CHAPTER 2003-411

Committee Substitute for Senate Bill No. 32-A

An act relating to motor vehicle insurance costs; providing a short title; providing legislative findings and purpose; amending s. 119.105, F.S.; prohibiting disclosure of confidential police reports for purposes of commercial solicitation; amending s. 316.066, F.S.; requiring the filing of a sworn statement as a condition to accessing a crash report stating the report will not be used for commercial solicitation; providing a penalty; creating part XIII of ch. 400, F.S., entitled the Health Care Clinic Act; providing for definitions and exclusions; providing for the licensure, inspection, and regulation of health care clinics by the Agency for Health Care Administration; requiring licensure and background screening; providing for clinic inspections; providing rulemaking authority; providing licensure fees; providing fines and penalties for operating an unlicensed clinic; providing for clinic responsibilities with respect to personnel and operations; providing accreditation requirements; providing for injunctive proceedings and agency actions; providing administrative penalties; amending s. 456.0375, F.S.; excluding certain entities from clinic registration requirements; providing retroactive application; amending s. 456.072, F.S.; providing that making a claim with respect to personal injury protection which is upcoded or which is submitted for payment of services not rendered constitutes grounds for disciplinary action; amending s. 627.732, F.S.; providing definitions; amending s. 627.736, F.S.; providing that benefits are void if fraud is committed; providing for award of attorney's fees in actions to recover benefits; providing that consideration shall be given to certain factors regarding the reasonableness of charges; specifying claims or charges that an insurer is not required to pay; requiring the Department of Health, in consultation with medical boards, to identify certain diagnostic tests as non-compensable; specifying effective dates; deleting certain provisions governing arbitration; providing for compliance with billing procedures; requiring certain providers to require an insured to sign a disclosure form; prohibiting insurers from authorizing physicians to change opinion in reports; providing requirements for physicians with respect to maintaining such reports; expanding provisions providing for a demand letter; authorizing the Financial Services Commission to determine cost savings under personal injury protection benefits under specified conditions; amending s. 627.739, F.S.; allowing a person who elects a deductible or modified coverage to claim the amount deducted from a person legally responsible; specifying application of a deductible amount; amending s. 817.234, F.S.; providing that it is a material omission and insurance fraud for a physician or other provider to waive a deductible or copayment or not collect the total amount of a charge; increasing the penalties for certain acts of solicitation of accident victims; providing mandatory minimum penalties; prohibiting certain solicitation of accident victims; providing penalties; prohibiting a person from participating in an intentional motor vehicle accident for the purpose of making motor vehicle tort claims;

providing penalties, including mandatory minimum penalties; amending s. 817.236, F.S.; increasing penalties for false and fraudulent motor vehicle insurance application; creating s. 817.2361, F.S.; prohibiting the creation or use of false or fraudulent motor vehicle insurance cards; providing penalties; amending s. 921.0022, F.S.; revising the offense severity ranking chart of the Criminal Punishment Code to reflect changes in penalties and the creation of additional offenses under the act; providing legislative intent with respect to the retroactive application of certain provisions; repealing s. 456.0375, F.S., relating to the regulation of clinics by the Department of Health; specifying the application of any increase in benefits approved by the Financial Services Commission; providing for application of other provisions of the act; requiring reports; providing an appropriation and authorizing additional positions; repealing of ss. 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., relating to the Florida Motor Vehicle No-Fault Law, unless reenacted by the 2006 Regular Session, and specifying certain effect; authorizing insurers to include in policies a notice of termination relating to such repeal; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; reenacting and amending s. 627.7295(5)(a), F.S., notwithstanding amendments to that paragraph by CS/SB 2364; providing for retroactive application; providing effective dates.

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

Section 1. Florida Motor Vehicle Insurance Affordability Reform Act; legislative findings; purpose.—

(1) This act may be cited as the "Florida Motor Vehicle Insurance Affordability Reform Act."

(2) The Legislature finds and declares that:

(a) The Florida Motor Vehicle No-Fault Law, enacted 32 years ago, has provided valuable benefits over the years to consumers in this state. The principle underlying the philosophical basis of the no-fault or personal injury protection (PIP) insurance system is that of a trade-off of one benefit for another, specifically providing medical and other benefits in return for a limitation on the right to sue for nonserious injuries.

(b) The PIP insurance system has provided benefits in the form of medical payments, lost wages, replacement services, funeral payments, and other benefits, without regard to fault, to consumers injured in automobile accidents.

(c) However, the goals behind the adoption of the no-fault law in 1971, which were to quickly and efficiently compensate accident victims regardless of fault, to reduce the volume of lawsuits by eliminating minor injuries from the tort system, and to reduce overall motor vehicle insurance costs, have been significantly compromised due to the fraud and abuse that has permeated the PIP insurance market.

(d) Motor vehicle insurance fraud and abuse, other than in the hospital setting, whether in the form of inappropriate medical treatments, inflated claims, staged accidents, solicitation of accident victims, falsification of records, or in any other form, has increased premiums for consumers and must be uncovered and vigorously prosecuted. The problem of inappropriate medical treatment and inflated claims for PIP have generally not occurred in the hospital setting.

(e) The no-fault system has been weakened in part due to certain insurers not adequately or timely compensating injured accident victims or health care providers. In addition, the system has become increasingly litigious with attorneys obtaining large fees by litigating, in certain instances, over relatively small amounts that are in dispute.

(f) It is a matter of great public importance that, in order to provide a healthy and competitive automobile insurance market, consumers be able to obtain affordable coverage, insurers be entitled to earn an adequate rate of return, and providers of services be compensated fairly.

(g) It is further a matter of great public importance that, in order to protect the public's health, safety, and welfare, it is necessary to enact the provisions contained in this act in order to prevent PIP insurance fraud and abuse and to curb escalating medical, legal, and other related costs, and the Legislature finds that the provisions of this act are the least restrictive actions necessary to achieve this goal.

(h) Therefore, the purpose of this act is to restore the health of the PIP insurance market in Florida by addressing these issues, preserving the no-fault system, and realizing cost-savings for all people in this state.

Section 2. Section 119.105, Florida Statutes, is amended to read:

119.105 Protection of victims of crimes or accidents.—Police reports are public records except as otherwise made exempt or confidential by general or special law. Every person is allowed to examine nonexempt or nonconfidential police reports. A ~~No~~ person who comes into possession of exempt or confidential information contained in police reports may not ~~inspects or copies police reports for the purpose of obtaining the names and addresses of the victims of crimes or accidents shall~~ use that ~~any~~ information ~~contained therein~~ for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. This section does not ~~Nothing herein shall~~ prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information.

Section 3. Paragraph (c) of subsection (3) of section 316.066, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

316.066 Written reports of crashes.—

(3)

(c) Crash reports required by this section which reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and which are received or prepared by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed. However, such reports may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personally identifying information concerning parties to motor vehicle crashes. Any local, state, or federal agency, agent, or employee that is authorized to have access to such reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties notwithstanding the provisions of this paragraph. Any local, state, or federal agency, agent, or employee receiving such crash reports shall maintain the confidential and exempt status of those reports and shall not disclose such crash reports to any person or entity. As a condition precedent to accessing a ~~Any person attempting to access~~ crash report ~~reports~~ within 60 days after the date the report is filed, a person must present a valid driver's license or other photographic identification, proof of status ~~legitimate credentials~~ or identification that demonstrates his or her qualifications to access that information, and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential. In lieu of requiring the written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential by this section will not be used for any commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time that the information remains confidential, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status. This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential information pursuant to this section. A law enforcement officer as defined in s. 943.10(1) may enforce this subsection. This exemption is subject to the

Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

(d) Any employee of a state or local agency in possession of information made confidential by this section who knowingly discloses such confidential information to a person not entitled to access such information under this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) Any person, knowing that he or she is not entitled to obtain information made confidential by this section, who obtains or attempts to obtain such information is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) Any person who knowingly uses confidential information in violation of a filed written sworn statement or contractual agreement required by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Effective October 1, 2003, part XIII of chapter 400, Florida Statutes, consisting of sections 400.901, 400.903, 400.905, 400.907, 400.909, 400.911, 400.913, 400.915, 400.917, 400.919, and 400.921 is created to read:

400.901 Short title; legislative findings.—

(1) This part, consisting of ss. 400.901-400.921, may be cited as the "Health Care Clinic Act."

