1 A bill to be entitled
2 An act relating to personal injury protection insurance;
3 amending s. 26.012, F.S.; providing that circuit courts
4 have exclusive original jurisdiction of unresolved
5 arbitration actions involving the Florida Motor Vehicle
6 No-Fault Law; amending s. 627.4137, F.S.; requiring
7 requests made to a self-insured corporation for disclosure
8 of certain information to be by certified mail; amending
9 s. 627.731, F.S.; providing legislative intent; amending
10 s. 627.736, F.S.; revising a reference to Medicare Part B
11 payments as the schedule for an insurer's discretionary
12 use when limiting reimbursement of certain medical
13 services, supplies, and care; specifying the Medicare fee
14 schedule or payment limitation that is to be used by an
15 insurer to limit reimbursements for certain medical
16 services, supplies, and care; requiring both the insured
17 and any assignee of benefits or payments to cooperate
18 under the terms of the policy; requiring a provider who is
19 assigned the benefits of an insured to submit to
20 examination under oath under certain circumstances;
21 requiring a provider to produce certain knowledgeable
22 individuals for examination under oath under certain
23 circumstances; requiring certain records be provided by
24 claimants for inspection if requested by an insurer;
25 authorizing methods for recording examinations under oath;
26 providing that certain actions by an insurer constitute an
27 unfair and deceptive trade practice; subjecting insurers
28 to penalties for an unfair and deceptive trade practice;

29 creating a presumption relating to failing to appear for
30 an examination; specifying that submitting to an
31 examination is a condition precedent to recovering
32 benefits; providing for application relating to attorney's
33 fees; limiting the amount of recoverable attorney's fees;
34 prohibiting the use of a contingency risk multiplier when
35 calculating attorney's fees; authorizing binding
36 arbitration as a policy provision for dispute resolution;
37 providing requirements and procedures relating to
38 arbitration; providing for the recovery of specified
39 attorney's fees and costs by a prevailing party in
40 arbitration; defining prevailing party; providing for
41 judicial appeal of an arbitration award; providing for the
42 scope of review on appeal; providing an effective date.
43
44 Be It Enacted by the Legislature of the State of Florida:
45
46 Section 1. Subsection (2) of section 26.012, Florida
47 Statutes, is amended to read:
48 26.012 Jurisdiction of circuit court.—
49 (2) They shall have exclusive original jurisdiction:
50 (a) In all actions at law not cognizable by the county
51 courts.;
52 (b) Of proceedings relating to the settlement of the
53 estates of decedents and minors, the granting of letters
54 testamentary, guardianship, involuntary hospitalization, the
55 determination of incompetency, and other jurisdiction usually
56 pertaining to courts of probate.;

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57 (c) In all cases in equity including all cases relating to
58 juveniles except traffic offenses as provided in chapters 316
59 and 985.~~;~~
60 (d) Of all felonies and of all misdemeanors arising out of
61 the same circumstances as a felony which is also charged.~~;~~
62 (e) In all cases involving legality of any tax assessment
63 or toll or denial of refund, except as provided in s. 72.011.~~;~~
64 (f) In actions of ejectment.~~; and~~
65 (g) In all actions involving the title and boundaries of
66 real property.
67 (h) In all actions not resolved by arbitration involving
68 the Florida Motor Vehicle No-Fault Law, codified in ss. 627.730-
69 627.7407.
70 Section 2. Subsection (3) is added to section 627.4137,
71 Florida Statutes, to read:
72 627.4137 Disclosure of certain information required.—
73 (3) Any request made to a self-insured corporation under
74 this section must be sent via United States certified mail to
75 the registered agent of the disclosing entity.
76 Section 3. Section 627.731, Florida Statutes, is amended
77 to read:
78 627.731 Purpose and legislative intent.—
79 (1) The purpose of ss. 627.730-627.7405 is to provide for
80 medical, surgical, funeral, and disability insurance benefits
81 without regard to fault, and to require motor vehicle insurance
82 securing such benefits, for motor vehicles required to be
83 registered in this state and, with respect to motor vehicle
84 accidents, a limitation on the right to claim damages for pain,

