

HB 1447

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1 A bill to be entitled
2 An act relating to insurance fraud and abuse; providing a
3 short title; providing legislative findings and intent;
4 amending s. 316.066, F.S.; revising circumstances under
5 which a motor vehicle crash report is required; requiring
6 certain crash reports to include the names of passengers;
7 amending s. 400.991, F.S.; requiring certain documents
8 relating to health care clinic licensure and exemption to
9 include a specified notice; creating s. 400.9933, F.S.;
10 providing for reports of suspected violations relating to
11 licensure of health care clinics under specified
12 provisions and the sharing of information; providing
13 qualified immunities with respect to such reports;
14 amending s. 443.1715, F.S.; deleting certain consent
15 requirements with respect to requests for wage information
16 from workers' compensation employers or carriers to the
17 Agency for Workforce Innovation; amending s. 456.072,
18 F.S.; providing that certain violations relating to health
19 care clinics constitute grounds for disciplinary action
20 against health care professionals; amending s. 626.989,
21 F.S.; including the knowing submission of certain false,
22 fraudulent, or misleading documents relating to health
23 care clinic licensure or exemption within the definition
24 of the term "fraudulent insurance act"; amending s.
25 627.7011, F.S.; allowing residential policies to provide
26 that the full replacement cost will be paid only when the
27 subject property is repaired or replaced; allowing an
28 insurer to hold back a sum reflecting the difference

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 | between the actual cash value and the replacement cost;
30 | amending s. 627.70131, F.S.; providing a deadline for a
31 | property insurer to pay or deny an initial or supplemental
32 | claim; amending s. 627.706, F.S.; specifying when optional
33 | sinkhole coverage must be made available; providing for
34 | coverage limits for optional sinkhole coverage; amending
35 | s. 627.7073, F.S.; defining the term "presumed correct"
36 | for purposes of sinkhole reports; amending s. 627.7074,
37 | F.S.; providing that the neutral evaluation process for
38 | sinkhole losses does not supersede appraisal clauses;
39 | amending s. 627.711, F.S.; revising who may sign a
40 | mitigation verification form submitted to an insurer;
41 | requiring the inspector to certify or attest to personal
42 | inspection of the structure; specifying what constitutes
43 | misconduct by an inspector; providing that misconduct is
44 | grounds for discipline by a licensing board and the Office
45 | of Insurance Regulation; providing criminal penalties for
46 | knowingly providing or uttering a false or fraudulent
47 | mitigation verification form with specified intent;
48 | requiring a mitigation verification form to contain a
49 | specified statement; providing that a policyholder who
50 | receives a premium discount or other specified benefit
51 | that is determined to have been false or fraudulent
52 | mitigation shall pay the wind deductible as increased by
53 | the amount of the fraudulent discount retroactive to when
54 | the fraudulent discount was first applied; amending s.
55 | 627.736, F.S.; specifying a form that must be submitted by
56 | health care clinics and other facilities along with

57 | invoices for payment of personal injury protection medical
 58 | benefits; providing that certain deadlines are tolled
 59 | while suspected fraudulent insurance acts are under
 60 | investigation, subject to certain required notice;
 61 | providing that benefits are not payable with respect to
 62 | fraudulent insurance acts; requiring compliance with law
 63 | regulating health care clinics and practice acts;
 64 | requiring initial medical reports within a specified
 65 | period for charges to be valid; providing exceptions;
 66 | amending s. 932.701, F.S.; including certain real and
 67 | personal property related to a fraudulent insurance act
 68 | within the definition of "contraband article" for purposes
 69 | of the Florida Contraband Forfeiture Act; providing an
 70 | effective date.

71 |
 72 | Be It Enacted by the Legislature of the State of Florida:

73 |
 74 | Section 1. (1) SHORT TITLE.—This act may be cited as the
 75 | "Comprehensive Insurance Fraud Investigation and Prevention Act
 76 | of 2010."

77 | (2) FINDINGS AND INTENT.—

78 | (a) The intent of this act is to enhance the investigation
 79 | and prevention of fraudulent insurance acts in this state, to
 80 | provide additional sanctions for such acts, and to revise
 81 | provisions of law that may create incentives for fraudulent
 82 | insurance acts.

83 | (b) The Legislature finds and declares as follows:

84 | 1. Automobile insurance fraud remains a major problem for

85 Florida consumers and insurers. According to the National
 86 Insurance Crime Bureau, Florida has had the highest number of
 87 staged accident questionable claims in the nation since at least
 88 2007, and the number of staged accident questionable claims in
 89 the state has grown rapidly.

90 2. The current regulatory process for health care clinics
 91 under part X of chapter 400, Florida Statutes, which was
 92 originally enacted in an effort to reduce automobile insurance
 93 fraud, is not sufficient to prevent fraud with respect to
 94 licensure exemptions and compliance with that part.

95 3. The ongoing crisis in the property insurance market,
 96 which reduces availability and affordability of coverage for
 97 consumers, is exacerbated by:

98 a. Fraudulent acts with respect to optional sinkhole
 99 coverage under part X of chapter 627, Florida Statutes.

100 b. Fraudulent claims for payment of replacement cost with
 101 respect to property that is not in fact repaired or replaced.

102 c. Fraudulent inspection reports that are used to obtain
 103 hurricane loss mitigation premium discounts for unqualified
 104 properties.

