a vehicle, identified in a policy by name as the  
10 insured under the policy.

11 (4)~~(3)~~ "Owner" means a person who holds the legal  
12 title to a motor vehicle; or, in the event a motor vehicle is  
13 the subject of a security agreement or lease with an option to  
14 purchase with the debtor or lessee having the right to  
15 possession, then the debtor or lessee shall be deemed the  
16 owner for the purposes of ss. 627.730-627.7405.

17 (5) "PIP clinic" means any facility or location at  
18 which medical or diagnostic services are provided to persons  
19 involved in motor vehicle crashes, which tenders charges for  
20 reimbursement for such services to any insurer providing  
21 personal injury protection coverage or to any insured, and:

22 (a) With respect to which any person, other than a  
23 licensed health care provider providing care within the scope  
24 of his or her license, owns an interest in, controls, or  
25 shares in profits from the operation of such facility or  
26 location; or

27 (b) Which derives more than 50 percent of its gross  
28 patient revenue directly or indirectly from personal injury  
29 protection insurance.

30 (6)~~(4)~~ "Relative residing in the same household" means  
31 a relative of any degree by blood or by marriage who usually

1 makes her or his home in the same family unit, whether or not  
2 temporarily living elsewhere.

3 ~~(7)(5)~~ "Recovery agent" means any person or agency who  
4 is licensed as a recovery agent or recovery agency and  
5 authorized under s. 324.202 to seize license plates.

6 (8) "Unlawful charge" means:

7 (a) A charge for a medical or diagnostic supply or  
8 service which is the basis of a claim for personal injury  
9 protection benefits if the supply or service that is the basis  
10 of the charge is not medically necessary, was rendered in  
11 violation of a state or federal law or rule or in connection  
12 with or as a result of a violation of a state or federal law  
13 or rule, or is otherwise declared by state or federal law to  
14 be unlawful or unenforceable; or

15 (b) That portion of a charge for a medical or  
16 diagnostic supply or service which is the basis of a claim for  
17 personal injury protection benefits in excess of fee  
18 limitations under state or federal law or rule, or which is  
19 otherwise declared by state or federal law to be unlawful or  
20 unenforceable.

21 Section 6. Section 627.736, Florida Statutes, is  
22 amended to read:

23 627.736 Required personal injury protection benefits;  
24 exclusions; priority; claims.--

25 (1) REQUIRED BENEFITS.--Every insurance policy  
26 complying with the security requirements of s. 627.733 shall  
27 provide personal injury protection to the named insured,  
28 relatives residing in the same household, persons operating  
29 the insured motor vehicle, passengers in such motor vehicle,  
30 and other persons struck by such motor vehicle and suffering  
31 bodily injury while not an occupant of a self-propelled

1 vehicle, subject to the provisions of subsection (2) and  
2 paragraph (4)(d), to a limit of \$10,000 for loss sustained by  
3 any such person as a result of bodily injury, sickness,  
4 disease, or death arising out of the ownership, maintenance,  
5 or use of a motor vehicle as follows:

6 (a) Medical benefits.--Eighty percent of all  
7 reasonable expenses for medically necessary medical, surgical,  
8 X-ray, dental, and rehabilitative services, including  
9 prosthetic devices, and for medically necessary ambulance,  
10 hospital, and nursing services. ~~Such benefits shall also~~  
11 ~~include necessary remedial treatment and services recognized~~  
12 ~~and permitted under the laws of the state for an injured~~  
13 ~~person who relies upon spiritual means through prayer alone~~  
14 ~~for healing, in accordance with his or her religious beliefs.~~

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

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

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

21 (2) AUTHORIZED EXCLUSIONS.--Any insurer may exclude  
22 benefits:

23 (a) For injury sustained by the named insured and  
24 relatives residing in the same household while occupying  
25 another motor vehicle owned by the named insured and not  
26 insured under the policy or for injury sustained by any person  
27 operating the insured motor vehicle without the express or  
28 implied consent of the insured.

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

- 1           1. Causing injury to himself or herself intentionally;  
2 or  
3           2. Being injured while committing a felony.  
4

5 Whenever an insured is charged with conduct as set forth in  
6 subparagraph 2., the 30-day payment provision of paragraph  
7 (4)(b) shall be held in abeyance, and the insurer shall  
8 withhold payment of any personal injury protection benefits  
9 pending the outcome of the case at the trial level. If the  
10 charge is nolle prossed or dismissed or the insured is  
11 acquitted, the 30-day payment provision shall run from the  
12 date the insurer is notified of such action.

13           (3) INSURED'S RIGHTS TO RECOVERY OF SPECIAL DAMAGES IN  
14 TORT CLAIMS.--No insurer shall have a lien on any recovery in  
15 tort by judgment, settlement, or otherwise for personal injury  
16 protection benefits, whether suit has been filed or settlement  
17 has been reached without suit. An injured party who is  
18 entitled to bring suit under the provisions of ss.  
19 627.730-627.7405, or his or her legal representative, shall  
20 have no right to recover any damages for which personal injury  
21 protection benefits are paid or payable. The plaintiff may  
22 prove all of his or her special damages notwithstanding this  
23 limitation, but if special damages are introduced in evidence,  
24 the trier of facts, whether judge or jury, shall not award  
25 damages for personal injury protection benefits paid or  
26 payable. In all cases in which a jury is required to fix  
27 damages, the court shall instruct the jury that the plaintiff  
28 shall not recover such special damages for personal injury  
29 protection benefits paid or payable.

30           (4) BENEFITS; WHEN DUE.--Benefits due from an insurer  
31 under ss. 627.730-627.7405 shall be primary, except that

1 benefits received under any workers' compensation law shall be  
2 credited against the benefits provided by subsection (1) and  
3 shall be due and payable as loss accrues, upon receipt of  
4 reasonable proof of such loss and the amount of expenses and  
5 loss incurred which are covered by the policy issued under ss.  
6 627.730-627.7405. When the Agency for Health Care  
7 Administration provides, pays, or becomes liable for medical  
8 assistance under the Medicaid program related to injury,  
9 sickness, disease, or death arising out of the ownership,  
10 maintenance, or use of a motor vehicle, benefits under ss.  
11 627.730-627.7405 shall be subject to the provisions of the  
12 Medicaid program.