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85 suffering, mental anguish, and inconvenience.
86 (2) It is the intent of the Legislature to balance the
87 insured's interest in prompt payment of valid claims for no-
88 fault insurance benefits with the public's interest in reducing
89 fraud, abuse, and overuse of the no-fault system. To these ends,
90 the intent of this act is to enhance the investigation and
91 prevention of fraudulent insurance acts in this state, to remove
92 incentives for manufactured litigation, and to revise provisions
93 of law that may create incentives for fraudulent insurance acts.
94 As such, ss. 627.730-627.7405 shall be construed according to
95 the plain language of the statutory provisions which are
96 designed to meet these goals.
97 (3) It is the further intent of the Legislature that the
98 provisions, schedules, and procedures authorized in ss. 627.730-
99 627.7405 be implemented by the insurers who offer personal
100 injury protection benefits. Provisions, schedules, and
101 procedures authorized in ss. 627.730-627.7405 have full force
102 and effect regardless of their inclusion in an insurance policy
103 form, and an insurer is not required to amend its policy form to
104 utilize provisions, schedules, or procedures specifically
105 authorized by the Florida Motor Vehicle No-Fault law.
106 Section 4. Paragraph (a) of subsection (5), paragraph (b)
107 of subsection (6), paragraph (b) of subsection (7), and
108 subsection (8) of section 627.736, Florida Statutes, are
109 amended, present subsection (16) is redesignated as subsection
110 (17), and new subsections (16) and (18) are added to that
111 section, to read:
112 627.736 Required personal injury protection benefits;

113 exclusions; priority; claims.—
114 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—
115 (a)1. Any physician, hospital, clinic, or other person or
116 institution lawfully rendering treatment to an injured person
117 for a bodily injury covered by personal injury protection
118 insurance may charge the insurer and injured party only a
119 reasonable amount pursuant to this section for the services and
120 supplies rendered, and the insurer providing such coverage may
121 pay for such charges directly to such person or institution
122 lawfully rendering such treatment, if the insured receiving such
123 treatment or his or her guardian has countersigned the properly
124 completed invoice, bill, or claim form approved by the office
125 upon which such charges are to be paid for as having actually
126 been rendered, to the best knowledge of the insured or his or
127 her guardian. In no event, however, may such a charge be in
128 excess of the amount the person or institution customarily
129 charges for like services or supplies. With respect to a
130 determination of whether a charge for a particular service,
131 treatment, or otherwise is reasonable, consideration may be
132 given to evidence of usual and customary charges and payments
133 accepted by the provider involved in the dispute, and
134 reimbursement levels in the community and various federal and
135 state medical fee schedules applicable to automobile and other
136 insurance coverages, and other information relevant to the
137 reasonableness of the reimbursement for the service, treatment,
138 or supply.
139 2. The insurer may limit reimbursement to 80 percent of
140 the following schedule of maximum charges:

141 a. For emergency transport and treatment by providers
142 licensed under chapter 401, 200 percent of Medicare.
143 b. For emergency services and care provided by a hospital
144 licensed under chapter 395, 75 percent of the hospital's usual
145 and customary charges.
146 c. For emergency services and care as defined by s.
147 395.002(9) provided in a facility licensed under chapter 395
148 rendered by a physician or dentist, and related hospital
149 inpatient services rendered by a physician or dentist, the usual
150 and customary charges in the community.
151 d. For hospital inpatient services, other than emergency
152 services and care, 200 percent of the Medicare Part A
153 prospective payment applicable to the specific hospital
154 providing the inpatient services.
155 e. For hospital outpatient services, other than emergency
156 services and care, 200 percent of the Medicare Part A Ambulatory
157 Payment Classification for the specific hospital providing the
158 outpatient services.
159 f. For all other medical services, supplies, and care,
160 including durable medical equipment and care and services
161 rendered by clinical laboratories, 200 percent of the allowable
162 amount under the participating physicians schedule of Medicare
163 Part B. However, if such services, supplies, or care is not
164 reimbursable under Medicare Part B, or if the care and services
165 are rendered in an ambulatory surgical center, the insurer may
166 limit reimbursement to 80 percent of the maximum reimbursable
167 allowance under workers' compensation, as determined under s.
168 440.13 and rules adopted thereunder which are in effect at the