105 Section 2. Paragraphs (a) and (b) of subsection (3) of
 106 section 316.066, Florida Statutes, are amended to read:

107 316.066 Written reports of crashes.—

108 (3) (a) Every law enforcement officer who in the regular
 109 course of duty investigates a motor vehicle crash:

110 1. Which crash resulted in death or personal injury or
 111 involved a vehicle that was transporting any passenger other
 112 than the driver shall, within 10 days after completing the

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113 investigation, forward a written report of the crash to the
 114 department or traffic records center.

115 2. Which crash involved a violation of s. 316.061(1) or s.
 116 316.193 shall, within 10 days after completing the
 117 investigation, forward a written report of the crash to the
 118 department or traffic records center.

119 3. In which crash a vehicle was rendered inoperative to a
 120 degree which required a wrecker to remove it from traffic may,
 121 within 10 days after completing the investigation, forward a
 122 written report of the crash to the department or traffic records
 123 center if such action is appropriate, in the officer's
 124 discretion.

125 (b) In every case in which a crash report is required by
 126 this section and a written report to a law enforcement officer
 127 is not prepared, the law enforcement officer shall provide each
 128 party involved in the crash a short-form report, prescribed by
 129 the state, to be completed by the party. The short-form report
 130 must include:

- 131 1. The date, time, and location of the crash;
- 132 2. A description of the vehicles involved;
- 133 3. The names and addresses of the parties involved and the
 134 names and addresses of all passengers;
- 135 4. The names and addresses of witnesses;
- 136 5. The name, badge number, and law enforcement agency of
 137 the officer investigating the crash; and
- 138 6. The names of the insurance companies for the respective
 139 parties involved in the crash.

140 Section 3. Subsection (6) is added to section 400.991,
 141 Florida Statutes, to read:

142 400.991 License requirements; background screenings;
 143 prohibitions.—

144 (6) All forms that constitute part of the application for
 145 licensure or exemption from licensure under this part must
 146 contain the following statement:

147
 148 INSURANCE FRAUD NOTICE: Knowingly submitting a false,
 149 misleading, or fraudulent application or other
 150 document relating to licensure as a health care
 151 clinic, exemption from licensure as a health care
 152 clinic, or compliance with part X of chapter 400,
 153 Florida Statutes, is a fraudulent insurance act and is
 154 also grounds for discipline by licensing boards of the
 155 Florida Department of Health.

156
 157 Section 4. Section 400.9933, Florida Statutes, is created
 158 to read:

159 400.9933 Insurer reports of suspected violations.—A
 160 designated employee of an insurer whose responsibilities include
 161 the investigation and disposition of claims may provide
 162 information to the agency relating to the suspicion that a
 163 person knowingly provided or submitted to the agency or insurer
 164 any false, misleading, or fraudulent application or other
 165 document relating to licensure as a health care clinic under
 166 this part, exemption from licensure under this part, or any
 167 violation of this part and may also share such information with

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168 other designated employees employed by the same or other
169 insurers whose responsibilities include the investigation and
170 disposition of claims relating to fraudulent insurance acts,
171 provided the Division of Insurance Fraud of the Department of
172 Financial Services has been given written notice of the names
173 and job titles of such designated employees prior to such
174 designated employees sharing information. Unless the designated
175 employees of the insurer act in bad faith or in reckless
176 disregard for the rights of any insured, neither the insurer nor
177 its designated employees are civilly liable for libel, slander,
178 or any similar tort, and a civil action does not arise against
179 the insurer or its designated employees for any such information
180 provided to an insurer or to the National Insurance Crime Bureau
181 or the National Association of Insurance Commissioners.

182 Section 5. Paragraph (b) of subsection (2) of section
183 443.1715, Florida Statutes, is amended to read:

184 443.1715 Disclosure of information; confidentiality.—

185 (2) DISCLOSURE OF INFORMATION.—

186 (b)1. The employer or the employer's workers' compensation
187 carrier against whom a claim for benefits under chapter 440 has
188 been made, or a representative of either, may request from the
189 Agency for Workforce Innovation or its tax collection service
190 provider ~~division~~ records of wages of the employee reported to
191 the Agency for Workforce Innovation or its tax collection
192 service provider ~~division~~ by any employer for the quarter that
193 includes the date of the accident that is the subject of such
194 claim and for subsequent quarters. ~~The request must be made with~~
195 ~~the authorization or consent of the employee or any employer who~~

196 ~~paid wages to the employee subsequent to the date of the~~
 197 ~~accident.~~

198 2. The employer or carrier shall make the request on a
 199 form prescribed by rule for such purpose by the Agency for
 200 Workforce Innovation ~~division~~. Such form shall contain a
 201 certification by the requesting party that it is a party
 202 entitled to the information requested as authorized by this
 203 paragraph.

204 3. The Agency for Workforce Innovation or its tax
 205 collection service provider ~~division~~ shall provide the most
 206 current information readily available within 15 days after
 207 receiving the request.

208 Section 6. Paragraph (mm) is added to subsection (1) of
 209 section 456.072, Florida Statutes, to read:

210 456.072 Grounds for discipline; penalties; enforcement.—

211 (1) The following acts shall constitute grounds for which
 212 the disciplinary actions specified in subsection (2) may be
 213 taken:

214 (mm) Knowingly providing or submitting to the Agency for
 215 Health Care Administration or to any insurer any false,
 216 misleading, or fraudulent application or other document relating
 217 to licensure as a health care clinic under part X of chapter
 218 400, exemption from licensure as a health care clinic, or
 219 compliance with part X of chapter 400.