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

17 (b) Personal injury protection insurance benefits paid  
18 pursuant to this section shall be overdue solely for the  
19 purposes of imposing interest under paragraph (c) and the  
20 notice provisions of subsection (8) if not paid within 30 days  
21 after the insurer is furnished written notice of the fact of a  
22 covered loss and of the amount of same. If such written  
23 notice is not furnished to the insurer as to the entire claim,  
24 any partial amount supported by written notice is likewise  
25 overdue if not paid within 30 days after such written notice  
26 is furnished to the insurer. Any part or all of the remainder  
27 of the claim that is subsequently supported by written notice  
28 is likewise overdue if not paid within 30 days after such  
29 written notice is furnished to the insurer. However, any  
30 payment shall not be deemed overdue when the insurer has  
31 reasonable cause to believe ~~proof to establish~~ that the

1 insurer is not responsible for the payment, notwithstanding  
2 that written notice has been furnished to the insurer. For  
3 the purpose of calculating the extent to which any benefits  
4 are overdue, payment shall be treated as being made on the  
5 date a draft or other valid instrument which is equivalent to  
6 payment was placed in the United States mail in a properly  
7 addressed, postpaid envelope or, if not so posted, on the date  
8 of delivery.

9 (c) All overdue payments shall bear simple interest at  
10 the rate of 12 ~~10~~ percent per year, calculated from the date  
11 the insurer was furnished written notice of the claim.

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

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

18 2. Accidental bodily injury sustained outside this  
19 state, but within the United States of America or its  
20 territories or possessions or Canada, by the owner while  
21 occupying the owner's motor vehicle.

22 3. Accidental bodily injury sustained by a relative of  
23 the owner residing in the same household, under the  
24 circumstances described in subparagraph 1. or subparagraph 2.,  
25 provided the relative at the time of the accident is domiciled  
26 in the owner's household and is not himself or herself the  
27 owner of a motor vehicle with respect to which security is  
28 required under ss. 627.730-627.7405.

29 4. Accidental bodily injury sustained in this state by  
30 any other person while occupying the owner's motor vehicle or,  
31 if a resident of this state, while not an occupant of a

1 self-propelled vehicle, if the injury is caused by physical  
2 contact with such motor vehicle, provided the injured person  
3 is not himself or herself:

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

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

8 (e) If two or more insurers are liable to pay personal  
9 injury protection benefits for the same injury to any one  
10 person, the maximum payable shall be as specified in  
11 subsection (1), and any insurer paying the benefits shall be  
12 entitled to recover from each of the other insurers an  
13 equitable pro rata share of the benefits paid and expenses  
14 incurred in processing the claim.

15 (f) Medical payments insurance, if available in a  
16 policy of motor vehicle insurance, shall pay the portion of  
17 any claim for personal injury protection medical benefits  
18 which is otherwise covered but is not payable due to the  
19 coinsurance provision of paragraph (1)(a), regardless of  
20 whether the full amount of personal injury protection coverage  
21 has been exhausted. The benefits shall not be payable for the  
22 amount of any deductible which has been selected.

23 (g) It is a violation of the insurance code for an  
24 insurer to fail to timely provide benefits as required by this  
25 section with such frequency as to constitute a general  
26 business practice.

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

28 (a) Any physician, hospital, clinic, or other person  
29 or institution lawfully rendering treatment to an injured  
30 person for a bodily injury covered by personal injury  
31 protection insurance may charge only a reasonable amount for

1 the products, services, and accommodations rendered, and the  
2 insurer providing such coverage may pay for such charges  
3 directly to such person or institution lawfully rendering such  
4 treatment, if the insured receiving such treatment or his or  
5 her guardian has countersigned the invoice, bill, or claim  
6 form approved by the Department of Insurance upon which such  
7 charges are to be paid for as having actually been rendered,  
8 to the best knowledge of the insured or his or her guardian.  
9 ~~In no event,~~ However, may such a charge may not be in excess  
10 of the amount the person or institution customarily charges or  
11 accepts as full compensation for like products, services, or  
12 accommodations in cases involving no insurance, provided that  
13 charges for cephalic thermograms and peripheral thermograms;  
14 spinal ultrasounds; magnetic resonance imaging (MRI);  
15 extremity ultrasounds; video fluoroscopy; surface  
16 electromyography; nerve conduction testing, including motor  
17 and sensory nerves, F waves, H reflexes, somatosensory evoked  
18 potentials, and dermatomal studies; and any substantially  
19 similar diagnostic test or procedure by whatever name may  
20 ~~shall~~ not exceed the maximum reimbursement allowance for such  
21 procedures as set forth in the applicable fee schedule  
22 established pursuant to s. 440.13. If the department finds  
23 that, with respect to a diagnostic test or procedure, there is  
24 a pattern of overcharges, overutilization, excessive costs, or  
25 improper or unnecessary utilization, the department shall by  
26 rule designate the test or procedure and, when so designated,  
27 charges for that test or procedure may not exceed the maximum  
28 reimbursement allowance for the test or procedure as set forth  
29 in the fee schedule.

30 (b) With respect to any treatment or service, other  
31 than medical services billed by a hospital for services

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

1 licensed pursuant to part III of chapter 401, the provider is  
2 not required to furnish the statement of charges within the  
3 time periods established by this paragraph; and the insurer  
4 shall not be considered to have been furnished with notice of  
5 the amount of covered loss for purposes of paragraph (4)(b)  
6 until it receives a statement complying with paragraph (5)(d),  
7 or copy thereof, which specifically identifies the place of  
8 service to be a hospital emergency department or an ambulance  
9 in accordance with billing standards recognized by the Health  
10 Care Finance Administration. Each notice of insured's rights  
11 under s. 627.7401 must include the following statement in type  
12 no smaller than 12 points:

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

30 (c) Every insurer shall include a provision in its  
31 policy for personal injury protection benefits for binding



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

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

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

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

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

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

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

21 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON;  
22 DISPUTES.--

23 (a) Every employer shall, if a request is made by an  
24 insurer providing personal injury protection benefits under  
25 ss. 627.730-627.7405 against whom a claim has been made,  
26 furnish forthwith, in a form approved by the department, a  
27 sworn statement of the earnings, since the time of the bodily  
28 injury and for a reasonable period before the injury, of the  
29 person upon whose injury the claim is based.