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169 time such services, supplies, or care is provided. Services,
170 supplies, or care that is not reimbursable under Medicare or
171 workers' compensation is not required to be reimbursed by the
172 insurer.
173 3. For purposes of subparagraph 2., the applicable fee
174 schedule or payment limitation under Medicare is the fee
175 schedule or payment limitation that was in effect as of January
176 1 of the year in which ~~at the time~~ the services, supplies, or
177 care was rendered ~~and~~ for the area in which such services were
178 rendered and shall apply throughout the remainder of the year,
179 notwithstanding any subsequent changes made to such fee schedule
180 or payment limitation, except that it may not be less than the
181 allowable amount under the participating physicians schedule of
182 Medicare Part B for 2007 for medical services, supplies, and
183 care subject to Medicare Part B.
184 4. Subparagraph 2. does not allow the insurer to apply any
185 limitation on the number of treatments or other utilization
186 limits that apply under Medicare or workers' compensation. An
187 insurer that applies the allowable payment limitations of
188 subparagraph 2. must reimburse a provider who lawfully provided
189 care or treatment under the scope of his or her license,
190 regardless of whether such provider would be entitled to
191 reimbursement under Medicare due to restrictions or limitations
192 on the types or discipline of health care providers who may be
193 reimbursed for particular procedures or procedure codes.
194 5. If an insurer limits payment as authorized by
195 subparagraph 2., the person providing such services, supplies,
196 or care may not bill or attempt to collect from the insured any

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197 amount in excess of such limits, except for amounts that are not
198 covered by the insured's personal injury protection coverage due
199 to the coinsurance amount or maximum policy limits.
200 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—
201 (b) Every physician, hospital, clinic, or other medical
202 institution providing, before or after bodily injury upon which
203 a claim for personal injury protection insurance benefits is
204 based, any products, services, or accommodations in relation to
205 that or any other injury, or in relation to a condition claimed
206 to be connected with that or any other injury, shall, if
207 requested to do so by the insurer against whom the claim has
208 been made, furnish forthwith a written report of the history,
209 condition, treatment, dates, and costs of such treatment of the
210 injured person and why the items identified by the insurer were
211 reasonable in amount and medically necessary, together with a
212 sworn statement that the treatment or services rendered were
213 reasonable and necessary with respect to the bodily injury
214 sustained and identifying which portion of the expenses for such
215 treatment or services was incurred as a result of such bodily
216 injury, and produce forthwith, and permit the inspection and
217 copying of, his or her or its records regarding such history,
218 condition, treatment, dates, and costs of treatment; provided
219 that this shall not limit the introduction of evidence at trial.
220 Such sworn statement shall read as follows: "Under penalty of
221 perjury, I declare that I have read the foregoing, and the facts
222 alleged are true, to the best of my knowledge and belief." No
223 cause of action for violation of the physician-patient privilege
224 or invasion of the right of privacy shall be permitted against

225 any physician, hospital, clinic, or other medical institution
226 complying with ~~the provisions of~~ this section. The person
227 requesting such records and such sworn statement shall pay all
228 reasonable costs connected therewith. If an insurer makes a
229 written request for documentation or information under this
230 paragraph within 30 days after having received notice of the
231 amount of a covered loss under paragraph (4)(a), the amount or
232 the partial amount which is the subject of the insurer's inquiry
233 shall become overdue if the insurer does not pay in accordance
234 with paragraph (4)(b) or within 10 days after the insurer's
235 receipt of the requested documentation or information, whichever
236 occurs later. For purposes of this paragraph, the term "receipt"
237 includes, but is not limited to, inspection and copying pursuant
238 to this paragraph. Any insurer that requests documentation or
239 information pertaining to reasonableness of charges or medical
240 necessity under this paragraph without a reasonable basis for
241 such requests as a general business practice is engaging in an
242 unfair trade practice under the insurance code. <u>If an insured</u>
243 <u>seeking to recover benefits under ss. 627.730-627.7405 assigns</u>
244 <u>the contractual right to those benefits or the payment of those</u>
245 <u>benefits to any person or entity, the assignee shall comply with</u>
246 <u>the terms of the policy, and both the insured and the assignee</u>
247 <u>shall be obligated to cooperate under the policy, which</u>
248 <u>includes, but is not limited to, submitting to examinations</u>
249 <u>under oath. Compliance with this paragraph is a condition</u>
250 <u>precedent to the recovery of benefits under ss. 627.730-</u>
251 <u>627.7405. If an insurer requests an examination under oath of a</u>
252 <u>medical provider, the provider must produce those individuals</u>

