

Bill No. CS for SB 1596

Barcode 824364

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| | CHAMBER ACTION | |
| <u>Senate</u> | | <u>House</u> |

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05/02/2006 10:09 AM

11 Senator King moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 14, line 13, through

15 page 15, line 2, delete those lines

16

17 and insert:

18 Section 13. Subsection (7) of section 627.736, Florida

19 Statutes, is amended, and subsection (14) is added to that

20 section, to read:

21 627.736 Required personal injury protection benefits;

22 exclusions; priority; claims.--

23 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;

24 REPORTS.--

25 (a) Whenever the mental or physical condition of an

26 injured person covered by personal injury protection is

27 material to any claim that has been or may be made for past or

28 future personal injury protection insurance benefits, such

29 person shall, upon the request of an insurer, submit to mental

30 or physical examination by a physician or physicians. The

31 costs of any examinations requested by an insurer shall be

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1 borne entirely by the insurer. Such examination shall be
2 conducted within the municipality where the insured is
3 receiving treatment, or in a location reasonably accessible to
4 the insured, which, for purposes of this paragraph, means any
5 location within the municipality in which the insured resides,
6 or any location within 10 miles by road of the insured's
7 residence, provided such location is within the county in
8 which the insured resides. If the examination is to be
9 conducted in a location reasonably accessible to the insured,
10 and if there is no qualified physician to conduct the
11 examination in a location reasonably accessible to the
12 insured, then such examination shall be conducted in an area
13 of the closest proximity to the insured's residence. Personal
14 protection insurers are authorized to include reasonable
15 provisions in personal injury protection insurance policies
16 for mental and physical examination of those claiming personal
17 injury protection insurance benefits. An insurer may not
18 withdraw payment of a treating physician without the consent
19 of the injured person covered by the personal injury
20 protection, unless the insurer first obtains a valid report by
21 a Florida physician licensed under the same chapter as the
22 treating physician whose treatment authorization is sought to
23 be withdrawn, stating that treatment was not reasonable,
24 related, or necessary.

25 **(b)** A valid report is one that is prepared and signed
26 by the physician examining the injured person or reviewing the
27 treatment records of the injured person or other relevant
28 information ~~and is factually supported by the examination and~~
29 ~~treatment records~~ if reviewed and that has not been modified
30 by anyone other than the physician. Such a report may be
31 written by a physician who has reviewed the medical records of

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1 the insured, even if the physician has not physically examined
2 the insured.

3 (c) The physician preparing the report must be in
4 active practice, unless the physician is physically disabled.
5 Active practice means that during the 3 years immediately
6 preceding the date of the physical examination or review of
7 the treatment records the physician must have devoted
8 professional time to the active clinical practice of
9 evaluation, diagnosis, or treatment of medical conditions or
10 to the instruction of students in an accredited health
11 professional school or accredited residency program or a
12 clinical research program that is affiliated with an
13 accredited health professional school or teaching hospital or
14 accredited residency program.

15 (d) The physician preparing a report at the request of
16 an insurer and physicians rendering expert opinions on behalf
17 of persons claiming medical benefits for personal injury
18 protection, or on behalf of an insured through an attorney or
19 another entity, shall maintain, for at least 3 years, copies
20 of all examination reports as medical records and shall
21 maintain, for at least 3 years, records of all payments for
22 the examinations and reports.

23 (e) Neither an insurer nor any person acting at the
24 direction of or on behalf of an insurer may materially change
25 an opinion in a report prepared under this subsection
26 ~~paragraph~~ or direct the physician preparing the report to
27 change such opinion. The denial of a payment as the result of
28 such a changed opinion constitutes a material
29 misrepresentation under s. 626.9541(1)(i)2.; however, this
30 provision does not preclude the insurer from calling to the
31 attention of the physician errors of fact in the report based

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1 upon information in the claim file or on new information that
2 will become part of the claim file.

3 (f)(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 fails or unreasonably refuses to submit to an
21 examination, the personal injury protection carrier is no
22 longer liable for subsequent personal injury protection
23 benefits.

24 (g) During the independent medical examination,
25 neither the insurer, the insured, nor the assignee of the
26 insured may have counsel, a court reporter, or a videographer
27 present.