30 (b) Every physician, hospital, clinic, or other  
31 medical institution providing, before or after bodily injury

1 upon which a claim for personal injury protection insurance  
2 benefits is based, any products, services, or accommodations  
3 in relation to that or any other injury, or in relation to a  
4 condition claimed to be connected with that or any other  
5 injury, shall, if requested to do so by the insurer against  
6 whom the claim has been made, furnish forthwith a written  
7 report of the history, condition, treatment, dates, and costs  
8 of such treatment of the injured person, together with a sworn  
9 statement that the treatment or services rendered were  
10 reasonable and necessary with respect to the bodily injury  
11 sustained and identifying which portion of the expenses for  
12 such treatment or services was incurred as a result of such  
13 bodily injury, and produce forthwith, and permit the  
14 inspection and copying of, his or her or its records regarding  
15 such history, condition, treatment, dates, and costs of  
16 treatment. Such sworn statement shall read as follows: "Under  
17 penalty of perjury, I declare that I have read the foregoing,  
18 and the facts alleged are true, to the best of my knowledge  
19 and belief." No cause of action for violation of the  
20 physician-patient privilege or invasion of the right of  
21 privacy shall be permitted against any physician, hospital,  
22 clinic, or other medical institution complying with the  
23 provisions of this section. The person requesting such records  
24 and such sworn statement shall pay all reasonable costs  
25 connected therewith. If an insurer makes a written request for  
26 documentation under this paragraph within 20 days after having  
27 received notice of the amount of a covered loss under  
28 paragraph (4)(a), the insurer shall pay the amount or partial  
29 amount of covered loss to which such documentation relates in  
30 accordance with paragraph (4)(b) or within 10 days after the  
31 insurer's receipt of the requested documentation, whichever

1 occurs later. For purposes of this paragraph, the term  
2 "receipt" includes, but is not limited to, inspection and  
3 copying pursuant to this paragraph.

4 (c) In the event of any dispute regarding an insurer's  
5 right to discovery of facts about an injured person's earnings  
6 or about his or her history, condition, or treatment, or the  
7 dates and costs of such treatment, the insurer may petition a  
8 court of competent jurisdiction to enter an order permitting  
9 such discovery. The order may be made only on motion for good  
10 cause shown and upon notice to all persons having an interest,  
11 and it shall specify the time, place, manner, conditions, and  
12 scope of the discovery. Such court may, in order to protect  
13 against annoyance, embarrassment, or oppression, as justice  
14 requires, enter an order refusing discovery or specifying  
15 conditions of discovery and may order payments of costs and  
16 expenses of the proceeding, including reasonable fees for the  
17 appearance of attorneys at the proceedings, as justice  
18 requires.

19 (d) The injured person shall be furnished, upon  
20 request, a copy of all information obtained by the insurer  
21 under the provisions of this section, and shall pay a  
22 reasonable charge, if required by the insurer.

23 (e) Notice to an insurer of the existence of a claim  
24 shall not be unreasonably withheld by an insured.

25 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;  
26 REPORTS.--

27 (a) Whenever the mental or physical condition of an  
28 injured person covered by personal injury protection is  
29 material to any claim that has been or may be made for past or  
30 future personal injury protection insurance benefits, such  
31 person shall, upon the request of an insurer, submit to mental

1 or physical examination by a physician or physicians. If the  
2 request for an examination is made within the 30-day period  
3 set forth in paragraph (4)(b), that 30-day period is tolled  
4 until 21 days after the date of the request for such  
5 examination by the insurer, or 10 days after the examination  
6 if the insured cannot be examined within 11 days after the  
7 request because of the unavailability of the insured.The  
8 costs of any examinations requested by an insurer shall be  
9 borne entirely by the insurer. Such examination shall be  
10 conducted within the municipality where the insured is  
11 receiving treatment, or in a location reasonably accessible to  
12 the insured, which, for purposes of this paragraph, means any  
13 location within the municipality in which the insured resides,  
14 or any location within 10 miles by road of the insured's  
15 residence, provided such location is within the county in  
16 which the insured resides. If the examination is to be  
17 conducted in a location reasonably accessible to the insured,  
18 and if there is no qualified physician to conduct the  
19 examination in a location reasonably accessible to the  
20 insured, then such examination shall be conducted in an area  
21 of the closest proximity to the insured's residence. Personal  
22 protection insurers are authorized to include reasonable  
23 provisions in personal injury protection insurance policies  
24 for mental and physical examination of those claiming personal  
25 injury protection insurance benefits. An insurer may not  
26 withdraw payment of a treating physician as to future  
27 treatment without the consent of the injured person covered by  
28 the personal injury protection, unless the insurer first  
29 obtains a report by a physician licensed under the same  
30 chapter as the treating physician whose future treatment  
31 authorization is sought to be withdrawn, stating that further

1 treatment ~~is was~~ not reasonable, related, or medically  
2 necessary.

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

23 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S  
24 FEES.--With respect to any dispute under the provisions of ss.  
25 627.730-627.7405 between the insured and the insurer, or  
26 between the insurer and an assignee of an insured's rights,  
27 the provisions of s. 627.428, except as otherwise provided in  
28 this section, shall apply.