220 Section 7. Subsection (1) of section 626.989, Florida
 221 Statutes, is amended to read:

222 626.989 Investigation by department or Division of
 223 Insurance Fraud; compliance; immunity; confidential information;

224 reports to division; division investigator's power of arrest.-

225 (1)(a) For the purposes of this section, a person commits
 226 a "fraudulent insurance act" if:

227 1. The person knowingly and with intent to defraud
 228 presents, causes to be presented, or prepares with knowledge or
 229 belief that it will be presented, to or by an insurer, self-
 230 insurer, self-insurance fund, servicing corporation, purported
 231 insurer, broker, or any agent thereof, any written statement as
 232 part of, or in support of, an application for the issuance of,
 233 or the rating of, any insurance policy, or a claim for payment
 234 or other benefit pursuant to any insurance policy, which the
 235 person knows to contain materially false information concerning
 236 any fact material thereto or if the person conceals, for the
 237 purpose of misleading another, information concerning any fact
 238 material thereto.

239 2. Except as provided in s. 400.9933, the person knowingly
 240 provides or submits to the Agency for Health Care Administration
 241 or to any insurer any false, misleading, or fraudulent
 242 application or other document relating to licensure as a health
 243 care clinic under part X of chapter 400, exemption from
 244 licensure as a health care clinic, or compliance with part X of
 245 chapter 400.

246 (b) For the purposes of this section, the term "insurer"
 247 also includes any health maintenance organization and the term
 248 "insurance policy" also includes a health maintenance
 249 organization subscriber contract.

250 Section 8. Subsection (3) of section 627.7011, Florida
 251 Statutes, is amended to read:

252 627.7011 Homeowners' policies; offer of replacement cost
 253 coverage and law and ordinance coverage.—

254 (3) In order to reduce the incentive for claims fraud, the
 255 policy may provide that in the event of a loss for which a
 256 dwelling or personal property is insured on the basis of
 257 replacement costs, the insurer need not pay the full replacement
 258 cost until ~~shall pay the replacement cost without reservation or~~
 259 ~~holdback of any depreciation in value, whether or not the~~
 260 insured replaces or repairs the dwelling or property and may
 261 hold back a sum reflecting the difference between the actual
 262 cash value and the replacement cost.

263 Section 9. Paragraph (a) of subsection (5) of section
 264 627.70131, Florida Statutes, is amended to read:

265 627.70131 Insurer's duty to acknowledge communications
 266 regarding claims; investigation.—

267 (5) (a) Within 90 days after an insurer receives notice of
 268 an initial or supplemental ~~a~~ property insurance claim from a
 269 policyholder, the insurer shall pay or deny such claim or a
 270 portion of the claim unless the failure to pay such claim or a
 271 portion of the claim is caused by factors beyond the control of
 272 the insurer which reasonably prevent such payment. Any payment
 273 of a claim or portion of a claim paid 90 days after the insurer
 274 receives notice of the claim, or paid more than 15 days after
 275 there are no longer factors beyond the control of the insurer
 276 which reasonably prevented such payment, whichever is later,
 277 shall bear interest at the rate set forth in s. 55.03. Interest
 278 begins to accrue from the date the insurer receives notice of
 279 the claim. The provisions of this subsection may not be waived,

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280 voided, or nullified by the terms of the insurance policy. If
281 there is a right to prejudgment interest, the insured shall
282 select whether to receive prejudgment interest or interest under
283 this subsection. Interest is payable when the claim or portion
284 of the claim is paid. Failure to comply with this subsection
285 constitutes a violation of this code. However, failure to comply
286 with this subsection shall not form the sole basis for a private
287 cause of action.

288 Section 10. Subsection (1) of section 627.706, Florida
289 Statutes, is amended to read:

290 627.706 Sinkhole insurance; catastrophic ground cover
291 collapse; definitions.—

292 (1) Every insurer authorized to transact property
293 insurance in this state shall provide coverage for a
294 catastrophic ground cover collapse and shall make available, for
295 an appropriate additional premium, coverage for sinkhole losses
296 on any structure, including contents of personal property
297 contained therein, to the extent provided in the form to which
298 the coverage attaches. The insurer shall make such coverage
299 available at the time of the policyholder's initial application
300 for coverage or, with respect to coverage in effect on October
301 1, 2010, at the first renewal of the policy after October 1,
302 2010. In order to reduce the impact of sinkhole-related
303 insurance fraud, the insurer making sinkhole coverage available
304 under this subsection shall specify a sinkhole coverage limit
305 equal to no more than 25 percent of the structure ("Coverage A")
306 limit under the policy. The sinkhole coverage limit does not
307 affect the coverage limit for catastrophic ground cover

308 collapse. The coverage limit for sinkhole losses includes
 309 payments for both indemnification and expenses. A policy for
 310 ~~residential property insurance may include a deductible amount~~
 311 ~~applicable to sinkhole losses equal to 1 percent, 2 percent, 5~~
 312 ~~percent, or 10 percent of the policy dwelling limits, with~~
 313 ~~appropriate premium discounts offered with each deductible~~
 314 ~~amount.~~

315 Section 11. Paragraph (c) of subsection (1) of section
 316 627.7073, Florida Statutes, is amended to read:

317 627.7073 Sinkhole reports.—

318 (1) Upon completion of testing as provided in s. 627.7072,
 319 the professional engineer or professional geologist shall issue
 320 a report and certification to the insurer and the policyholder
 321 as provided in this section.