(2) The Legislature finds that the regulation of health care clinics must be strengthened to prevent significant cost and harm to consumers. The purpose of this part is to provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration.

400.903 Definitions.—

(1) "Agency" means the Agency for Health Care Administration.

(2) "Applicant" means an individual owner, corporation, partnership, firm, business, association, or other entity that owns or controls, directly or indirectly, 5 percent or more of an interest in the clinic and that applies for a clinic license.

(3) "Clinic" means an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services. For purposes of this part the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 390, chapter 394, chapter 395, chapter 397, this chapter, chapter 463, chapter 465, chapter 466, chapter 478, chapter 480, chapter 484, or chapter 651.

(b) Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 390, chapter 394, chapter 395, chapter 397, this chapter, chapter 463, chapter 465, chapter 466, chapter 478, chapter 480, chapter 484, or chapter 651.

(c) Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 390, chapter 394, chapter, 395, chapter 397, this chapter, chapter 463, chapter 465, chapter 466, chapter 478, chapter 480, chapter 484, or chapter 651.

(d) Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 390, chapter 394, chapter 395, chapter 397, this chapter, chapter 463, chapter 465, chapter 466, chapter 478, chapter 480, chapter 484, or chapter 651.

(e) An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) and any community college or university clinic.

(f) A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, which are wholly owned by a licensed health care practitioner, or the licensed health care practitioner and the spouse, parent, or child of a licensed health care practitioner, so long as one of the owners who is a licensed health care practitioner is supervising the services performed therein and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license.

(g) Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

(4) "Medical director" means a physician who is employed or under contract with a clinic and who maintains a full and unencumbered physician license in accordance with chapter 458, chapter 459, chapter 460, or chapter 461. However, if the clinic is limited to providing health care services pursuant to chapter 457, chapter 484, chapter 486, chapter 490, or chapter 491 or part I, part III, part X, part XIII, or part XIV of chapter 468, the clinic may appoint a health care practitioner licensed under that chapter to serve as a clinic director who is responsible for the clinic's activities. A health care practitioner may not serve as the clinic director if the services provided at the clinic are beyond the scope of that practitioner's license.

400.905 License requirements; background screenings; prohibitions.—

(1) Each clinic, as defined in s. 400.903, must be licensed and shall at all times maintain a valid license with the agency. Each clinic location shall be licensed separately regardless of whether the clinic is operated under the same business name or management as another clinic. Mobile clinics must provide to the agency, at least quarterly, their projected street locations to enable the agency to locate and inspect such clinics.

(2) The initial clinic license application shall be filed with the agency by all clinics, as defined in s. 400.903, on or before March 1, 2004. A clinic license must be renewed biennially.

(3) Applicants that submit an application on or before March 1, 2004, which meets all requirements for initial licensure as specified in this section shall receive a temporary license until the completion of an initial inspection verifying that the applicant meets all requirements in rules authorized by s. 400.911. However, a clinic engaged in magnetic resonance imaging services may not receive a temporary license unless it presents evidence satisfactory to the agency that such clinic is making a good-faith effort and substantial progress in seeking accreditation required under s. 400.915.

(4) Application for an initial clinic license or for renewal of an existing license shall be notarized on forms furnished by the agency and must be accompanied by the appropriate license fee as provided in s. 400.911. The agency shall take final action on an initial license application within 60 days after receipt of all required documentation.

(5) The application shall contain information that includes, but need not be limited to, information pertaining to the name, residence and business address, phone number, social security number, and license number of the medical or clinic director, of the licensed medical providers employed or under contract with the clinic, and of each person who, directly or indirectly, owns or controls 5 percent or more of an interest in the clinic, or general partners in limited liability partnerships.

(6) The applicant must file with the application satisfactory proof that the clinic is in compliance with this part and applicable rules, including:

(a) A listing of services to be provided either directly by the applicant or through contractual arrangements with existing providers;

(b) The number and discipline of each professional staff member to be employed; and

(c) Proof of financial ability to operate. An applicant must demonstrate financial ability to operate a clinic by submitting a balance sheet and an income and expense statement for the first year of operation which provide evidence of the applicant's having sufficient assets, credit, and projected revenues to cover liabilities and expenses. The applicant shall have demonstrated financial ability to operate if the applicant's assets, credit, and projected revenues meet or exceed projected liabilities and expenses. All documents required under this subsection must be prepared in accordance with generally accepted accounting principles, may be in a compilation form, and the financial statement must be signed by a certified public accountant. As an alternative to submitting a balance sheet and an income and expense statement for the first year of operation, the applicant may file a surety bond of at least $500,000 which guarantees that the clinic will act in full conformity with all legal requirements for operating a clinic, payable to the agency. The agency may adopt rules to specify related requirements for such surety bond.

(7) Each applicant for licensure shall comply with the following requirements:

(a) As used in this subsection, the term "applicant" means individuals owning or controlling, directly or indirectly, 5 percent or more of an interest in a clinic; the medical or clinic director, or a similarly titled person who is responsible for the day-to-day operation of the licensed clinic; the financial officer or similarly titled individual who is responsible for the financial operation of the clinic; and licensed medical providers at the clinic.

(b) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of this paragraph.

(c) Each applicant must submit to the agency, with the application, a description and explanation of any exclusions, permanent suspensions, or terminations of an applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interest under the Medicaid or Medicare programs may be accepted in lieu of this submission. The description and explanation may indicate whether such exclusions, suspensions, or terminations were voluntary or not voluntary on the part of the applicant.

(d) A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, or a violation of insurance fraud under s. 817.234, within the past 5 years. If the applicant has been convicted of an offense prohibited under the level 2 standards or insurance fraud in any jurisdiction, the applicant must show that his or her civil rights have been restored prior to submitting an application.

(e) The agency may deny or revoke licensure if the applicant has falsely represented any material fact or omitted any material fact from the application required by this part.

(8) Requested information omitted from an application for licensure, license renewal, or transfer of ownership must be filed with the agency within 21 days after receipt of the agency's request for omitted information, or the application shall be deemed incomplete and shall be withdrawn from further consideration.

(9) The failure to file a timely renewal application shall result in a late fee charged to the facility in an amount equal to 50 percent of the current license fee.

400.907 Clinic inspections; emergency suspension; costs.—

(1) Any authorized officer or employee of the agency shall make inspections of the clinic as part of the initial license application or renewal applica-

tion. The application for a clinic license issued under this part or for a renewal license constitutes permission for an appropriate agency inspection to verify the information submitted on or in connection with the application or renewal.

(2) An authorized officer or employee of the agency may make unannounced inspections of clinics licensed pursuant to this part as are necessary to determine that the clinic is in compliance with this part and with applicable rules. A licensed clinic shall allow full and complete access to the premises and to billing records or information to any representative of the agency who makes an inspection to determine compliance with this part and with applicable rules.

(3) Failure by a clinic licensed under this part to allow full and complete access to the premises and to billing records or information to any representative of the agency who makes a request to inspect the clinic to determine compliance with this part or failure by a clinic to employ a qualified medical director or clinic director constitutes a ground for emergency suspension of the license by the agency pursuant to s. 120.60(6).

(4) In addition to any administrative fines imposed, the agency may assess a fee equal to the cost of conducting a complaint investigation.

400.909 License renewal; transfer of ownership; provisional license.—

(1) An application for license renewal must contain information as required by the agency.

(2) Ninety days before the expiration date, an application for renewal must be submitted to the agency.

(3) The clinic must file with the renewal application satisfactory proof that it is in compliance with this part and applicable rules. If there is evidence of financial instability, the clinic must submit satisfactory proof of its financial ability to comply with the requirements of this part.