29 (a) An overdue claim for medical benefits does not  
30 give rise to an award of attorney's fees unless, as conditions  
31 precedent thereto:

1           1. At a time after the claim has become overdue  
2 pursuant to paragraph (4)(b), the claimant or the claimant's  
3 attorney submitted notice of the overdue claim by United  
4 States certified or registered mail to the insurer on a form  
5 adopted by rule of the department which includes space or  
6 instructions for providing:

7           a. An itemized specification of each amount claimed to  
8 be overdue, the information reasonably necessary to  
9 substantiate the medical necessity of the treatment or  
10 supplies that are the basis for the claim, and the  
11 reasonableness of the amount of the claim; and

12           b. A written sworn statement signed by the physician,  
13 hospital, clinic, or other person or institution rendering the  
14 treatment to the insured upon which the claim is based,  
15 certifying that no consideration of any kind was paid or  
16 offered, directly or indirectly, in cash or in kind, or in any  
17 form whatsoever, by the certifying individual or entity, or  
18 any employee or agent thereof, to the insured or any other  
19 person to induce the referral of the insured, or in return for  
20 a list of names or a publication that lists names of  
21 individuals involved in motor vehicle crashes in which the  
22 insured's name is included;

23           2. The insurer has subsequently failed to pay all  
24 amounts identified in the notice within 30 days after the  
25 insurer's receipt of the notice; and

26           3. If the insured is the claimant, the claimant's  
27 attorney has submitted to the insurer a written sworn  
28 statement certifying that the attorney, the attorney's firm,  
29 or an agent or employee of the attorney or attorney's firm has  
30 not paid or offered consideration of any kind, directly or  
31 indirectly, in cash or in kind, or in any form whatsoever to:

1           a. The claimant;

2           b. Any person to induce the referral of the claimant  
3 to the attorney or the attorney's firm; or

4           c. Any person in return for a list of names or a  
5 publication in which the claimant's name is included.

6           (b) With respect to a suit based upon a claim arising  
7 under personal injury protection benefits, attorney's fees  
8 added to the judgment under this section or any other law may  
9 not exceed the reasonable hourly fee for legal services  
10 actually and necessarily rendered, without adjustment by  
11 resort to contingency risk multipliers such as Lodestar or  
12 other multiplier effects.

13           (c) This section or s. 627.428 does not limit in any  
14 way a person's ability to employ the provisions of s. 768.79.

15           (9)(a) Each insurer which has issued a policy  
16 providing personal injury protection benefits shall report the  
17 renewal, cancellation, or nonrenewal thereof to the Department  
18 of Highway Safety and Motor Vehicles within 45 days from the  
19 effective date of the renewal, cancellation, or nonrenewal.  
20 Upon the issuance of a policy providing personal injury  
21 protection benefits to a named insured not previously insured  
22 by the insurer thereof during that calendar year, the insurer  
23 shall report the issuance of the new policy to the Department  
24 of Highway Safety and Motor Vehicles within 30 days. The  
25 report shall be in such form and format and contain such  
26 information as may be required by the Department of Highway  
27 Safety and Motor Vehicles which shall include a format  
28 compatible with the data processing capabilities of said  
29 department, and the Department of Highway Safety and Motor  
30 Vehicles is authorized to adopt rules necessary with respect  
31 thereto. Failure by an insurer to file proper reports with the



1 Department of Highway Safety and Motor Vehicles as required by  
2 this subsection or rules adopted with respect to the  
3 requirements of this subsection constitutes a violation of the  
4 Florida Insurance Code. Reports of cancellations and policy  
5 renewals and reports of the issuance of new policies received  
6 by the Department of Highway Safety and Motor Vehicles are  
7 confidential and exempt from the provisions of s. 119.07(1).  
8 These records are to be used for enforcement and regulatory  
9 purposes only, including the generation by the department of  
10 data regarding compliance by owners of motor vehicles with  
11 financial responsibility coverage requirements. In addition,  
12 the Department of Highway Safety and Motor Vehicles shall  
13 release, upon a written request by a person involved in a  
14 motor vehicle accident, by the person's attorney, or by a  
15 representative of the person's motor vehicle insurer, the name  
16 of the insurance company and the policy number for the policy  
17 covering the vehicle named by the requesting party. The  
18 written request must include a copy of the appropriate  
19 accident form as provided in s. 316.065, s. 316.066, or s.  
20 316.068.

21 (b) Every insurer with respect to each insurance  
22 policy providing personal injury protection benefits shall  
23 notify the named insured or in the case of a commercial fleet  
24 policy, the first named insured in writing that any  
25 cancellation or nonrenewal of the policy will be reported by  
26 the insurer to the Department of Highway Safety and Motor  
27 Vehicles. The notice shall also inform the named insured that  
28 failure to maintain personal injury protection and property  
29 damage liability insurance on a motor vehicle when required by  
30 law may result in the loss of registration and driving  
31 privileges in this state, and the notice shall inform the

1 named insured of the amount of the reinstatement fees required  
2 by s. 627.733(7). This notice is for informational purposes  
3 only, and no civil liability shall attach to an insurer due to  
4 failure to provide this notice.

5 (10) An insurer may negotiate and enter into contracts  
6 with licensed health care providers for the benefits described  
7 in this section, referred to in this section as "preferred  
8 providers," which shall include health care providers licensed  
9 under chapters 458, 459, 460, 461, and 463. The insurer may  
10 provide an option to an insured to use a preferred provider at  
11 the time of purchase of the policy for personal injury  
12 protection benefits, if the requirements of this subsection  
13 are met. If the insured elects to use a provider who is not a  
14 preferred provider, whether the insured purchased a preferred  
15 provider policy or a nonpreferred provider policy, the medical  
16 benefits provided by the insurer shall be as required by this  
17 section. If the insured elects to use a provider who is a  
18 preferred provider, the insurer may pay medical benefits in  
19 excess of the benefits required by this section and may waive  
20 or lower the amount of any deductible that applies to such  
21 medical benefits. If the insurer offers a preferred provider  
22 policy to a policyholder or applicant, it must also offer a  
23 nonpreferred provider policy. The insurer shall provide each  
24 policyholder with a current roster of preferred providers in  
25 the county in which the insured resides at the time of  
26 purchase of such policy, and shall make such list available  
27 for public inspection during regular business hours at the  
28 principal office of the insurer within the state.