322 (c) The respective findings, opinions, and recommendations
 323 of the professional engineer or professional geologist as to the
 324 cause of distress to the property and the findings, opinions,
 325 and recommendations of the professional engineer as to land and
 326 building stabilization and foundation repair shall be presumed
 327 correct. For purposes of this paragraph, the term "presumed
 328 correct" means that the party disputing a finding, opinion, or
 329 recommendation has the burden of proving by a preponderance of
 330 the evidence that the finding, opinion, or recommendation is not
 331 valid.

332 Section 12. Subsection (3) of section 627.7074, Florida
 333 Statutes, is amended to read:

334 627.7074 Alternative procedure for resolution of disputed
 335 sinkhole insurance claims.—

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336 (3) Following the receipt of the report provided under s.
337 627.7073 or the denial of a claim for a sinkhole loss, the
338 insurer shall notify the policyholder of his or her right to
339 participate in the neutral evaluation program under this
340 section. Neutral evaluation supersedes the alternative dispute
341 resolution process under s. 627.7015, but does not supersede the
342 appraisal clause, if any, of the insurance policy. The insurer
343 shall provide to the policyholder the consumer information
344 pamphlet prepared by the department pursuant to paragraph
345 (2) (b).

346 Section 13. Section 627.711, Florida Statutes, is amended
347 to read:

348 627.711 Notice of premium discounts for hurricane loss
349 mitigation; uniform mitigation verification inspection form.—

350 (1) Using a form prescribed by the Office of Insurance
351 Regulation, the insurer shall clearly notify the applicant or
352 policyholder of any personal lines residential property
353 insurance policy, at the time of the issuance of the policy and
354 at each renewal, of the availability and the range of each
355 premium discount, credit, other rate differential, or reduction
356 in deductibles, and combinations of discounts, credits, rate
357 differentials, or reductions in deductibles, for properties on
358 which fixtures or construction techniques demonstrated to reduce
359 the amount of loss in a windstorm can be or have been installed
360 or implemented. The prescribed form shall describe generally
361 what actions the policyholders may be able to take to reduce
362 their windstorm premium. The prescribed form and a list of such
363 ranges approved by the office for each insurer licensed in the

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364 state and providing such discounts, credits, other rate
 365 differentials, or reductions in deductibles for properties
 366 described in this subsection shall be available for electronic
 367 viewing and download from the Department of Financial Services'
 368 or the Office of Insurance Regulation's Internet website. The
 369 Financial Services Commission may adopt rules to implement this
 370 subsection.

371 (2) ~~By July 1, 2007,~~ The Financial Services Commission
 372 shall develop by rule a uniform mitigation verification
 373 inspection form that shall be used by all insurers when
 374 submitted by policyholders for the purpose of factoring
 375 discounts for wind insurance. In developing the form, the
 376 commission shall seek input from insurance, construction, and
 377 building code representatives. Further, the commission shall
 378 provide guidance as to the length of time the inspection results
 379 are valid. An insurer shall accept as valid a uniform mitigation
 380 verification form ~~certified by the Department of Financial~~
 381 ~~Services or~~ signed by:

382 ~~(a) A hurricane mitigation inspector certified by the My~~
 383 ~~Safe Florida Home program;~~

384 (a) ~~(b)~~ A building code inspector certified under s.
 385 468.607;

386 (b) ~~(e)~~ A general, building, or residential contractor
 387 licensed under s. 489.111;

388 (c) ~~(d)~~ A professional engineer licensed under s. 471.015
 389 who has passed the appropriate equivalency test of the building
 390 code training program as required by s. 553.841;

391 (d) ~~(e)~~ A professional architect licensed under s. 481.213;

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392 | or

393 | ~~(e)-(f)~~ Any other individual or entity recognized by the
394 | insurer as possessing the necessary qualifications to properly
395 | complete a uniform mitigation verification form.

396 | (3) An individual or entity that is authorized to sign the
397 | mitigation verification form must certify or attest to personal
398 | inspection of the structures referenced by the form.

399 | (4) An individual or entity that signs a uniform
400 | mitigation form may not commit misconduct in performing
401 | hurricane mitigation inspections or in completing a uniform
402 | mitigation form that causes financial harm to a customer or the
403 | customer's insurer or that jeopardizes a customer's health,
404 | safety, and welfare. Misconduct occurs when an authorized
405 | mitigation inspector signs a uniform mitigation verification
406 | form:

407 | (a) Falsely indicating that he or she personally inspected
408 | the structures referenced by the form;

409 | (b) Falsely indicating the existence of a feature that
410 | entitles an insured to a mitigation discount that the inspector
411 | knows does not exist or did not personally inspect;

412 | (c) Containing erroneous information due to the gross
413 | negligence of the inspector; or

414 | (d) Containing a pattern of demonstrably false information
415 | regarding the existence of mitigation features that the
416 | inspector knows could give an insured a false evaluation of the
417 | ability of the structure to withstand major damage from a
418 | hurricane, endangering the safety of the insured's life and
419 | property.