(4) When transferring the ownership of a clinic, the transferee must submit an application for a license at least 60 days before the effective date of the transfer. An application for change of ownership of a clinic is required only when 45 percent or more of the ownership, voting shares, or controlling interest of a clinic is transferred or assigned, including the final transfer or assignment of multiple transfers or assignments over a 2-year period that cumulatively total 45 percent or greater.

(5) The license may not be sold, leased, assigned, or otherwise transferred, voluntarily or involuntarily, and is valid only for the clinic owners and location for which originally issued.

(6) A clinic against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a provisional license effective until final disposition by the agency of such proceedings. If judicial relief is sought from the final disposition, the agency that has jurisdiction may issue a temporary permit for the duration of the judicial proceeding.

400.911 Rulemaking authority; license fees.—

(1) The agency shall adopt rules necessary to administer the clinic administration, regulation, and licensure program, including rules establishing the specific licensure requirements, procedures, forms, and fees. It shall adopt rules establishing a procedure for the biennial renewal of licenses. The agency may issue initial licenses for less than the full 2-year period by charging a prorated licensure fee and specifying a different renewal date than would otherwise be required for biennial licensure. The rules shall specify the expiration dates of licenses, the process of tracking compliance with financial responsibility requirements, and any other conditions of renewal required by law or rule.

(2) The agency shall adopt rules specifying limitations on the number of licensed clinics and licensees for which a medical director or a clinic director may assume responsibility for purposes of this part. In determining the quality of supervision a medical director or a clinic director can provide, the agency shall consider the number of clinic employees, the clinic location, and the health care services provided by the clinic.

(3) License application and renewal fees must be reasonably calculated by the agency to cover its costs in carrying out its responsibilities under this part, including the cost of licensure, inspection, and regulation of clinics, and must be of such amount that the total fees collected do not exceed the cost of administering and enforcing compliance with this part. Clinic licensure fees are nonrefundable and may not exceed $2,000. The agency shall adjust the license fee annually by not more than the change in the Consumer Price Index based on the 12 months immediately preceding the increase. All fees collected under this part must be deposited in the Health Care Trust Fund for the administration of this part.

400.913 Unlicensed clinics; penalties; fines; verification of licensure status.—

(1) It is unlawful to own, operate, or maintain a clinic without obtaining a license under this part.

(2) Any person who owns, operates, or maintains an unlicensed clinic commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(3) Any person found guilty of violating subsection (2) a second or subsequent time commits a felony of the second degree, punishable as provided under s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(4) Any person who owns, operates, or maintains an unlicensed clinic due to a change in this part or a modification in agency rules within 6 months after the effective date of such change or modification and who, within 10 working days after receiving notification from the agency, fails to cease operation or apply for a license under this part commits a felony of the third

degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(5) Any clinic that fails to cease operation after agency notification may be fined for each day of noncompliance pursuant to this part.

(6) When a person has an interest in more than one clinic, and fails to obtain a license for any one of these clinics, the agency may revoke the license, impose a moratorium, or impose a fine pursuant to this part on any or all of the licensed clinics until such time as the unlicensed clinic is licensed or ceases operation.

(7) Any person aware of the operation of an unlicensed clinic must report that facility to the agency.

(8) Any health care provider who is aware of the operation of an unlicensed clinic shall report that facility to the agency. Failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed shall be reported to the provider's licensing board.

(9) The agency may not issue a license to a clinic that has any unpaid fines assessed under this part.

400.915 Clinic responsibilities.—

(1) Each clinic shall appoint a medical director or clinic director who shall agree in writing to accept legal responsibility for the following activities on behalf of the clinic. The medical director or the clinic director shall:

(a) Have signs identifying the medical director or clinic director posted in a conspicuous location within the clinic readily visible to all patients.

(b) Ensure that all practitioners providing health care services or supplies to patients maintain a current active and unencumbered Florida license.

(c) Review any patient referral contracts or agreements executed by the clinic.

(d) Ensure that all health care practitioners at the clinic have active appropriate certification or licensure for the level of care being provided.

(e) Serve as the clinic records owner as defined in s. 456.057.

(f) Ensure compliance with the recordkeeping, office surgery, and adverse incident reporting requirements of chapter 456, the respective practice acts, and rules adopted under this part.

(g) Conduct systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful. Upon discovery of an unlawful charge, the medical director or clinic director shall take immediate corrective action.

(2) Any business that becomes a clinic after commencing operations must, within 5 days after becoming a clinic, file a license application under

this part and shall be subject to all provisions of this part applicable to a clinic.

(3) Any contract to serve as a medical director or a clinic director entered into or renewed by a physician or a licensed health care practitioner in violation of this part is void as contrary to public policy. This subsection shall apply to contracts entered into or renewed on or after March 1, 2004.

(4) All charges or reimbursement claims made by or on behalf of a clinic that is required to be licensed under this part, but that is not so licensed, or that is otherwise operating in violation of this part, are unlawful charges, and therefore are noncompensable and unenforceable.

(5) Any person establishing, operating, or managing an unlicensed clinic otherwise required to be licensed under this part, or any person who knowingly files a false or misleading license application or license renewal application, or false or misleading information related to such application or department rule, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Any licensed health care provider who violates this part is subject to discipline in accordance with this chapter and his or her respective practice act.

(7) The agency may fine, or suspend or revoke the license of, any clinic licensed under this part for operating in violation of the requirements of this part or the rules adopted by the agency.

(8) The agency shall investigate allegations of noncompliance with this part and the rules adopted under this part.

(9) Any person or entity providing health care services which is not a clinic, as defined under s. 400.903, may voluntarily apply for a certificate of exemption from licensure under its exempt status with the agency on a form that sets forth its name or names and addresses, a statement of the reasons why it cannot be defined as a clinic, and other information deemed necessary by the agency.

(10) The clinic shall display its license in a conspicuous location within the clinic readily visible to all patients.

(11)(a) Each clinic engaged in magnetic resonance imaging services must be accredited by the Joint Commission on Accreditation of Healthcare Organizations, the American College of Radiology, or the Accreditation Association for Ambulatory Health Care, within 1 year after licensure. However, a clinic may request a single, 6-month extension if it provides evidence to the agency establishing that, for good cause shown, such clinic can not be accredited within 1 year after licensure, and that such accreditation will be completed within the 6-month extension. After obtaining accreditation as required by this subsection, each such clinic must maintain accreditation as a condition of renewal of its license.

(b) The agency may disallow the application of any entity formed for the purpose of avoiding compliance with the accreditation provisions of this

subsection and whose principals were previously principals of an entity that was unable to meet the accreditation requirements within the specified timeframes. The agency may adopt rules as to the accreditation of magnetic resonance imaging clinics.

(12) The agency shall give full faith and credit pertaining to any past variance and waiver granted to a magnetic resonance imaging clinic from Rule 64-2002, Florida Administrative Code, by the Department of Health, until September 2004. After that date, such clinic must request a variance and waiver from the agency under s. 120.542.

400.917 Injunctions.—

(1) The agency may institute injunctive proceedings in a court of competent jurisdiction in order to:

(a) Enforce the provisions of this part or any minimum standard, rule, or order issued or entered into pursuant to this part if the attempt by the agency to correct a violation through administrative fines has failed; if the violation materially affects the health, safety, or welfare of clinic patients; or if the violation involves any operation of an unlicensed clinic.

(b) Terminate the operation of a clinic if a violation of any provision of this part, or any rule adopted pursuant to this part, materially affects the health, safety, or welfare of clinic patients.

(2) Such injunctive relief may be temporary or permanent.

(3) If action is necessary to protect clinic patients from life-threatening situations, the court may allow a temporary injunction without bond upon proper proof being made. If it appears by competent evidence or a sworn, substantiated affidavit that a temporary injunction should issue, the court, pending the determination on final hearing, shall enjoin operation of the clinic.

