

Bill No. HB 561, 1st Eng.

Barcode 413812

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

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Senator King moved the following amendment:

Senate Amendment (with title amendment)

Lines 361-379, delete those lines

Section 13. Subsection (7) of section 627.736, Florida Statutes, is amended, and subsection (14) is added to that section, to read:

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

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

(a) Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon the request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer shall be borne entirely by the insurer. Such examination shall be

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22 be withdrawn, stating that treatment was not reasonable,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

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

1 the insured.

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

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

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

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1 will become part of the claim file.

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

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

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

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

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

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

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

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

23 627.7403 Mandatory joinder of derivative claim.--

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

29 (b) In any action brought under s. 627.736 claiming
30 personal injury protection benefits, all claims arising out of
31 the claimant's injuries, including all claims resulting from a

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1 valid assignment of benefits that are, or with due diligence
2 could have been, identified must be brought at the same time
3 and consolidated into one cause of action or shall be deemed
4 waived.

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

7 627.7404 Interpleader.--An action for interpleader or
8 in the nature of interpleader may be brought against two or
9 more adverse claimants who claim or may claim entitlement to
10 benefits that may be available pursuant to a policy of motor
11 vehicle insurance. The claims of the several defendants need
12 not have a common origin or be identical but may be adverse to
13 and independent of each other. The plaintiff may deny
14 liability in whole or in part to any or all of the defendants.
15 A defendant may likewise obtain interpleader by way of
16 counterclaim or cross-claim. the complaint for interpleader
17 shall specify the nature and value of the benefits and must be
18 accompanied by payment or tender into court of the benefits
19 available. The complaint may request, and the court may grant
20 prior to the entry of an order of interpleader, appropriate
21 ancillary relief, including, but not limited to, preliminary
22 injunctive relief. Interpleading of policy limits is prima
23 facie evidence of good faith on the part of the insurance
24 company. This section does not limit the joinder of parties as
25 otherwise required or permitted by the laws of this state.

26
27 (Redesignate subsequent sections.)

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

31 And the title is amended as follows:

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1 Lines 48-51, delete those lines

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3 and insert:

4 and liabilities; amending s. 627.736, F.S.;

5 revising requirements for the mental and

6 physical examination of injured persons and

7 reports relating to such examinations;

8 requiring insurers to provide certain persons

9 with notice of the department's Anti-Fraud

10 Reward Program and the criminal violations that

11 may be reported in pursuit of an award;

12 amending s. 627.7403, F.S.; providing that

13 certain claims must be consolidated or are

14 waived; creating s. 627.7404, F.S.; providing

15 for actions for interpleader; providing

16 procedures; allowing the provision of

17 appropriate ancillary relief; providing that

18 interpleading of policy limits is prima facie

19 evidence of an insurance company's good faith;

20 providing that the section does not limit the

21 otherwise lawful joinder of parties;

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