29 (11) REGISTRATION AND CHARGES OF PIP CLINICS.--

30 (a) Each PIP clinic must file a registration statement  
31 with the Agency for Health Care Administration by September 1,

1 2001, or before beginning operation. The registration  
2 statement must be continuously updated and annually restated  
3 and refiled and must contain:

4 1. The name, residence and business addresses, and  
5 telephone numbers of all persons sharing in any profits  
6 derived from the operation of the clinic.

7 2. A schedule of all tests, treatments, or other  
8 services rendered in or by the clinic and the charges for each  
9 of such services.

10 3. A sworn affidavit executed under penalty of perjury  
11 from each person owning, controlling, or sharing in any profit  
12 from the clinic, agreeing that each such person is jointly and  
13 severally liable in any civil action related to any actions  
14 taken by or in the clinic which are related to:

15 a. Diagnostic tests or treatment by persons who are  
16 not licensed to provide such treatment or unauthorized tests  
17 or treatment by persons who are authorized to perform certain  
18 treatments only under supervision of a licensed professional  
19 or under other specific conditions; or

20 b. Any unlawful charge or claim for reimbursement  
21 tendered to an insurer providing personal injury protection  
22 coverage or to an insured.

23 4. A registration fee, in an amount determined by rule  
24 of the Agency for Health Care Administration, which covers all  
25 direct and indirect costs of the agency in implementing  
26 registrations and maintaining and making registrations  
27 available as public records.

28 5. A bond conditioned to pay any judgment for  
29 penalties or damages which may be adjudged against the clinic,  
30 in an amount of \$200,000 or two times the clinic's average  
31 monthly gross receipts, whichever is greater.

1       (b) A charge or claim for reimbursement made by or on  
2 behalf of a PIP clinic constitutes an unlawful charge if the  
3 clinic is not in compliance with this section or its  
4 registration statement, or if the PIP clinic is in violation  
5 of any laws governing medical treatment at the time the  
6 service is rendered or at the time the claim is sought to be  
7 collected.

8       (12) REIMBURSEMENT OF UNLAWFUL  
9 CHARGE.--Notwithstanding other law, an insurer or person  
10 involved in a motor vehicle crash is not obligated to pay for  
11 any unlawful charge or attorney's fees related to any claim  
12 for such charges.

13       (13) CIVIL ACTION CREATED.--Any insurer or other  
14 person to whom a claim for an unlawful charge is tendered for  
15 payment may file a civil action against any person, other than  
16 an insured, tendering such claim, and against any person,  
17 including an insured, aiding and abetting in such charge. A  
18 person who in any way facilitates the delivery of services or  
19 supplies or tenders or undertakes efforts to enforce  
20 collection of such charge is aiding or abetting in such  
21 charge, if such person derives any consideration or promise of  
22 consideration related to the supply, service, or charge and  
23 such person knew or should have known that the charge was  
24 unlawful under the facts or conduct involved in the claims.  
25 Damages recoverable in such action include the amount of the  
26 unlawful charge and attorney's fees or other consequential  
27 damages caused by the unlawful charge, including costs and  
28 attorney's fees incurred in resisting the payment of the  
29 unlawful charge, costs and attorney's fees incurred in making  
30 a claim under this section, and punitive damages, subject to  
31 the requirements and limitations of part II of chapter 768.

1           Section 7. Section 627.737, Florida Statutes, is  
2 amended to read:

3           627.737 Tort exemption; limitation on right to  
4 damages; punitive damages.--

5           (1) Every owner, registrant, operator, or occupant of  
6 a motor vehicle with respect to which security has been  
7 provided as required by ss. 627.730-627.7405, and every person  
8 or organization legally responsible for her or his acts or  
9 omissions, is hereby exempted from tort liability for damages  
10 arising from ~~because of~~ bodily injury, sickness, or disease  
11 arising out of the ownership, operation, maintenance, or use  
12 of such motor vehicle in this state to the extent that the  
13 benefits described in s. 627.736(1) are payable for such  
14 injury, or would be payable but for any exclusion authorized  
15 by ss. 627.730-627.7405, under any insurance policy or other  
16 method of security complying with the requirements of s.  
17 627.733, or by an owner personally liable under s. 627.733 for  
18 the payment of such benefits, unless a person is entitled to  
19 maintain an action to recover noneconomic or general damages,  
20 including damages for pain, suffering, mental anguish,  
21 physical impairment, loss of capacity to enjoy life, and  
22 inconvenience, ~~for~~ such injury under the provisions of  
23 subsection (2).

24           (2) In any action of tort brought against the owner,  
25 registrant, operator, or occupant of a motor vehicle with  
26 respect to which security has been provided as required by ss.  
27 627.730-627.7405, or against any person or organization  
28 legally responsible for her or his acts or omissions, a  
29 plaintiff may recover noneconomic or general damages in tort  
30 including ~~for~~ pain, suffering, mental anguish, physical  
31 impairment, loss of capacity to enjoy life, and inconvenience

1 arising from ~~because of~~ bodily injury, sickness, or disease  
2 arising out of the ownership, maintenance, operation, or use  
3 of such motor vehicle only in the event that the injury or  
4 disease consists in whole or in part of:

5 (a) Significant and permanent loss of an important  
6 bodily function.

7 (b) Significant permanent injury within a reasonable  
8 degree of medical probability, other than scarring or  
9 disfigurement which has a substantial and permanent impact on  
10 the plaintiff's ability to perform the activities associated  
11 with a reasonably normal lifestyle.

12 (c) Significant and permanent scarring or  
13 disfigurement.

14 (d) Death.

15 (3) When a plaintiff is represented by an attorney  
16 with respect to an action brought under subsection (2), the  
17 plaintiff's attorney shall, as a condition precedent to  
18 maintaining the action, submit a written sworn statement to  
19 the court certifying that the attorney, the attorney's firm,  
20 any agent or employee of the attorney or the attorney's firm,  
21 or any other attorney sharing in the fee arrangement has not  
22 paid or offered consideration of any kind, directly or  
23 indirectly, in cash or in kind, or in any form whatsoever to:

24 (a) The plaintiff;

25 (b) Any person to induce the referral of the plaintiff  
26 to the attorney or the attorney's firm; or

27 (c) Any person in return for a list of names or a  
28 publication in which the plaintiff's name is included.