400.919 Agency actions.—Administrative proceedings challenging agency licensure enforcement action shall be reviewed on the basis of the facts and conditions that resulted in the agency action.

400.921 Agency administrative penalties.—

(1) The agency may impose administrative penalties against clinics of up to $5,000 per violation for violations of the requirements of this part. In determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

(b) Actions taken by the owner, medical director, or clinic director to correct violations.

(c) Any previous violations.

(d) The financial benefit to the clinic of committing or continuing the violation.

(2) Each day of continuing violation after the date fixed for termination of the violation, as ordered by the agency, constitutes an additional, separate, and distinct violation.

(3) Any action taken to correct a violation shall be documented in writing by the owner, medical director, or clinic director of the clinic and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated clinic, revoke or deny a clinic's license when a clinic medical director or clinic director fraudulently misrepresents actions taken to correct a violation.

(4) For fines that are upheld following administrative or judicial review, the violator shall pay the fine, plus interest at the rate as specified in s. 55.03, for each day beyond the date set by the agency for payment of the fine.

(5) Any unlicensed clinic that continues to operate after agency notification is subject to a $1,000 fine per day.

(6) Any licensed clinic whose owner, medical director, or clinic director concurrently operates an unlicensed clinic shall be subject to an administrative fine of $5,000 per day.

(7) Any clinic whose owner fails to apply for a change-of-ownership license in accordance with s. 400.909 and operates the clinic under the new ownership is subject to a fine of $5,000.

(8) The agency, as an alternative to or in conjunction with an administrative action against a clinic for violations of this part and adopted rules, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner, medical director, or clinic director of the clinic, prior to written notification. The agency, instead of fixing a period within which the clinic shall enter into compliance with standards, may request a plan of corrective action from the clinic which demonstrates a good-faith effort to remedy each violation by a specific date, subject to the approval of the agency.

(9) Administrative fines paid by any clinic under this section shall be deposited into the Health Care Trust Fund.

Section 5. Paragraph (b) of subsection (1) of section 456.0375, Florida Statutes, is amended to read:

456.0375 Registration of certain clinics; requirements; discipline; exemptions.—

(1)

(b) For purposes of this section, the term "clinic" does not include and the registration requirements herein do not apply to:

1. Entities licensed or registered by the state pursuant to chapter 390, chapter 394, chapter 395, chapter 397, chapter 400, chapter 463, chapter 465, chapter 466, chapter 478, chapter 480, ~~or~~ chapter 484, or chapter 651.

2. Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 390, chapter 394, chapter 395, chapter 397, chapter 400, chapter 463, chapter 465, chapter 466, chapter 478, chapter 480, chapter 484, or chapter 651.

3. Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 390, chapter 394, chapter 395, chapter 397, chapter 400, chapter 463, chapter 465, chapter 466, chapter 478, chapter 480, chapter 484, or chapter 651.

4. Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 390, chapter 394, chapter 395, chapter 397, chapter 400, chapter 463, chapter 465, chapter 466, chapter 478, chapter 480, chapter 484, or chapter 651.

5.~~2.~~ Entities exempt from federal taxation under 26 U.S.C. s. 501(c)(3) and community college and university clinics.

6.~~3.~~ Sole proprietorships, group practices, partnerships, or corporations that provide health care services by licensed health care practitioners pursuant to chapters 457, 458, 459, 460, 461, 462, 463, 466, 467, 484, 486, 490, 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, which are wholly owned by licensed health care practitioners or the licensed health care practitioner and the spouse, parent, or child of a licensed health care practitioner, so long as one of the owners who is a licensed health care practitioner is supervising the services performed therein and is legally responsible for the entity's compliance with all federal and state laws. However, no health care practitioner may supervise services beyond the scope of the practitioner's license.

7. Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

Section 6. Paragraphs (dd) and (ee) are added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

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

(dd) With respect to making a personal injury protection claim as required by s. 627.736, intentionally submitting a claim statement, or bill that has been "upcoded" as defined in s. 627.732.

(ee) With respect to making a personal injury protection claim as required by s. 627.736, intentionally submitting a claim, statement, or bill for payment of services that were not rendered.

Section 7. Subsection (1) of section 627.732, Florida Statutes, as amended by chapter 2003-2, Laws of Florida, is amended, and subsections (8) through (16) are added to that section, to read:

627.732 Definitions.—As used in ss. 627.730-627.7405, the term:

(1) "Broker" means any person not possessing a license under chapter 395, chapter 400, chapter 458, chapter 459, chapter 460, chapter 461, or chapter 641 who charges or receives compensation for any use of medical equipment and is not the 100-percent owner or the 100-percent lessee of such equipment. For purposes of this section, such owner or lessee may be an individual, a corporation, a partnership, or any other entity and any of its 100-percent-owned affiliates and subsidiaries. For purposes of this subsection, the term "lessee" means a long-term lessee under a capital or operating lease, but does not include a part-time lessee. The term "broker" does not include a hospital or physician management company whose medical equipment is ancillary to the practices managed, a debt collection agency, or an entity that has contracted with the insurer to obtain a discounted rate for such services; nor does the term include a management company that has contracted to provide general management services for a licensed physician or health care facility and whose compensation is not materially affected by the usage or frequency of usage of medical equipment or an entity that is 100-percent owned by one or more hospitals or physicians. The term "broker" does not include a person or entity that certifies, upon request of an insurer, that:

(a) It is a clinic registered under s. 456.0375 or licensed under ss. 400.901-400.921;

(b) It is a 100-percent owner of medical equipment; and

(c) The owner's only part-time lease of medical equipment for personal injury protection patients is on a temporary basis not to exceed 30 days in a 12-month period, and such lease is solely for the purposes of necessary repair or maintenance of the 100-percent-owned medical equipment or pending the arrival and installation of the newly purchased or a replacement for the 100-percent-owned medical equipment, or for patients for whom, because of physical size or claustrophobia, it is determined by the medical director or clinical director to be medically necessary that the test be performed in medical equipment that is open-style. The leased medical equipment cannot be used by patients who are not patients of the registered clinic for medical treatment of services. Any person or entity making a false certification under this subsection commits insurance fraud as defined in s. 817.234. However, the 30-day period provided in this paragraph may be extended for an additional 60 days as applicable to magnetic resonance imaging equipment if the owner certifies that the extension otherwise complies with this paragraph.

(8) "Certify" means to swear or attest to being true or represented in writing.

(9) "Immediate personal supervision," as it relates to the performance of medical services by nonphysicians not in a hospital, means that an individ-

ual licensed to perform the medical service or provide the medical supplies must be present within the confines of the physical structure where the medical services are performed or where the medical supplies are provided such that the licensed individual can respond immediately to any emergencies if needed.

(10) "Incident," with respect to services considered as incident to a physician's professional service, for a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461, if not furnished in a hospital, means such services must be an integral, even if incidental, part of a covered physician's service.

(11) "Knowingly" means that a person, with respect to information, has actual knowledge of the information; acts in deliberate ignorance of the truth or falsity of the information; or acts in reckless disregard of the information, and proof of specific intent to defraud is not required.

(12) "Lawful" or "lawfully" means in substantial compliance with all relevant applicable criminal, civil, and administrative requirements of state and federal law related to the provision of medical services or treatment.

(13) "Hospital" means a facility that, at the time services or treatment were rendered, was licensed under chapter 395.

(14) "Properly completed" means providing truthful, substantially complete, and substantially accurate responses as to all material elements to each applicable request for information or statement by a means that may lawfully be provided and that complies with this section, or as agreed by the parties.

(15) "Upcoding" means an action that submits a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed. The term does not include an otherwise lawful bill by a magnetic resonance imaging facility, which globally combines both technical and professional components, if the amount of the global bill is not more than the components if billed separately; however, payment of such a bill constitutes payment in full for all components of such service.

(16) "Unbundling" means an action that submits a billing code that is properly billed under one billing code, but that has been separated into two or more billing codes, and would result in payment greater in amount than would be paid using one billing code.