28 (h) This section does not preclude or limit the
29 ability of the insurer to assert that the claim was unrelated,
30 was not medically necessary, or was unreasonable or that the
31 amount of the charge was in excess of that permitted under, or

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1 in violation of, this section. Such an assertion by the
2 insurer may be made, through or without expert testimony, at
3 any time, including after payment of the claim or after the
4 30-day time period for payment set forth in this section.

5 (14) FRAUD ADVISORY NOTICE.--Upon receiving notice of
6 a claim under this section, an insurer shall provide a notice
7 to the insured or to a person for whom a claim for
8 reimbursement for diagnosis or treatment of injuries has been
9 filed, advising that:

10 (a) Pursuant to s. 626.9892, the Department of
11 Financial Services may pay rewards of up to \$25,000 to persons
12 providing information leading to the arrest and conviction of
13 persons committing crimes investigated by the Division of
14 Insurance Fraud arising from violations of s. 440.105, s.
15 624.15, s. 626.9541, s. 626.989, or s. 817.234.

16 (b) Solicitation of a person injured in a motor
17 vehicle crash for purposes of filing personal injury
18 protection or tort claims could be a violation of s. 817.234,
19 s. 817.505, or the rules regulating The Florida Bar and should
20 be immediately reported to the Division of Insurance Fraud if
21 such conduct has taken place.

22 Section 14. Section 627.7403, Florida Statutes, is
23 amended to read:

24 627.7403 Mandatory joinder of derivative claim.--

25 (a) In any action brought pursuant to the provisions
26 of s. 627.737 claiming personal injuries, all claims arising
27 out of the plaintiff's injuries, including all derivative
28 claims, shall be brought together, unless good cause is shown
29 why such claims should be brought separately.

30 (b) In any action brought under s. 627.736 claiming
31 personal injury protection benefits, all claims arising out of

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1 the claimant's injuries, including all claims resulting from a
 2 valid assignment of benefits that are, or with due diligence
 3 could have been, identified must be brought at the same time
 4 and consolidated into one cause of action or shall be deemed
 5 waived.

6 Section 15. Section 627.7404, Florida Statutes, is
 7 created to read:

8 627.7404 Interpleader.--An action for interpleader or
 9 in the nature of interpleader may be brought against two or
 10 more adverse claimants who claim or may claim entitlement to
 11 benefits that may be available pursuant to a policy of motor
 12 vehicle insurance. The claims of the several defendants need
 13 not have a common origin or be identical but may be adverse to
 14 and independent of each other. The plaintiff may deny
 15 liability in whole or in part to any or all of the defendants.
 16 A defendant may likewise obtain interpleader by way of
 17 counterclaim or cross-claim. the complaint for interpleader
 18 shall specify the nature and value of the benefits and must be
 19 accompanied by payment or tender into court of the benefits
 20 available. The complaint may request, and the court may grant
 21 prior to the entry of an order of interpleader, appropriate
 22 ancillary relief, including, but not limited to, preliminary
 23 injunctive relief. Interpleading of policy limits is prima
 24 facie evidence of good faith on the part of the insurance
 25 company. This section does not limit the joinder of parties as
 26 otherwise required or permitted by the laws of this state.

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 28 (Redesignate subsequent sections.)

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

2 And the title is amended as follows:

3 On page 3, lines 6-11, delete those lines

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5 and insert:

6 may not exceed 21 days; amending s. 627.736,
7 F.S.; revising requirements for the mental and
8 physical examination of injured persons and
9 reports relating to such examinations;
10 requiring insurers to provide certain persons
11 with notice of the department's Anti-Fraud
12 Reward Program and the criminal violations that
13 may be reported in pursuit of an award;
14 amending s. 627.7403, F.S.; providing that
15 certain claims must be consolidated or are
16 waived; creating s. 627.7404, F.S.; providing
17 for actions for interpleader; providing
18 procedures; allowing the provision of
19 appropriate ancillary relief; providing that
20 interpleading of policy limits is prima facie
21 evidence of an insurance company's good faith;
22 providing that the section does not limit the
23 otherwise lawful joinder of parties; amending
24 s. 627.7401, F.S.; requiring

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