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420 (5) The licensing board of an authorized mitigation
421 inspector who violates subsection (4) may commence disciplinary
422 proceedings and impose administrative fines and other sanctions
423 authorized under the inspector's licensing act.

424 (6) The Office of Insurance Regulation may commence
425 disciplinary proceedings against an individual or entity
426 authorized to sign a uniform mitigation form under paragraph
427 (2) (e) who violates subsection (4) and may impose administrative
428 fines and other sanctions authorized under s. 624.310.

429 (7)-(3) An individual or entity who knowingly provides or
430 utters a false or fraudulent mitigation verification form with
431 the intent to obtain or receive a discount on an insurance
432 premium to which the individual or entity is not entitled
433 commits, for a first violation, a misdemeanor of the second
434 first degree, punishable as provided in s. 775.082 or s.
435 775.083. An individual or entity who commits a second or
436 subsequent violation commits a felony of the third degree,
437 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

438 (8) Any mitigation verification form prepared by an
439 inspector or submitted by or on behalf of an insured must
440 contain the following statement in boldface type no smaller than
441 12 points:

442
443 INSURANCE FRAUD NOTICE: Fraudulent mitigation forms may
444 subject you to substantial fines or imprisonment. Knowingly
445 preparing or submitting a false, misleading, or fraudulent
446 mitigation verification form or other document relating to
447 a mitigation discount may be a felony under section

448 817.234, Florida Statutes. In addition, for an individual
 449 or entity to knowingly provide or utter a false or
 450 fraudulent mitigation verification form with the intent to
 451 obtain or receive a discount on an insurance premium to
 452 which the individual or entity is not entitled is a second
 453 degree misdemeanor for a first violation under section
 454 627.711, Florida Statutes, and a felony under section
 455 627.711, Florida Statutes, for a subsequent violation.

456
 457 (9) A policyholder who receives a premium discount,
 458 credit, other rate differential, or reduction in deductibles, or
 459 a combination of discounts, credits, rate differentials, or
 460 reductions in deductibles for properties on which fixtures or
 461 construction techniques to reduce the amount of loss in a
 462 windstorm can be or have been installed or implemented that is
 463 determined to have been false or fraudulent mitigation shall pay
 464 the wind deductible plus the amount of the fraudulent discount,
 465 credit, other rate differential, and reduction in deductibles
 466 received. This payment shall apply retroactively from the policy
 467 year that the fraudulent discount was first applied.

468 Section 14. Paragraph (a) of subsection (1), paragraphs
 469 (b) and (h) of subsection (4), and paragraph (b) of subsection
 470 (5) of section 627.736, Florida Statutes, are amended, and
 471 paragraph (h) is added to subsection (5) of that section, to
 472 read:

473 627.736 Required personal injury protection benefits;
 474 exclusions; priority; claims.—

475 (1) REQUIRED BENEFITS.—Every insurance policy complying

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476 with the security requirements of s. 627.733 shall provide
477 personal injury protection to the named insured, relatives
478 residing in the same household, persons operating the insured
479 motor vehicle, passengers in such motor vehicle, and other
480 persons struck by such motor vehicle and suffering bodily injury
481 while not an occupant of a self-propelled vehicle, subject to
482 the provisions of subsection (2) and paragraph (4)(e), to a
483 limit of \$10,000 for loss sustained by any such person as a
484 result of bodily injury, sickness, disease, or death arising out
485 of the ownership, maintenance, or use of a motor vehicle as
486 follows:

487 (a) Medical benefits.—Eighty percent of all reasonable
488 expenses for medically necessary medical, surgical, X-ray,
489 dental, and rehabilitative services, including prosthetic
490 devices, and medically necessary ambulance, hospital, and
491 nursing services. However, the medical benefits shall provide
492 reimbursement only for such services and care that are lawfully
493 provided, supervised, ordered, or prescribed by a physician
494 licensed under chapter 458 or chapter 459, a dentist licensed
495 under chapter 466, or a chiropractic physician licensed under
496 chapter 460 or that are provided by any of the following persons
497 or entities:

498 1. A hospital or ambulatory surgical center licensed under
499 chapter 395.

500 2. A person or entity licensed under ss. 401.2101-401.45
501 that provides emergency transportation and treatment.

502 3. An entity wholly owned by one or more physicians
503 licensed under chapter 458 or chapter 459, chiropractic

504 physicians licensed under chapter 460, or dentists licensed
 505 under chapter 466 or by such practitioner or practitioners and
 506 the spouse, parent, child, or sibling of that practitioner or
 507 those practitioners.

508 4. An entity wholly owned, directly or indirectly, by a
 509 hospital or hospitals.

510 5. A health care clinic licensed under ss. 400.990-400.995
 511 that is:

512 a. Accredited by the Joint Commission on Accreditation of
 513 Healthcare Organizations, the American Osteopathic Association,
 514 the Commission on Accreditation of Rehabilitation Facilities, or
 515 the Accreditation Association for Ambulatory Health Care, Inc.;
 516 or

517 b. A health care clinic that:

518 (I) Has a medical director licensed under chapter 458,
 519 chapter 459, or chapter 460;

520 (II) Has been continuously licensed for more than 3 years
 521 or is a publicly traded corporation that issues securities
 522 traded on an exchange registered with the United States
 523 Securities and Exchange Commission as a national securities
 524 exchange; and

525 (III) Provides at least four of the following medical
 526 specialties:

527 (A) General medicine.