Section 8. Subsections (4), (5), (6), (7), and (11) of section 627.736, Florida Statutes, are amended, present subsection (13) of that section is redesignated as subsection (14), and amended, and a new subsection (13) is added to that section, to read:

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

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

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

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

(b) Personal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. When an insurer pays only a portion of a claim or rejects a claim, the insurer shall provide at the time of the partial payment or rejection an itemized specification of each item that the insurer had reduced, omitted, or declined to pay and any information that the insurer desires the claimant to consider related to the medical necessity of the denied treatment or to explain the reasonableness of the reduced charge, provided that this shall not limit the introduction of evidence at trial; and the insurer shall include the name and address of the person to whom the claimant should respond and a claim number to be referenced in future correspondence. However, notwithstanding the fact that written notice has been furnished to the insurer, any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope or, if not so posted, on the date of delivery. This paragraph does not preclude or limit the ability of the insurer to assert that the claim was unrelated, was not medically necessary, or was unreasonable or that the amount of the charge was in excess of that permitted under, or in violation of, subsection (5). Such assertion by the insurer may be made at any time, including after payment of the claim or after the 30-day time period for payment set forth in this paragraph.

(c) All overdue payments shall bear simple interest at the rate established ~~by the Comptroller~~ under s. 55.03 or the rate established in the insurance contract, whichever is greater, for the year in which the payment became overdue, calculated from the date the insurer was furnished with written notice of the amount of covered loss. Interest shall be due at the time payment of the overdue claim is made.

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

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

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

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

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself or herself:

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

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

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

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

(g) Benefits shall not be due or payable to or on the behalf of an insured person if that person has committed, by a material act or omission, any insurance fraud relating to personal injury protection coverage under his or her policy, if the fraud is admitted to in a sworn statement by the insured or if it is established in a court of competent jurisdiction. Any insurance fraud shall void all coverage arising from the claim related to such fraud under the personal injury protection coverage of the insured person who committed the fraud, irrespective of whether a portion of the insured person's claim may be legitimate, and any benefits paid prior to the discovery of the insured person's insurance fraud shall be recoverable by the insurer from the person who committed insurance fraud in their entirety. The prevailing party is entitled to its costs and attorney's fees in any action in which it prevails in an insurer's action to enforce its right of recovery under this paragraph.

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment, if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the Department of Insurance upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like services or supplies ~~in cases involving no insurance~~. With respect to a determination of whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, and reimbursement levels in the community and various federal and state medical fee schedules applicable to automobile and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment or supply.

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

a. Made by a broker or by a person making a claim on behalf of a broker;~~.~~

b. For any service or treatment that was not lawful at the time rendered;

c. To any person who knowingly submits a false or misleading statement relating to the claim or charges;

d. With respect to a bill or statement that does not substantially meet the applicable requirements of paragraph (d);

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

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

2. Charges for medically necessary cephalic thermograms, peripheral thermograms, spinal ultrasounds, extremity ultrasounds, video fluoroscopy,

and surface electromyography shall not exceed the maximum reimbursement allowance for such procedures as set forth in the applicable fee schedule or other payment methodology established pursuant to s. 440.13.

3. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing when done in conjunction with a needle electromyography procedure and both are performed and billed solely by a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 who is also certified by the American Board of Electrodiagnostic Medicine or by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or who holds diplomate status with the American Chiropractic Neurology Board or its predecessors shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor ~~by an additional amount equal to the medical Consumer Price Index for Florida~~.

4. Allowable amounts that may be charged to a personal injury protection insurance insurer and insured for medically necessary nerve conduction testing that does not meet the requirements of subparagraph 3. shall not exceed the applicable fee schedule or other payment methodology established pursuant to s. 440.13.

5. Effective upon this act becoming a law and before November 1, 2001, allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services shall not exceed 200 percent of the allowable amount under Medicare Part B for year 2001, for the area in which the treatment was rendered. Beginning November 1, 2001, allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services shall not exceed 175 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year ~~by an additional amount equal to the medical Consumer Price Index for Florida~~, except that allowable amounts that may be charged to a personal injury protection insurance insurer and insured for magnetic resonance imaging services provided in facilities accredited by the Accreditation Association for Ambulatory Health Care, the American College of Radiology or the Joint Commission on Accreditation of Healthcare Organizations shall not exceed 200 percent of the allowable amount under the participating physician fee schedule of Medicare Part B for year 2001, for the area in which the treatment was rendered, adjusted annually on August 1 to reflect the prior calendar year's changes in the annual Medical Care Item of the Consumer Price Index for All Urban Consumers in the South Region as

determined by the Bureau of Labor Statistics of the United States Department of Labor for the 12-month period ending June 30 of that year ~~by an additional amount equal to the medical Consumer Price Index for Florida~~. This paragraph does not apply to charges for magnetic resonance imaging services and nerve conduction testing for inpatients and emergency services and care as defined in chapter 395 rendered by facilities licensed under chapter 395.

6. The Department of Health, in consultation with the appropriate professional licensing boards, shall adopt, by rule, a list of diagnostic tests deemed not be medically necessary for use in the treatment of persons sustaining bodily injury covered by personal injury protection benefits under this section. The initial list shall be adopted by January 1, 2004, and shall be revised from time to time as determined by the Department of Health, in consultation with the respective professional licensing boards. Inclusion of a test on the list of invalid diagnostic tests shall be based on lack of demonstrated medical value and a level of general acceptance by the relevant provider community and shall not be dependent for results entirely upon subjective patient response. Notwithstanding its inclusion on a fee schedule in this subsection, an insurer or insured is not required to pay any charges or reimburse claims for any invalid diagnostic test as determined by the Department of Health.

(c)1. With respect to any treatment or service, other than medical services billed by a hospital or other provider for emergency services as defined in s. 395.002 or inpatient services rendered at a hospital-owned facility, the statement of charges must be furnished to the insurer by the provider and may not include, and the insurer is not required to pay, charges for treatment or services rendered more than 35 days before the postmark date of the statement, except for past due amounts previously billed on a timely basis under this paragraph, and except that, if the provider submits to the insurer a notice of initiation of treatment within 21 days after its first examination or treatment of the claimant, the statement may include charges for treatment or services rendered up to, but not more than, 75 days before the postmark date of the statement. The injured party is not liable for, and the provider shall not bill the injured party for, charges that are unpaid because of the provider's failure to comply with this paragraph. Any agreement requiring the injured person or insured to pay for such charges is unenforceable.

2. If, however, the insured fails to furnish the provider with the correct name and address of the insured's personal injury protection insurer, the provider has 35 days from the date the provider obtains the correct information to furnish the insurer with a statement of the charges. The insurer is not required to pay for such charges unless the provider includes with the statement documentary evidence that was provided by the insured during the 35-day period demonstrating that the provider reasonably relied on erroneous information from the insured and either:

a.~~1.~~ A denial letter from the incorrect insurer; or

b.~~2.~~ Proof of mailing, which may include an affidavit under penalty of perjury, reflecting timely mailing to the incorrect address or insurer.

3. For emergency services and care as defined in s. 395.002 rendered in a hospital emergency department or for transport and treatment rendered by an ambulance provider licensed pursuant to part III of chapter 401, the provider is not required to furnish the statement of charges within the time periods established by this paragraph; and the insurer shall not be considered to have been furnished with notice of the amount of covered loss for purposes of paragraph (4)(b) until it receives a statement complying with paragraph (d) ~~(e)~~, or copy thereof, which specifically identifies the place of service to be a hospital emergency department or an ambulance in accordance with billing standards recognized by the Health Care Finance Administration.

4. Each notice of insured's rights under s. 627.7401 must include the following statement in type no smaller than 12 points:

BILLING REQUIREMENTS.—Florida Statutes provide that with respect to any treatment or services, other than certain hospital and emergency services, the statement of charges furnished to the insurer by the provider may not include, and the insurer and the injured party are not required to pay, charges for treatment or services rendered more than 35 days before the postmark date of the statement, except for past due amounts previously billed on a timely basis, and except that, if the provider submits to the insurer a notice of initiation of treatment within 21 days after its first examination or treatment of the claimant, the statement may include charges for treatment or services rendered up to, but not more than, 75 days before the postmark date of the statement.