29 ~~(4)(3)~~ When a defendant, in a proceeding brought  
30 pursuant to ss. 627.730-627.7405, questions whether the  
31 plaintiff has met the requirements of subsection (2), then the

1 defendant may file an appropriate motion with the court, and  
2 the court shall, on a one-time basis only, 30 days before the  
3 date set for the trial or the pretrial hearing, whichever is  
4 first, by examining the pleadings and the evidence before it,  
5 ascertain whether the plaintiff will be able to submit some  
6 evidence that the plaintiff will meet the requirements of  
7 subsection (2). If the court finds that the plaintiff will  
8 not be able to submit such evidence, then the court shall  
9 dismiss the plaintiff's claim without prejudice.

10 (5)~~(4)~~ In any action brought against an automobile  
11 liability insurer for damages in excess of its policy limits,  
12 no claim for punitive damages shall be allowed.

13 Section 8. Section 817.234, Florida Statutes, is  
14 amended to read:

15 817.234 False and fraudulent insurance claims.--

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

19 1. Presents or causes to be presented any written or  
20 oral statement as part of, or in support of, a claim for  
21 payment or other benefit pursuant to an insurance policy or a  
22 health maintenance organization subscriber or provider  
23 contract, knowing that such statement contains any false,  
24 incomplete, or misleading information concerning any fact or  
25 thing material to such claim;

26 2. Prepares or makes any written or oral statement  
27 that is intended to be presented to any insurer in connection  
28 with, or in support of, any claim for payment or other benefit  
29 pursuant to an insurance policy or a health maintenance  
30 organization subscriber or provider contract, knowing that  
31 such statement contains any false, incomplete, or misleading

1 information concerning any fact or thing material to such  
2 claim; or

3           3.a. Knowingly presents, causes to be presented, or  
4 prepares or makes with knowledge or belief that it will be  
5 presented to any insurer, purported insurer, servicing  
6 corporation, insurance broker, or insurance agent, or any  
7 employee or agent thereof, any false, incomplete, or  
8 misleading information or written or oral statement as part  
9 of, or in support of, an application for the issuance of, or  
10 the rating of, any insurance policy, or a health maintenance  
11 organization subscriber or provider contract; or

12           b. Who knowingly conceals information concerning any  
13 fact material to such application.

14           (b) All claims and application forms shall contain a  
15 statement that is approved by the Department of Insurance that  
16 clearly states in substance the following: "Any person who  
17 knowingly and with intent to injure, defraud, or deceive any  
18 insurer files a statement of claim or an application  
19 containing any false, incomplete, or misleading information is  
20 guilty of a felony of the third degree." This paragraph shall  
21 not apply to reinsurance contracts, reinsurance agreements, or  
22 reinsurance claims transactions.

23           (2)(a) Any physician licensed under chapter 458,  
24 osteopathic physician licensed under chapter 459, chiropractic  
25 physician licensed under chapter 460, or other practitioner  
26 licensed under the laws of this state who knowingly and  
27 willfully assists, conspires with, or urges any insured party  
28 to fraudulently violate any of the provisions of this section  
29 or part XI of chapter 627, or any person who, due to such  
30 assistance, conspiracy, or urging by said physician,  
31 osteopathic physician, chiropractic physician, or



1 practitioner, knowingly and willfully benefits from the  
2 proceeds derived from the use of such fraud, commits insurance  
3 fraud, punishable as provided in subsection (11). In the event  
4 that a physician, osteopathic physician, chiropractic  
5 physician, or practitioner is adjudicated guilty of a  
6 violation of this section, the Board of Medicine as set forth  
7 in chapter 458, the Board of Osteopathic Medicine as set forth  
8 in chapter 459, the Board of Chiropractic Medicine as set  
9 forth in chapter 460, or other appropriate licensing authority  
10 shall hold an administrative hearing to consider the  
11 imposition of administrative sanctions as provided by law  
12 against said physician, osteopathic physician, chiropractic  
13 physician, or practitioner.

14 (b) In addition to any other provision of law,  
15 systematic upcoding by a provider, as defined in s.  
16 641.19(15), with the intent to obtain reimbursement otherwise  
17 not due from an insurer is punishable as provided in s.  
18 641.52(5).

19 (3) Any attorney who knowingly and willfully assists,  
20 conspires with, or urges any claimant to fraudulently violate  
21 any of the provisions of this section or part XI of chapter  
22 627, or any person who, due to such assistance, conspiracy, or  
23 urging on such attorney's part, knowingly and willfully  
24 benefits from the proceeds derived from the use of such fraud,  
25 commits insurance fraud, punishable as provided in subsection  
26 (11).

27 (4) Any person or governmental unit licensed under  
28 chapter 395 to maintain or operate a hospital, and any  
29 administrator or employee of any such hospital, who knowingly  
30 and willfully allows the use of the facilities of said  
31 hospital by an insured party in a scheme or conspiracy to

1 fraudulently violate any of the provisions of this section or  
2 part XI of chapter 627 commits insurance fraud, punishable as  
3 provided in subsection (11). Any adjudication of guilt for a  
4 violation of this subsection, or the use of business practices  
5 demonstrating a pattern indicating that the spirit of the law  
6 set forth in this section or part XI of chapter 627 is not  
7 being followed, shall be grounds for suspension or revocation  
8 of the license to operate the hospital or the imposition of an  
9 administrative penalty of up to \$5,000 by the licensing  
10 agency, as set forth in chapter 395.

11 (5) Any insurer damaged as a result of a violation of  
12 any provision of this section when there has been a criminal  
13 adjudication of guilt shall have a cause of action to recover  
14 compensatory damages, plus all reasonable investigation and  
15 litigation expenses, including attorneys' fees, at the trial  
16 and appellate courts.