528 (B) Radiography.

529 (C) Orthopedic medicine.

530 (D) Physical medicine.

531 (E) Physical therapy.

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- 532 (F) Physical rehabilitation.
- 533 (G) Prescribing or dispensing outpatient prescription
- 534 medication.
- 535 (H) Laboratory services.
- 536

537 When any services under this paragraph are provided by an entity
 538 or clinic described in subparagraph 3., subparagraph 4., or
 539 subparagraph 5., the medical benefits shall provide
 540 reimbursement for such services only if the entity or clinic
 541 provides to the insurer a form adopted by rule of the Financial
 542 Services Commission that documents that the entity or clinic
 543 meets the criteria of subparagraph 3., subparagraph 4., or
 544 subparagraph 5. and that includes a sworn statement or affidavit
 545 to that effect. ~~The Financial Services Commission shall adopt by~~
 546 ~~rule the form that must be used by an insurer and a health care~~
 547 ~~provider specified in subparagraph 3., subparagraph 4., or~~
 548 ~~subparagraph 5. to document that the health care provider meets~~
 549 ~~the criteria of this paragraph, which rule must include a~~
 550 ~~requirement for a sworn statement or affidavit.~~

551

552 Only insurers writing motor vehicle liability insurance in this
 553 state may provide the required benefits of this section, and no
 554 such insurer shall require the purchase of any other motor
 555 vehicle coverage other than the purchase of property damage
 556 liability coverage as required by s. 627.7275 as a condition for
 557 providing such required benefits. Insurers may not require that
 558 property damage liability insurance in an amount greater than
 559 \$10,000 be purchased in conjunction with personal injury

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560 protection. Such insurers shall make benefits and required
561 property damage liability insurance coverage available through
562 normal marketing channels. Any insurer writing motor vehicle
563 liability insurance in this state who fails to comply with such
564 availability requirement as a general business practice shall be
565 deemed to have violated part IX of chapter 626, and such
566 violation shall constitute an unfair method of competition or an
567 unfair or deceptive act or practice involving the business of
568 insurance; and any such insurer committing such violation shall
569 be subject to the penalties afforded in such part, as well as
570 those which may be afforded elsewhere in the insurance code.

571 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under
572 ss. 627.730-627.7405 shall be primary, except that benefits
573 received under any workers' compensation law shall be credited
574 against the benefits provided by subsection (1) and shall be due
575 and payable as loss accrues, upon receipt of reasonable proof of
576 such loss and the amount of expenses and loss incurred which are
577 covered by the policy issued under ss. 627.730-627.7405. When
578 the Agency for Health Care Administration provides, pays, or
579 becomes liable for medical assistance under the Medicaid program
580 related to injury, sickness, disease, or death arising out of
581 the ownership, maintenance, or use of a motor vehicle, benefits
582 under ss. 627.730-627.7405 shall be subject to the provisions of
583 the Medicaid program.

584 (b) Personal injury protection insurance benefits paid
585 pursuant to this section shall be overdue if not paid within 30
586 days after the insurer is furnished written notice of the fact
587 of a covered loss and of the amount of same. If such written

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588 notice is not furnished to the insurer as to the entire claim,
589 any partial amount supported by written notice is overdue if not
590 paid within 30 days after such written notice is furnished to
591 the insurer. Any part or all of the remainder of the claim that
592 is subsequently supported by written notice is overdue if not
593 paid within 30 days after such written notice is furnished to
594 the insurer. When an insurer pays only a portion of a claim or
595 rejects a claim, the insurer shall provide at the time of the
596 partial payment or rejection an itemized specification of each
597 item that the insurer had reduced, omitted, or declined to pay
598 and any information that the insurer desires the claimant to
599 consider related to the medical necessity of the denied
600 treatment or to explain the reasonableness of the reduced
601 charge, provided that this shall not limit the introduction of
602 evidence at trial; and the insurer shall include the name and
603 address of the person to whom the claimant should respond and a
604 claim number to be referenced in future correspondence. However,
605 notwithstanding the fact that written notice has been furnished
606 to the insurer, any payment shall not be deemed overdue when the
607 insurer has reasonable proof to establish that the insurer is
608 not responsible for the payment. For the purpose of calculating
609 the extent to which any benefits are overdue, payment shall be
610 treated as being made on the date a draft or other valid
611 instrument which is equivalent to payment was placed in the
612 United States mail in a properly addressed, postpaid envelope
613 or, if not so posted, on the date of delivery. This paragraph
614 does not preclude or limit the ability of the insurer to assert
615 that the claim was unrelated, was not medically necessary, or

616 was unreasonable or that the amount of the charge was in excess
 617 of that permitted under, or in violation of, subsection (5).
 618 Such assertion by the insurer may be made at any time, including
 619 after payment of the claim or after the 30-day time period for
 620 payment set forth in this paragraph. Notwithstanding any other
 621 provisions of this paragraph, the 30-day deadline for payment or
 622 denial is tolled with respect to any portion or portions of a
 623 claim for which the insurer has a reasonable suspicion of a
 624 fraudulent insurance act as defined in s. 626.989, while the
 625 insurer is investigating the suspected fraudulent insurance
 626 acts, if the insurer notifies the insured within the 30-day
 627 period that it is investigating such portion or portions of the
 628 claim.