~~(d) Every insurer shall include a provision in its policy for personal injury protection benefits for binding arbitration of any claims dispute involving medical benefits arising between the insurer and any person providing medical services or supplies if that person has agreed to accept assignment of personal injury protection benefits. The provision shall specify that the provisions of chapter 682 relating to arbitration shall apply. The prevailing party shall be entitled to attorney's fees and costs. For purposes of the award of attorney's fees and costs, the prevailing party shall be determined as follows:~~

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

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

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

~~4. In the demand for arbitration, the party requesting arbitration must include a statement specifically identifying the issues for arbitration for each examination or treatment in dispute. The other party must subsequently issue a statement specifying any other examinations or treatment and any other issues that it intends to raise in the arbitration. The parties may amend their statements up to 30 days prior to arbitration, provided that arbitration shall be limited to those identified issues and neither party may add additional issues during arbitration.~~

(d)~~(e)~~ All statements and bills for medical services rendered by any physician, hospital, clinic, or other person or institution shall be submitted to the insurer on a properly completed Centers for Medicare and Medicaid Services (CMS) ~~Health Care Finance Administration~~ 1500 form, UB 92 forms, or any other standard form approved by the department for purposes of this paragraph. All billings for such services rendered by providers shall, to the extent applicable, follow the Physicians' Current Procedural Terminology (CPT) or Healthcare Correct Procedural Coding System (HCPCS), or ICD-9 in effect for the year in which services are rendered and comply with the Centers for Medicare and Medicaid Services (CMS) 1500 form instructions and the American Medical Association Current Procedural Terminology (CPT) Editorial Panel and Healthcare Correct Procedural Coding System (HCPCS). All providers other than hospitals shall include on the applicable claim form the professional license number of the provider in the line or space provided for "Signature of Physician or Supplier, Including Degrees or Credentials." In determining compliance with applicable CPT and HCPCS coding, guidance shall be provided by the Physicians' Current Procedural Terminology (CPT) or the Healthcare Correct Procedural Coding System (HCPCS) in effect for the year in which services were rendered, the Office of the Inspector General (OIG), Physicians Compliance Guidelines, and other authoritative treatises designated by rule by the Agency for Health Care Administration. No statement of medical services may include charges for medical services of a person or entity that performed such services without possessing the valid licenses required to perform such services. For purposes of paragraph (4)(b), an insurer shall not be considered to have been furnished with notice of the amount of covered loss or medical bills due unless the statements or bills comply with this paragraph, and unless the statements or bills are properly completed in their entirety as to all material provisions, with all relevant information being provided therein.

(e)1. At the initial treatment or service provided, each physician, other licensed professional, clinic, or other medical institution providing medical services upon which a claim for personal injury protection benefits is based shall require an insured person, or his or her guardian, to execute a disclosure and acknowledgment form, which reflects at a minimum that:

a. The insured, or his or her guardian, must countersign the form attesting to the fact that the services set forth therein were actually rendered;

b. The insured, or his or her guardian, has both the right and affirmative duty to confirm that the services were actually rendered;

c. The insured, or his or her guardian, was not solicited by any person to seek any services from the medical provider;

d. That the physician, other licensed professional, clinic, or other medical institution rendering services for which payment is being claimed explained the services to the insured or his or her guardian; and

e. If the insured notifies the insurer in writing of a billing error, the insured may be entitled to a certain percentage of a reduction in the amounts paid by the insured's motor vehicle insurer.

2. The physician, other licensed professional, clinic, or other medical institution rendering services for which payment is being claimed has the affirmative duty to explain the services rendered to the insured, or his or her guardian, so that the insured, or his or her guardian, countersigns the form with informed consent.

3. Countersignature by the insured, or his or her guardian, is not required for the reading of diagnostic tests or other services that are of such a nature that they are not required to be performed in the presence of the insured.

4. The licensed medical professional rendering treatment for which payment is being claimed must sign, by his or her own hand, the form complying with this paragraph.

5. The original completed disclosure and acknowledgement form shall be furnished to the insurer pursuant to paragraph (4)(b) and may not be electronically furnished.

6. This disclosure and acknowledgement form is not required for services billed by a provider for emergency services as defined in s. 395.002, for emergency services and care as defined in s. 395.002 rendered in a hospital emergency department, or for transport and treatment rendered by an ambulance provider licensed pursuant to part III of chapter 401.

7. The Financial Services Commission shall adopt, by rule, a standard disclosure and acknowledgment form that shall be used to fulfill the requirements of this paragraph, effective 90 days after such form is adopted and becomes final. The commission shall adopt a proposed rule by October 1, 2003. Until the rule is final, the provider may use a form of its own which otherwise complies with the requirements of this paragraph.

8. As used in this paragraph, "countersigned" means a second or verifying signature, as on a previously signed document, and is not satisfied by the statement "signature on file" or any similar statement.

9. The requirements of this paragraph apply only with respect to the initial treatment or service of the insured by a provider. For subsequent treatments or service, the provider must maintain a patient log signed by the patient, in chronological order by date of service, that is consistent with the services being rendered to the patient as claimed. The requirements of this subparagraph for maintaining a patient log signed by the patient may

be met by a hospital that maintains medical records as required by s. 395.3025 and applicable rules and makes such records available to the insurer upon request.

(f) Upon written notification by any person, an insurer shall investigate any claim of improper billing by a physician or other medical provider. The insurer shall determine if the insured was properly billed for only those services and treatments that the insured actually received. If the insurer determines that the insured has been improperly billed, the insurer shall notify the insured, the person making the written notification and the provider of its findings and shall reduce the amount of payment to the provider by the amount determined to be improperly billed. If a reduction is made due to such written notification by any person, the insurer shall pay to the person 20 percent of the amount of the reduction, up to $500. If the provider is arrested due to the improper billing, then the insurer shall pay to the person 40 percent of the amount of the reduction, up to $500.

(g) An insurer may not systematically downcode with the intent to deny reimbursement otherwise due. Such action constitutes a material misrepresentation under s. 626.9541(1)(i)2.

(6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—

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

(b) Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates, and costs of such treatment of the injured person and why the items identified by the insurer were reasonable in amount and medically necessary, together with a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained and identifying which portion of the expenses for such treatment or services was incurred as a result of such bodily injury, and produce forthwith, and permit the inspection and copying of, his or her or its records regarding such history, condition, treatment, dates, and costs of treatment; provided that this shall not limit the introduction of evidence at trial. Such sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief." No cause of action for violation of the physician-patient privilege or invasion of the right of privacy shall be permitted against any physician, hospital, clinic, or other medical institution complying with the provisions

of this section. The person requesting such records and such sworn statement shall pay all reasonable costs connected therewith. If an insurer makes a written request for documentation or information under this paragraph within 30 days after having received notice of the amount of a covered loss under paragraph (4)(a), the amount or the partial amount which is the subject of the insurer's inquiry shall become overdue if the insurer does not pay in accordance with paragraph (4)(b) or within 10 days after the insurer's receipt of the requested documentation or information, whichever occurs later. For purposes of this paragraph, the term "receipt" includes, but is not limited to, inspection and copying pursuant to this paragraph. Any insurer that requests documentation or information pertaining to reasonableness of charges or medical necessity under this paragraph without a reasonable basis for such requests as a general business practice is engaging in an unfair trade practice under the insurance code.