17 (6) For the purposes of this section, "statement"  
18 includes, but is not limited to, any notice, statement, proof  
19 of loss, bill of lading, invoice, account, estimate of  
20 property damages, bill for services, diagnosis, prescription,  
21 hospital or doctor records, X ray, test result, or other  
22 evidence of loss, injury, or expense.

23 (7) The provisions of this section shall also apply as  
24 to any insurer or adjusting firm or its agents or  
25 representatives who, with intent, injure, defraud, or deceive  
26 any claimant with regard to any claim. The claimant shall  
27 have the right to recover the damages provided in this  
28 section.

29 (8) It is unlawful for any person, in his or her  
30 individual capacity or in his or her capacity as a public or  
31 private employee, or for any firm, corporation, partnership,

1 or association, to solicit or cause to be solicited any person  
2 involved in a motor vehicle crash by any means of  
3 communication, other than advertising directed to the general  
4 public, ~~business in or about city receiving hospitals, city~~  
5 and county receiving hospitals, county hospitals, justice  
6 courts, or municipal courts; in any public institution; in any  
7 public place; upon any public street or highway; in or about  
8 private hospitals, sanitariums, or any private institution; or  
9 upon private property of any character whatsoever for the  
10 purpose of making motor vehicle tort claims or claims for  
11 personal injury protection benefits required by s. 627.736.  
12 Any charge for a service rendered by any medical provider or  
13 attorney who has solicited the person or caused the person to  
14 be solicited in violation of this subsection is an unlawful  
15 charge, as that term is defined in s. 627.732, and is  
16 unenforceable. Any person who violates the provisions of this  
17 subsection commits a felony of the third degree, punishable as  
18 provided in s. 775.082, s. 775.083, or s. 775.084. A person  
19 who is convicted of a violation of this subsection shall be  
20 sentenced to a minimum term of imprisonment of 6 months.

21 (9) It is unlawful for any attorney to solicit any  
22 business relating to the representation of persons involved  
23 ~~injured~~ in a motor vehicle accident for the purpose of filing  
24 a motor vehicle tort claim or a claim for personal injury  
25 protection benefits required by s. 627.736. The solicitation  
26 by advertising of any business by an attorney relating to the  
27 representation of a person involved ~~injured~~ in a specific  
28 motor vehicle accident is prohibited by this section. Any  
29 attorney who violates the provisions of this subsection  
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 subsection shall be sentenced  
2 to a minimum term of imprisonment of 6 months.Whenever any  
3 circuit or special grievance committee acting under the  
4 jurisdiction of the Supreme Court finds probable cause to  
5 believe that an attorney is guilty of a violation of this  
6 section, such committee shall forward to the appropriate state  
7 attorney a copy of the finding of probable cause and the  
8 report being filed in the matter. This section shall not be  
9 interpreted to prohibit advertising by attorneys which does  
10 not entail a solicitation as described in this subsection and  
11 which is permitted by the rules regulating The Florida Bar as  
12 promulgated by the Florida Supreme Court.

13 (10) As used in this section, the term "insurer" means  
14 any insurer, health maintenance organization, self-insurer,  
15 self-insurance fund, or other similar entity or person  
16 regulated under chapter 440 or chapter 641 or by the  
17 Department of Insurance under the Florida Insurance Code.

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

20 (a) Is less than \$20,000, the offender commits a  
21 felony of the third degree, punishable as provided in s.  
22 775.082, s. 775.083, or s. 775.084, and a convicted offender  
23 shall be sentenced to a minimum term of imprisonment of 6  
24 months.

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

30 (c) Is \$100,000 or more, the offender commits a felony  
31 of the first degree, punishable as provided in s. 775.082, s.

1 775.083, or s. 775.084, and a convicted offender shall be  
2 sentenced to a minimum term of imprisonment of 2 years.

3 (12) As used in this section:

4 (a) "Property" means property as defined in s.  
5 812.012.

6 (b) "Value" means value as defined in s. 812.012.

7 Section 9. Section 817.505, Florida Statutes, is  
8 amended to read:

9 817.505 Patient brokering prohibited; exceptions;  
10 penalties.--

11 (1) It is unlawful for any person, including any  
12 health care provider or health care facility, to:

13 (a) Offer or pay any commission, bonus, rebate,  
14 kickback, or bribe, directly or indirectly, in cash or in  
15 kind, or engage in any split-fee arrangement, in any form  
16 whatsoever, to induce the referral of patients or patronage  
17 from a health care provider or health care facility;

18 (b) Solicit or receive any commission, bonus, rebate,  
19 kickback, or bribe, directly or indirectly, in cash or in  
20 kind, or engage in any split-fee arrangement, in any form  
21 whatsoever, in return for referring patients or patronage to a  
22 health care provider or health care facility; or

23 (c) Aid, abet, advise, or otherwise participate in the  
24 conduct prohibited under paragraph (a) or paragraph (b).

25 (2) For the purposes of this section, the term:

26 (a) "Health care provider or health care facility"  
27 means any person or entity licensed, certified, or registered  
28 with the Agency for Health Care Administration; any person or  
29 entity that has contracted with the Agency for Health Care  
30 Administration to provide goods or services to Medicaid  
31 recipients as provided under s. 409.907; a county health

1 department established under part I of chapter 154; any  
2 community service provider contracting with the Department of  
3 Children and Family Services to furnish alcohol, drug abuse,  
4 or mental health services under part IV of chapter 394; any  
5 substance abuse service provider licensed under chapter 397;  
6 or any federally supported primary care program such as a  
7 migrant or community health center authorized under ss. 329  
8 and 330 of the United States Public Health Services Act.

9 (b) "Health care provider network entity" means a  
10 corporation, partnership, or limited liability company owned  
11 or operated by two or more health care providers and organized  
12 for the purpose of entering into agreements with health  
13 insurers, health care purchasing groups, or the Medicare or  
14 Medicaid program.