629 (h) Benefits shall not be due or payable to or on the
 630 behalf of any ~~an insured person if that~~ person if that person
 631 has committed, by a material act or omission, any insurance
 632 fraud relating to personal injury protection coverage under the
 633 ~~his or her~~ policy, if the fraud is admitted to in a sworn
 634 statement by the insured or if it is established in a court of
 635 competent jurisdiction. Any insurance fraud shall void all
 636 coverage arising from the claim related to such fraud under the
 637 personal injury protection coverage of the insured person who
 638 committed the fraud, irrespective of whether a portion of the
 639 insured person's claim may be legitimate, and any benefits paid
 640 prior to the discovery of the insured person's insurance fraud
 641 shall be recoverable by the insurer from the person who
 642 committed insurance fraud in their entirety. As used in this
 643 paragraph, the term "insurance fraud" includes any act or

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644 omission included within the term "fraudulent insurance act"
645 under s. 626.989. The prevailing party is entitled to its costs
646 and attorney's fees in any action in which it prevails in an
647 insurer's action to enforce its right of recovery under this
648 paragraph.

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

650 (b)1. An insurer or insured is not required to pay a claim
651 or charges:

652 a. Made by a broker or by a person making a claim on
653 behalf of a broker.†

654 b. For any service or treatment that was not lawful at the
655 time rendered.†

656 c.(I) To any person who, with respect to personal injury
657 protection coverage of a particular injured person or insured,
658 knowingly submits or attempts to submit a false or misleading
659 statement, record, or bill; knowingly submits or attempts to
660 submit false or misleading information relating to the claim or
661 charges; or has otherwise committed or attempted to commit a
662 fraudulent insurance act as defined in s. 626.989.

663 (II) A person described in sub-sub-subparagraph (I) is not
664 entitled to payment of any claims or charges with respect to the
665 injured person or insured, irrespective of whether some portion
666 of such person's claim or charges with respect to the injured
667 person or insured might not be false, misleading, or fraudulent
668 within the meaning of sub-sub-subparagraph (I). All personal
669 injury protection coverage with respect to services provided to
670 the injured person or insured by a person described in sub-sub-
671 subparagraph (I) is void, but this limitation does not affect

672 services provided to the injured person or insured by persons
 673 other than a person described in sub-sub-subparagraph (I).

674 (III) In addition to any other remedies provided by law,
 675 an insurer receiving a claim or charge as described in this sub-
 676 subparagraph has the right, under any available common law or
 677 statutory cause of action, to recover from a person described in
 678 sub-sub-subparagraph (I) any sums it previously paid to such
 679 person with respect to the injured person or insured.

680 (IV) The injured person or insured is not liable for, and
 681 a provider or other person receiving an assignment of benefits
 682 shall not bill the injured person or insured for, any claims or
 683 charges that are denied by the insurer under sub-sub-
 684 subparagraphs (I) and (II) or any amounts that the insurer
 685 recovers under sub-sub-subparagraph (III). Any agreement
 686 requiring the injured person or insured to pay such charges is
 687 void and unenforceable.

688 d. With respect to a bill or statement that does not fully
 689 ~~substantially~~ meet the applicable requirements of paragraph (d);
 690 that is submitted by a facility that is not fully in compliance
 691 with applicable requirements of part X of chapter 400, including
 692 provisions relating to licensure, exemption from licensure, and
 693 clinic responsibilities; or that is submitted by a practitioner
 694 who is not in full compliance with the applicable practice act.
 695 In the course of investigating compliance as required by this
 696 sub-subparagraph, or as part of the investigation of a suspected
 697 fraudulent insurance act under paragraph (4) (b), the insurer may
 698 require an examination under oath of a provider, practitioner,
 699 medical director, clinic director, or owner of a clinic or other

700 facility submitting a bill or statement.

701 e. For any treatment or service that is upcoded, or that
 702 is unbundled when such treatment or services should be bundled,
 703 in accordance with paragraph (d). To facilitate prompt payment
 704 of lawful services, an insurer may change codes that it
 705 determines to have been improperly or incorrectly upcoded or
 706 unbundled, and may make payment based on the changed codes,
 707 without affecting the right of the provider to dispute the
 708 change by the insurer, provided that before doing so, the
 709 insurer must contact the health care provider and discuss the
 710 reasons for the insurer's change and the health care provider's
 711 reason for the coding, or make a reasonable good faith effort to
 712 do so, as documented in the insurer's file.~~;~~ ~~and~~

713 f. For medical services or treatment billed by a physician
 714 and not provided in a hospital unless such services are rendered
 715 by the physician or are incident to his or her professional
 716 services and are included on the physician's bill, including
 717 documentation verifying that the physician is responsible for
 718 the medical services that were rendered and billed.

719 2. The Department of Health, in consultation with the
 720 appropriate professional licensing boards, shall adopt, by rule,
 721 a list of diagnostic tests deemed not to be medically necessary
 722 for use in the treatment of persons sustaining bodily injury
 723 covered by personal injury protection benefits under this
 724 section. The initial list shall be adopted by January 1, 2004,
 725 and shall be revised from time to time as determined by the
 726 Department of Health, in consultation with the respective
 727 professional licensing boards. Inclusion of a test on the list

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728 of invalid diagnostic tests shall be based on lack of
729 demonstrated medical value and a level of general acceptance by
730 the relevant provider community and shall not be dependent for
731 results entirely upon subjective patient response.
732 Notwithstanding its inclusion on a fee schedule in this
733 subsection, an insurer or insured is not required to pay any
734 charges or reimburse claims for any invalid diagnostic test as
735 determined by the Department of Health.