253 with the most knowledge of the issues identified by the insurer
254 in the request for examination under oath. All claimants must
255 produce and provide for inspection all documents requested by
256 the insurer that are reasonably obtainable by the claimant.
257 Examinations under oath may be recorded by audio, video, court
258 reporter, or any combination thereof. Any insurer that, as a
259 general practice, requests examinations under oath without a
260 reasonable basis is engaging in an unfair and deceptive trade
261 practice.
262 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;
263 REPORTS.—
264 (b) If requested by the person examined, a party causing
265 an examination to be made shall deliver to him or her a copy of
266 every written report concerning the examination rendered by an
267 examining physician, at least one of which reports must set out
268 the examining physician's findings and conclusions in detail.
269 After such request and delivery, the party causing the
270 examination to be made is entitled, upon request, to receive
271 from the person examined every written report available to him
272 or her or his or her representative concerning any examination,
273 previously or thereafter made, of the same mental or physical
274 condition. By requesting and obtaining a report of the
275 examination so ordered, or by taking the deposition of the
276 examiner, the person examined waives any privilege he or she may
277 have, in relation to the claim for benefits, regarding the
278 testimony of every other person who has examined, or may
279 thereafter examine, him or her in respect to the same mental or
280 physical condition. If a person unreasonably refuses to submit

281 to an examination, the personal injury protection carrier is no
282 longer liable for ~~subsequent~~ personal injury protection benefits
283 incurred after the date of the first request for examination.
284 Failure to appear for an examination creates a rebuttable
285 presumption that the failure was an unreasonable refusal.
286 Submission to an examination is a condition precedent to
287 benefits.
288 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY'S
289 FEES.—With respect to any dispute under ~~the provisions of~~ ss.
290 627.730-627.7405 between the insured and the insurer, ~~or~~ between
291 an assignee of an insured's rights and the insurer, or between
292 any entity or person seeking payment of benefits pursuant to the
293 terms of the policy, the provisions of s. 627.428 shall apply,
294 except as provided in subsections (10), (15), and (18)~~(15)~~. Any
295 attorney's fees recovered under ss. 627.730-627.7405 shall be
296 limited to the lesser of $10,000 or treble the disputed amount
297 recovered by the attorney under ss. 627.730-627.7405. Attorney's
298 fees in a class action under ss. 627.730-627.7405 are limited to
299 the lesser of $50,000 or treble the total of the disputed amount
300 recovered in the class action proceeding.
301 (16) ATTORNEYS' FEES.—Notwithstanding s. 627.428, the
302 attorney's fees recovered under ss. 627.730-627.7405 shall be
303 calculated without regard to any contingency risk multiplier.
304 (17)~~(16)~~ SECURE ELECTRONIC DATA TRANSFER.—If all parties
305 mutually and expressly agree, a notice, documentation,
306 transmission, or communication of any kind required or
307 authorized under ss. 627.730-627.7405 may be transmitted
308 electronically if it is transmitted by secure electronic data