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

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

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

(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 conducted within the municipality where the insured is receiving treatment, or in a location reasonably accessible to the insured, which, for purposes of this paragraph, means any location within the municipality in which the insured resides, or any location within 10 miles by road of the insured's residence, provided such location is within the county in which the insured resides. If the examination is to be conducted in a location reasonably accessible to the insured, and if there is no qualified physician to conduct the examination in a location reasonably accessible to the insured, then such examination shall be conducted in an area of the closest

proximity to the insured's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits. An insurer may not withdraw payment of a treating physician without the consent of the injured person covered by the personal injury protection, unless the insurer first obtains a valid report by a Florida physician licensed under the same chapter as the treating physician whose treatment authorization is sought to be withdrawn, stating that treatment was not reasonable, related, or necessary. A valid report is one that is prepared and signed by the physician examining the injured person or reviewing the treatment records of the injured person and is factually supported by the examination and treatment records if reviewed and that has not been modified by anyone other than the physician. The physician preparing the report must be in active practice, unless the physician is physically disabled. Active practice means that during the 3 years immediately preceding the date of the physical examination or review of the treatment records the physician must have devoted professional time to the active clinical practice of evaluation, diagnosis, or treatment of medical conditions or to the instruction of students in an accredited health professional school or accredited residency program or a clinical research program that is affiliated with an accredited health professional school or teaching hospital or accredited residency program. The physician preparing a report at the request of an insurer and physicians rendering expert opinions on behalf of persons claiming medical benefits for personal injury protection, or on behalf of an insured through an attorney or another entity, shall maintain, for at least 3 years, copies of all examination reports as medical records and shall maintain, for at least 3 years, records of all payments for the examinations and reports. Neither an insurer nor any person acting at the direction of or on behalf of an insurer may materially change an opinion in a report prepared under this paragraph or direct the physician preparing the report to change such opinion. The denial of a payment as the result of such a changed opinion constitutes a material misrepresentation under s. 626.9541(1)(i)2.; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file.

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

(11) DEMAND LETTER.—

(a) As a condition precedent to filing any action for ~~an overdue claim for~~ benefits under this section ~~paragraph (4)(b)~~, the insurer must be provided with written notice of an intent to initiate litigation~~; provided, however, that, except with regard to a claim or amended claim or judgment for interest only which was not paid or was incorrectly calculated, such notice is not required for an overdue claim that the insurer has denied or reduced, nor is such notice required if the insurer has been provided documentation or information at the insurer's request pursuant to subsection (6)~~. Such notice may not be sent until the claim is overdue, including any additional time the insurer has to pay the claim pursuant to paragraph (4)(b).

(b) The notice required shall state that it is a "demand letter under s. 627.736(11)" and shall state with specificity:

1. The name of the insured upon which such benefits are being sought, including a copy of the assignment giving rights to the claimant if the claimant is not the insured.

2. The claim number or policy number upon which such claim was originally submitted to the insurer.

3. To the extent applicable, the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and an itemized statement specifying each exact amount, the date of treatment, service, or accommodation, and the type of benefit claimed to be due. A completed form satisfying the requirements of paragraph (5)(d) or the lost-wage statement previously submitted ~~Health Care Finance Administration 1500 form, UB 92, or successor forms approved by the Secretary of the United States Department of Health and Human Services~~ may be used as the itemized statement. To the extent that the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, the claimant shall attach a copy of the insurer's notice withdrawing such payment and an itemized statement of the type, frequency, and duration of future treatment claimed to be reasonable and medically necessary.

(c) Each notice required by this subsection ~~section~~ must be delivered to the insurer by United States certified or registered mail, return receipt requested. Such postal costs shall be reimbursed by the insurer if so requested by the claimant ~~provider~~ in the notice, when the insurer pays the ~~overdue~~ claim. Such notice must be sent to the person and address specified by the insurer for the purposes of receiving notices under this subsection ~~section, on the document denying or reducing the amount asserted by the filer to be overdue~~. Each licensed insurer, whether domestic, foreign, or alien, shall ~~may~~ file with the office ~~department~~ designation of the name and address of the person to whom notices pursuant to this subsection ~~section~~ shall be sent which the office shall make available on its Internet website ~~when such document does not specify the name and address to whom the notices under this section are to be sent or when there is no such document~~. The name and address on file with the office ~~department~~ pursuant to s. 624.422 shall be deemed the authorized representative to accept notice

pursuant to this subsection ~~section~~ in the event no other designation has been made.

(d) If, within 15 ~~7 business~~ days after receipt of notice by the insurer, the overdue claim specified in the notice is paid by the insurer together with applicable interest and a penalty of 10 percent of the overdue amount paid by the insurer, subject to a maximum penalty of $250, no action ~~for nonpayment or late payment~~ may be brought against the insurer. If the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, no action may be brought against the insurer if, within 15 days after its receipt of the notice, the insurer mails to the person filing the notice a written statement of the insurer's agreement to pay for such treatment in accordance with the notice and to pay a penalty of 10 percent, subject to a maximum penalty of $250, when it pays for such future treatment in accordance with the requirements of this section. To the extent the insurer determines not to pay any ~~the overdue~~ amount demanded, the penalty shall not be payable in any subsequent action ~~for nonpayment or late payment~~. For purposes of this subsection, payment or the insurer's agreement shall be treated as being made on the date a draft or other valid instrument that is equivalent to payment, or the insurer's written statement of agreement, is placed in the United States mail in a properly addressed, postpaid envelope, or if not so posted, on the date of delivery. The insurer shall not be obligated to pay any attorney's fees if the insurer pays the claim or mails its agreement to pay for future treatment within the time prescribed by this subsection.

(e) The applicable statute of limitation for an action under this section shall be tolled for a period of 15 business days by the mailing of the notice required by this subsection.

(f) Any insurer making a general business practice of not paying valid claims until receipt of the notice required by this subsection ~~section~~ is engaging in an unfair trade practice under the insurance code.

(13) MINIMUM BENEFIT COVERAGE.—If the Financial Services Commission determines that the cost savings under personal injury protection insurance benefits paid by insurers have been realized due to the provisions of this act, prior legislative reforms, or other factors, the commission may increase the minimum $10,000 benefit coverage requirement. In establishing the amount of such increase, the commission must determine that the additional premium for such coverage is approximately equal to the premium cost savings that have been realized for the personal injury protection coverage with limits of $10,000.

Section 9. Subsections (1) and (2) of section 627.739, Florida Statutes, are amended to read:

627.739 Personal injury protection; optional limitations; deductibles.—

(1) The named insured may elect a deductible or modified coverage or combination thereof to apply to the named insured alone or to the named insured and dependent relatives residing in the same household, but may not elect a deductible or modified coverage to apply to any other person

covered under the policy. ~~Any person electing a deductible or modified coverage, or a combination thereof, or subject to such deductible or modified coverage as a result of the named insured's election, shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator, or occupant of a vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by ss. 627.730-627.7405.~~

(2) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of $250, $500, and $1,000~~, and $2,000~~. The deductible amount must be applied to 100 percent of the expenses and losses described in s. 627.736. After the deductible is met, each insured is eligible to receive up to $10,000 in total benefits described in s. 627.736(1).~~, such amount to be deducted from the benefits otherwise due each person subject to the deduction.~~ However, this subsection shall not be applied to reduce the amount of any benefits received in accordance with s. 627.736(1)(c).

Section 10. Subsections (7), (8), and (9) of section 817.234, Florida Statutes, are amended to read:

817.234 False and fraudulent insurance claims.—

(7)(a) It shall constitute a material omission and insurance fraud for any physician or other provider, other than a hospital, to engage in a general business practice of billing amounts as its usual and customary charge, if such provider has agreed with the patient or intends to waive deductibles or copayments, or does not for any other reason intend to collect the total amount of such charge. With respect to a determination as to whether a physician or other provider has engaged in such general business practice, consideration shall be given to evidence of whether the physician or other provider made a good-faith attempt to collect such deductible or copayment. This paragraph does not apply to physicians or other providers who waive deductibles or copayments or reduce their bills as part of a bodily injury settlement or verdict.