15 (c) "Health insurer" means any insurance company  
16 authorized to transact health insurance in the state, any  
17 insurance company authorized to transact health insurance or  
18 casualty insurance in the state that is offering a minimum  
19 premium plan or stop-loss coverage for any person or entity  
20 providing health care benefits, any self-insurance plan as  
21 defined in s. 624.031, any health maintenance organization  
22 authorized to transact business in the state pursuant to part  
23 I of chapter 641, any prepaid health clinic authorized to  
24 transact business in the state pursuant to part II of chapter  
25 641, any prepaid limited health service organization  
26 authorized to transact business in this state pursuant to  
27 chapter 636, any multiple-employer welfare arrangement  
28 authorized to transact business in the state pursuant to ss.  
29 624.436-624.45, or any fraternal benefit society providing  
30 health benefits to its members as authorized pursuant to  
31 chapter 632.

1           (3) This section shall not apply to:

2           (a) Any discount, payment, waiver of payment, or  
3 payment practice not prohibited by 42 U.S.C. s. 1320a-7b(b) or  
4 regulations promulgated thereunder.

5           (b) Any payment, compensation, or financial  
6 arrangement within a group practice as defined in s. 456.053,  
7 provided such payment, compensation, or arrangement is not to  
8 or from persons who are not members of the group practice.

9           (c) Payments to a health care provider or health care  
10 facility for professional consultation services.

11           (d) Commissions, fees, or other remuneration lawfully  
12 paid to insurance agents as provided under the insurance code.

13           (e) Payments by a health insurer who reimburses,  
14 provides, offers to provide, or administers health, mental  
15 health, or substance abuse goods or services under a health  
16 benefit plan.

17           (f) Payments to or by a health care provider or health  
18 care facility, or a health care provider network entity, that  
19 has contracted with a health insurer, a health care purchasing  
20 group, or the Medicare or Medicaid program to provide health,  
21 mental health, or substance abuse goods or services under a  
22 health benefit plan when such payments are for goods or  
23 services under the plan. However, nothing in this section  
24 affects whether a health care provider network entity is an  
25 insurer required to be licensed under the Florida Insurance  
26 Code.

27           (g) Insurance advertising gifts lawfully permitted  
28 under s. 626.9541(1)(m).

29           (h) Commissions or fees paid to a nurse registry  
30 licensed under s. 400.506 for referring persons providing  
31 health care services to clients of the nurse registry.

1 (i) Payments by a health care provider or health care  
2 facility to a health, mental health, or substance abuse  
3 information service that provides information upon request and  
4 without charge to consumers about providers of health care  
5 goods or services to enable consumers to select appropriate  
6 providers or facilities, provided that such information  
7 service:

8 1. Does not attempt through its standard questions for  
9 solicitation of consumer criteria or through any other means  
10 to steer or lead a consumer to select or consider selection of  
11 a particular health care provider or health care facility;

12 2. Does not provide or represent itself as providing  
13 diagnostic or counseling services or assessments of illness or  
14 injury and does not make any promises of cure or guarantees of  
15 treatment;

16 3. Does not provide or arrange for transportation of a  
17 consumer to or from the location of a health care provider or  
18 health care facility; and

19 4. Charges and collects fees from a health care  
20 provider or health care facility participating in its services  
21 that are set in advance, are consistent with the fair market  
22 value for those information services, and are not based on the  
23 potential value of a patient or patients to a health care  
24 provider or health care facility or of the goods or services  
25 provided by the health care provider or health care facility.

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 (5) Notwithstanding the existence or pursuit of any  
4 other remedy, the Attorney General or the state attorney of  
5 the judicial circuit in which any part of the offense occurred  
6 may maintain an action for injunctive or other process to  
7 enforce the provisions of this section.

8 (6) The party bringing an action under this section  
9 may recover reasonable expenses in obtaining injunctive  
10 relief, including, but not limited to, investigative costs,  
11 court costs, reasonable attorney's fees, witness costs, and  
12 deposition expenses.

13 (7) The provisions of this section are in addition to  
14 any other civil, administrative, or criminal actions provided  
15 by law and may be imposed against both corporate and  
16 individual defendants.

17 Section 10. Subsection (1) of section 324.021, Florida  
18 Statutes, is amended to read:

19 324.021 Definitions; minimum insurance required.--The  
20 following words and phrases when used in this chapter shall,  
21 for the purpose of this chapter, have the meanings  
22 respectively ascribed to them in this section, except in those  
23 instances where the context clearly indicates a different  
24 meaning:

25 (1) MOTOR VEHICLE.--Every self-propelled vehicle which  
26 is designed and required to be licensed for use upon a  
27 highway, including trailers and semitrailers designed for use  
28 with such vehicles, except traction engines, road rollers,  
29 farm tractors, power shovels, and well drillers, and every  
30 vehicle which is propelled by electric power obtained from  
31 overhead wires but not operated upon rails, but not including

1 any bicycle or moped. However, the term "motor vehicle" shall  
2 not include any motor vehicle as defined in s. 627.732 ~~s.~~  
3 ~~627.732(1)~~ when the owner of such vehicle has complied with  
4 the requirements of ss. 627.730-627.7405, inclusive, unless  
5 the provisions of s. 324.051 apply; and, in such case, the  
6 applicable proof of insurance provisions of s. 320.02 apply.

7 Section 11. This act shall take effect July 1, 2001.

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10 SENATE SUMMARY

11 Creates the "Personal Injury Protection Insurance Reform  
12 Act." Provides immunity from liability for law  
13 enforcement officials who provide information to various  
14 agencies about acts of insurance fraud. Requires that the  
15 Department of Insurance designate maximum reimbursement  
16 allowances for certain tests and procedures. Requires  
17 that an insurer pay interest on overdue benefits. Allows  
18 the period for paying benefits to be tolled under certain  
19 circumstances. Revises requirements for awarding  
20 attorney's fees. Requires that PIP clinics register with  
21 the Agency for Health Care Administration and maintain a  
22 bond. Prohibits soliciting a person involved in a motor  
23 vehicle crash for certain purposes. Provides minimum  
24 terms of imprisonment for acts of insurance fraud. (See  
25 bill for details.)  
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