736 (h) Charges for treatment are not valid unless the
737 provider of such treatment, within 14 days after initial contact
738 with the injured person, provides to the insurer an initial
739 medical report outlining the medical history, examination
740 findings, and preliminary diagnosis and treatment plan. This
741 paragraph does not apply to medical services billed by a
742 hospital or other provider of emergency services and care as
743 defined in s. 395.002 or inpatient services rendered at a
744 hospital-owned facility.

745 Section 15. Paragraph (a) of subsection (2) of section
746 932.701, Florida Statutes, is amended to read:

747 932.701 Short title; definitions.—

748 (2) As used in the Florida Contraband Forfeiture Act:

749 (a) "Contraband article" means:

750 1. Any controlled substance as defined in chapter 893 or
751 any substance, device, paraphernalia, or currency or other means
752 of exchange that was used, was attempted to be used, or was
753 intended to be used in violation of any provision of chapter
754 893, if the totality of the facts presented by the state is
755 clearly sufficient to meet the state's burden of establishing

756 | probable cause to believe that a nexus exists between the
757 | article seized and the narcotics activity, whether or not the
758 | use of the contraband article can be traced to a specific
759 | narcotics transaction.

760 | 2. Any gambling paraphernalia, lottery tickets, money,
761 | currency, or other means of exchange which was used, was
762 | attempted, or intended to be used in violation of the gambling
763 | laws of the state.

764 | 3. Any equipment, liquid or solid, which was being used,
765 | is being used, was attempted to be used, or intended to be used
766 | in violation of the beverage or tobacco laws of the state.

767 | 4. Any motor fuel upon which the motor fuel tax has not
768 | been paid as required by law.

769 | 5. Any personal property, including, but not limited to,
770 | any vessel, aircraft, item, object, tool, substance, device,
771 | weapon, machine, vehicle of any kind, money, securities, books,
772 | records, research, negotiable instruments, or currency, which
773 | was used or was attempted to be used as an instrumentality in
774 | the commission of, or in aiding or abetting in the commission
775 | of, any felony, whether or not comprising an element of the
776 | felony, or which is acquired by proceeds obtained as a result of
777 | a violation of the Florida Contraband Forfeiture Act.

778 | 6. Any real property, including any right, title,
779 | leasehold, or other interest in the whole of any lot or tract of
780 | land, which was used, is being used, or was attempted to be used
781 | as an instrumentality in the commission of, or in aiding or
782 | abetting in the commission of, any felony, or which is acquired
783 | by proceeds obtained as a result of a violation of the Florida

784 Contraband Forfeiture Act.

785 7. Any personal property, including, but not limited to,
 786 equipment, money, securities, books, records, research,
 787 negotiable instruments, currency, or any vessel, aircraft, item,
 788 object, tool, substance, device, weapon, machine, or vehicle of
 789 any kind in the possession of or belonging to any person who
 790 takes aquaculture products in violation of s. 812.014(2)(c).

791 8. Any motor vehicle offered for sale in violation of s.
 792 320.28.

793 9. Any motor vehicle used during the course of committing
 794 an offense in violation of s. 322.34(9)(a).

795 10. Any photograph, film, or other recorded image,
 796 including an image recorded on videotape, a compact disc,
 797 digital tape, or fixed disk, that is recorded in violation of s.
 798 810.145 and is possessed for the purpose of amusement,
 799 entertainment, sexual arousal, gratification, or profit, or for
 800 the purpose of degrading or abusing another person.

801 11. Any real property, including any right, title,
 802 leasehold, or other interest in the whole of any lot or tract of
 803 land, which is acquired by proceeds obtained as a result of
 804 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
 805 property, including, but not limited to, equipment, money,
 806 securities, books, records, research, negotiable instruments, or
 807 currency; or any vessel, aircraft, item, object, tool,
 808 substance, device, weapon, machine, or vehicle of any kind in
 809 the possession of or belonging to any person which is acquired
 810 by proceeds obtained as a result of Medicaid fraud under s.
 811 409.920 or s. 409.9201.

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812 12.a. Any personal property, including, but not limited
813 to, any vessel, aircraft, item, object, tool, substance, device,
814 weapon, machine, vehicle of any kind, money, securities, books,
815 records, research, negotiable instruments, or currency, which
816 was used or was attempted to be used as an instrumentality in
817 the commission of, or in aiding or abetting in the commission
818 of, any fraudulent insurance act as defined in s. 626.989,
819 whether or not comprising an element of the fraudulent insurance
820 act.

821 b. Any real property, including any right, title,
822 leasehold, or other interest in the whole of any lot or tract of
823 land, which is used in or acquired by proceeds obtained as a
824 result of a fraudulent insurance act as defined in s. 626.989.

825 c. Any personal property, including, but not limited to,
826 equipment, money, securities, books, records, research,
827 negotiable instruments, or currency, or any vessel, aircraft,
828 item, object, tool, substance, device, weapon, machine, or
829 vehicle of any kind in the possession of or belonging to any
830 person, which is acquired by proceeds obtained as a result of a
831 fraudulent insurance act as defined in s. 626.989.

832 Section 16. This act shall take effect October 1, 2010.