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

(c) An insurer, or any person acting at the direction of or on behalf of an insurer, may not change an opinion in a mental or physical report prepared under s. 627.736(7) or direct the physician preparing the report to change such opinion; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8)(a) It is unlawful for any person intending to defraud any other person~~, in his or her individual capacity or in his or her capacity as a public or private employee, or for any firm, corporation, partnership, or association,~~

to solicit or cause to be solicited any business from a person involved in a motor vehicle accident ~~by any means of communication other than advertising directed to the public~~ for the purpose of making, adjusting, or settling motor vehicle tort claims or claims for personal injury protection benefits required by s. 627.736. ~~Charges for any services rendered by a health care provider or attorney who violates this subsection in regard to the person for whom such services were rendered are noncompensable and unenforceable as a matter of law.~~ Any person who violates the provisions of this paragraph ~~subsection~~ commits a felony of the second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

(b) A person may not solicit or cause to be solicited any business from a person involved in a motor vehicle accident by any means of communication other than advertising directed to the public for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by s. 627.736, within 60 days after the occurrence of the motor vehicle accident. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A lawyer, health care practitioner as defined in s. 456.001, or owner or medical director of a clinic required to be licensed pursuant to s. 400.903 may not, at any time after 60 days have elapsed from the occurrence of a motor vehicle accident, solicit or cause to be solicited any business from a person involved in a motor vehicle accident by means of in-person or telephone contact at the person's residence, for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by s. 627.736. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Charges for any services rendered by any person who violates this subsection in regard to the person for whom such services were rendered are noncompensable and unenforceable as a matter of law.

(9) A person may not organize, plan, or knowingly participate in an intentional motor vehicle crash for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits as required by s. 627.736. ~~It is unlawful for any attorney to solicit any business relating to the representation of a person involved in a motor vehicle accident for the purpose of filing a motor vehicle tort claim or a claim for personal injury protection benefits required by s. 627.736. The solicitation by advertising of any business by an attorney relating to the representation of a person injured in a specific motor vehicle accident is prohibited by this section.~~ Any person ~~attorney~~ who violates ~~the provisions of~~ this paragraph ~~subsection~~ commits a felony of the second ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years. ~~Whenever any circuit or special grievance committee acting under the jurisdiction of the Supreme Court finds probable cause to believe that an attorney is guilty of a violation of this section, such committee shall forward~~

~~to the appropriate state attorney a copy of the finding of probable cause and the report being filed in the matter. This section shall not be interpreted to prohibit advertising by attorneys which does not entail a solicitation as described in this subsection and which is permitted by the rules regulating The Florida Bar as promulgated by the Florida Supreme Court.~~

Section 11. Section 817.236, Florida Statutes, is amended to read:

817.236 False and fraudulent motor vehicle insurance application.—Any person who, with intent to injure, defraud, or deceive any motor vehicle insurer, including any statutorily created underwriting association or pool of motor vehicle insurers, presents or causes to be presented any written application, or written statement in support thereof, for motor vehicle insurance knowing that the application or statement contains any false, incomplete, or misleading information concerning any fact or matter material to the application commits a felony ~~misdemeanor~~ of the third ~~first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

Section 12. Section 817.2361, Florida Statutes, is created to read:

817.2361 False or fraudulent motor vehicle insurance card.—Any person who, with intent to deceive any other person, creates, markets, or presents a false or fraudulent motor vehicle insurance card commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 13. Effective October 1, 2003, paragraphs (c) and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(c) LEVEL 3
119.10(3)	3rd	Unlawful use of confidential information from police reports.
316.066(3)(d)-(f)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in marked patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

Florida Statute	Felony Degree	Description
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
400.903(3)	3rd	Operating a clinic without a license or filing false license application or other required information.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/ misleading information.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
796.05(1)	3rd	Live on earnings of a prostitute.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234(8)(b)-(c)~~&(9)~~	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.

Florida Statute	Felony Degree	Description
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 200 feet of university or public park.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 200 feet of public housing facility.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.

Florida Statute	Felony Degree	Description
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
		(g) LEVEL 7
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920(2)	3rd	Medicaid provider fraud.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.

Florida Statute	Felony Degree	Description
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by money transmitter.
560.125(5)(a)	3rd	Money transmitter business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

Florida Statute	Felony Degree	Description
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

Florida Statute	Felony Degree	Description
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
812.014(2)(a)	1st	Property stolen, valued at $100,000 or more; cargo stolen valued at $50,000 or more; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.

Florida Statute	Felony Degree	Description
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
872.06	2nd	Abuse of a dead human body.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility or school.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.

Florida Statute	Felony Degree	Description
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.

Section 14. The amendment made by this act to section 456.0375(1)(b), Florida Statutes, is intended to clarify the legislative intent of this provision as it existed at the time the provision initially took effect. Accordingly, section 456.0375(1)(b), Florida Statutes, as amended by this act shall operate retroactively to October 1, 2001.

Section 15. Effective March 1, 2004, section 456.0375, Florida Statutes, is repealed.

Section 16. (1) Any increase in benefits approved by the Financial Services Commission under subsection (13) of section 627.736, Florida Statutes, as added by this act, shall apply to new and renewal policies that are effective 120 days after the order issued by the commission becomes final. Subsections (1) and (2) of section 627.739, Florida Statutes, as amended by this act, shall apply to new and renewal policies issued on or after October 1, 2003.

(2) Subsection (11) of section 627.736, Florida Statutes, as amended by this act, shall apply to actions filed on and after August 1, 2003.

(3) Paragraph (7)(a) of section 627.736, Florida Statutes, as amended by this act, and paragraph (7)(c) of section 817.234, Florida Statutes, as amended by this act, shall apply to examinations conducted on and after October 1, 2003.

(4) Subsection (5) of section 627.736, Florida Statutes, as amended by this act, shall apply to treatment and services occurring on or after October 1, 2003.

Section 17. By December 31, 2004, the Department of Financial Services, the Department of Health, and the Agency for Health Care Administration each shall submit a report on the implementation of this act and recommendations, if any, to further improve the automobile insurance market, reduce automobile insurance costs, and reduce automobile insurance fraud and abuse to the President of the Senate and the Speaker of the House of Representatives. The report by the Department of Financial Services shall include

a study of the medical and legal costs associated with personal injury protection insurance claims.

Section 18. Effective July 1, 2003, there is appropriated $2.5 million from the Health Care Trust Fund, and 51 full-time equivalent positions are authorized, for the Agency for Health Care Administration to implement the provisions of this act.

Section 19. (1) Effective October 1, 2007, sections 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, Florida Statutes, constituting the Florida Motor Vehicle No-Fault Law, are repealed, unless reenacted by the Legislature during the 2006 Regular Session and such reenactment becomes law to take effect for policies issued or renewed on or after October 1, 2006.

(2) Insurers are authorized to provide, in all policies issued or renewed after October 1, 2006, that such policies may terminate on or after October 1, 2007, as provided in subsection (1).

Section 20. If any law that is amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted during the same session of the Legislature, and full effect should be given to each if that is possible.

Section 21. (1) Notwithstanding the amendment to section 627.7295, Florida Statutes, by CS/SB 2364, paragraph (a) of subsection (5) of section 627.7295, Florida Statutes is not amended as provided by that act, but is reenacted to read:

627.7295 Motor vehicle insurance contracts.—

(5)(a) A licensed general lines agent may charge a per-policy fee not to exceed $10 to cover the administrative costs of the agent associated with selling the motor vehicle insurance policy if the policy covers only personal injury protection coverage as provided by s. 627.736 and property damage liability coverage as provided by s. 627.7275 and if no other insurance is sold or issued in conjunction with or collateral to the policy. The per-policy fee must be a component of the insurer's rate filing and may not be charged by an agent unless the fee is included in the filing. The fee is not considered part of the premium except for purposes of the department's review of expense factors in a filing made pursuant to s. 627.062.

(2) This section shall take effect upon this act becoming a law, except that, if this act does not become a law before CS/SB 2364 becomes a law, this section shall operate retroactively to the date that CS/SB 2364 becomes a law.

Section 22. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2003.

Approved by the Governor July 11, 2003.

Filed in Office Secretary of State July 11, 2003.