309 transfer that is consistent with state and federal privacy and
310 security laws.
311 (18) ARBITRATION; APPEALABLE BY ACTION IN CIRCUIT COURT.—
312 (a) In order to expedite the resolution of disputes
313 arising from contracts involving personal injury protection
314 benefits, an insurer may offer a policy that requires or allows
315 the insurer, an insured, or any other claimant under the policy
316 to make a demand for arbitration for any claims dispute
317 involving personal injury protection benefits before filing a
318 lawsuit and in lieu of litigation, with the exception of an
319 appeal pursuant to paragraph (i). Before making a demand for
320 arbitration, a claimant must comply with the conditions under
321 subsection (10). A demand for arbitration must be in writing and
322 furnished to the nonrequesting party via United States certified
323 mail. Arbitration may not be held until at least 30 days after
324 the request for arbitration is received by the nonrequesting
325 party and at least 20 days after all the requested documentation
326 discoverable under paragraphs (e) and (f) is received. Unless
327 otherwise provided in this subsection, arbitration is governed
328 by chapter 682, the Florida Arbitration Code.
329 (b) The arbitration must take place in the county where
330 the treatment was rendered. If the treatment was rendered
331 outside this state, arbitration must take place in the county
332 where the insured resides, unless the parties agree to another
333 location.
334 (c) The arbitration panel must be made up of three
335 arbitrators. Each party must select a competent and impartial
336 arbitrator. The two arbitrators selected by the parties must

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337 select a third arbitrator. If the two arbitrators selected by
338 the parties are unable to agree on the selection of a third
339 arbitrator within 30 days, either party may request a circuit
340 court judge in the county where the arbitration is pending to
341 select a third arbitrator. If this method fails or for any
342 reason cannot be followed, or an arbitrator who has been
343 appointed fails to act and a successor has not been duly
344 appointed, the court, on application of an insurer or claimant,
345 must appoint one or more arbitrators. An arbitrator so appointed
346 has the same powers as an arbitrator named or provided for in
347 the policy providing personal injury protection benefits.
348 (d) The decision of a majority of the arbitrators is
349 binding on each party, unless appealed under paragraph (i). The
350 decision of the arbitrators must be furnished in writing to each
351 party.
352 (e) Upon written request before arbitration, the
353 appropriate provider must make available for inspection or
354 copying the entire file pertaining to the patient whose benefits
355 are the subject of arbitration. Arbitration may not be held
356 until 30 days after the required written demand for arbitration
357 is received and an insured's file is supplied to the insurer.
358 (f) Upon written request before arbitration, the insurer
359 must provide for the inspection or copying of the evidence upon
360 which it relies in adjusting or rejecting the claim. However,
361 the insurer is not required to produce privileged items from its
362 claims or underwriting files or documents or items which it does
363 not intend to rely upon as evidence to support its adjustment or
364 rejection of the claim. This paragraph only authorizes discovery

365 from the insurer of items relating to insurance coverage and
366 does not authorize discovery pertaining to any issue relating to
367 the handling of claims.
368 (g) An arbitration award may not exceed the applicable
369 limits of coverage remaining on the policy.
370 (h)1. The prevailing party is entitled to reimbursement of
371 reasonable attorney's fees and costs directly associated with
372 the arbitration. A claim for attorney's fees is limited to the
373 lesser of $10,000 or treble the amount of the benefits secured
374 in the arbitration process, or in the case of a class action,
375 attorney's fees are limited to the lesser of $50,000 or treble
376 the total amount of the benefits secured in the arbitration
377 process.
378 2. For purposes of this section, the prevailing party is:
379 a. The claimant if the award is greater than 50 percent
380 above the amount the insurer offered before arbitration; or
381 b. The insurer if the award is less than 50 percent above
382 the amount the insurer offered before arbitration.
383 3. If there is no prevailing party, each party must pay
384 its own costs and attorney's fees and share equally in the
385 payment of the costs incurred on both parties' behalf, including
386 the costs of a third arbitrator.
387 (i) Either party may appeal the arbitration decision by
388 filing an appeal in circuit court with a copy of the arbitration
389 decision attached. However, if the insurer pays the amount
390 awarded in the arbitration, but the claimant, assignee, or
391 insured seeking benefits under the insurance policy appeals the
392 arbitration decision in circuit court, s. 627.428 does not

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393 apply. An appeal of the arbitration decision is limited to a
394 review on the record and is not a de novo review. Interest on
395 the amount in dispute does not accrue during the course of an
396 appeal.
397 Section 5. This act shall take effect upon becoming a law.