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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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February 16, 1981

MEMORANDUM

TO: Representative Thelma Buchholdt

FROM: Betty Barton *BB*
Issues Analyst

RE: Motor Vehicle Insurance
Research Request No. 81-32

You have asked for information regarding compulsory liability and no-fault insurance for motor vehicles. As a component of this request, you expressed special interest in receiving materials about Florida's no-fault insurance law. We have assembled a copy of the law, as amended, and some explanatory materials concerning it, which are attached to this memorandum. In addition, we have contacted Terry Butler, Staff Attorney for the Florida House of Representatives' Standing Committee on Insurance, for information concerning the effects of the Florida law. Mr. Butler is sending materials on the Florida Act, which will be forwarded to your office upon arrival.

The Florida Automobile Reparations Reform Act, enacted in 1972, requires motorists to carry first-party personal injury protection insurance coverage with an overall limit of \$10,000 per individual. This provides coverage for 80 percent of the allowable medical expenses, 60 percent of the individual's loss of income, replacement services (e.g., house-keeping, day care), and funeral costs (\$1,000 maximum). It should be noted that Florida law no longer mandates compulsory liability insurance; this provision was repealed in 1977 because of its upward effect on the cost of premiums.

Under Florida law, an accident victim cannot recover general damages through the courts unless the accident has resulted in a significant injury or death. In 1979, the tort threshold of the law was amended to eliminate all non-permanent injuries from consideration by the courts. This amendment was made in an effort to reduce the cost of insurance premiums, which have been especially expensive in the populated areas of the state having a high risk rating, e.g., Dade County.

The Florida law has been fairly well received by the public, and is, of course, popular with insurance carriers. In turn, the Act has been

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opposed by some of the state's attorneys who argue that the tort threshold denies individuals access to the courts. In 1974, the Act was upheld by the State Supreme Court. However, due to major amendments to the law, several new cases have been initiated and are currently pending.

If you have additional questions concerning the enclosed materials, please do not hesitate to contact me. We are continuing to research other components of your request and expect to complete it in the very near future.

BB/BF

Attachments

PRINCIPAL PROVISIONS OF THE FLORIDA LAW

The Florida Automobile Reparations Reform Act took effect Jan. 1, 1972. It was altered in 1973 and 1974 by decisions of the Florida Supreme Court and was revised in 1976, 1977, and 1978 by the legislature. The latest version, effective Jan. 1, 1979, provides that an accident victim cannot recover general damages from a motorist carrying the required insurance unless the accident results in:

- Significant and permanent loss of an important body function;
- Injury that is permanent within a reasonable degree of medical probability, other than scarring or disfigurement;
- Significant and permanent scarring or disfigurement;
- Death;

Motorists are required to carry a first-party personal injury protection insurance coverage with an overall limit of \$10,000. This coverage provides benefits for 80 percent of medical expenses, 60 percent of income loss, replacement services, and funeral costs (up to \$1,000). If the loss exceeds this amount, the right to sue is available for the portion over \$10,000.

Insurers must offer deductibles of \$250, \$500, \$1,000, \$2,000, \$3,000, \$4,000, \$6,000 and \$8,000 for the personal injury protection coverage. Deductibles can apply to the policyholder alone or to the policyholder and relatives living in his household, but not to others. Motorists can buy the coverage without benefits for income loss at a lower rate. Those eligible for Medicare can have Medicare benefits deducted from the no-fault benefits. Those eligible for military health benefits can do the same.

All motor vehicles with four or more wheels are covered by the law, which also applies to out-of-state vehicle owners who have their vehicles in Florida more than 90 days a year.

The 1976 amendments to the law provided extensive safeguards against claim fraud. Any physician, attorney, insurance adjuster, insurance company, or claimant that conspires to commit claim fraud is guilty of a third-degree felony. Any hospital administrator or employee who allows the use of hospital facilities by an insured person to commit claim fraud is also guilty of a third-degree felony.

The law established a Division of Fraudulent Claims (now called Division of Insurance Fraud) in the Florida Insurance Department to investigate suspected fraudulent activity. Insurance companies are required to report to the division any claims they suspect of being fraudulent. Insurance companies and their employees and agents are given immunity to lawsuits for libel that may arise because of the information they provide the division.

Doctors, hospitals, and other medical institutions are required to provide sworn statements that the treatment rendered to an accident victim was reasonable and necessary.

Accident Victim

Claim Fraud

Historical Background

The original Florida law restricted tort liability in this way: An accident victim could not recover general damages unless his medical expenses exceeded \$1,000, or the injuries resulted in permanent disfigurement, permanent injury, fracture of a weight-bearing bone, a compound, comminuted, displaced, or compressed fracture, loss of a body member or function, or death. On April 17, 1974, the Florida Supreme Court, in a decision upholding the basic constitutionality of the law, strengthened the tort restriction. Recovery of general damages was permitted only if the medical expenses exceeded \$1,000, or the injuries resulted in permanent disfigurement or injury, loss of a body member or function, or death.

In 1976, the legislature amended the law to allow recovery of general damages only if the accident victim suffered loss of a body member, permanent loss of a body function, permanent injury other than scarring or disfigurement, significant permanent scarring or disfigurement, or a serious non-permanent injury that materially affected the victim's ability to resume his normal activity and life-style during all or substantially all of the 90-day period after the injury. ** Amendments*

Until overturned by the courts, a provision of the Florida law restricted tort recovery for vehicle damage. It required insurers to offer two types of collision coverage to their policyholders. "Basic" collision coverage paid for damage to the policyholder's automobile only if the other driver was at fault. "Full" coverage was like the traditional collision coverage, but it eliminated the deductible if the other driver was at fault. A policyholder who chose to buy neither form of collision coverage was prohibited from suing the driver at fault unless the damage to his vehicle exceeded \$550.

On July 11, 1973, the Florida Supreme Court, in a four-to-three decision, ruled this portion of the law unconstitutional. Since motorists were not compelled to purchase either form of collision coverage, the court said, the law abolished a long-standing right without providing a reasonable alternative. If an alternate remedy had been provided, or if the legislature had shown an overpowering public need for the reform, the abolition of the right might have been constitutionally permissible, the court said.

The original Florida law provided benefits for 100 percent of medical expenses and 85 percent of lost income (up to the \$5,000 limit on the personal injury protection coverage). The amendments in 1977 cut these coverages to 80 percent of medical costs and 60 percent of income loss. Until 1977, the law permitted deductibles only up to \$2,000. Until the 1978 amendments, the personal injury protection coverage was limited to \$5,000.

Liability coverage was compulsory in Florida until July 1, 1977. Now only the no-fault coverage is required. But proof of financial responsibility for damages caused in an accident is still required by Florida law.

THE FLORIDA LAW

Section 1. Short title.—This act may be cited and known as the "Florida automobile reparations reform act."

Sec. 2. Section 2. Purpose.—The purpose of this act is to require medical, surgical, funeral and disability insurance benefits to be provided without regard to fault under motor vehicle policies that provide bodily injury and property damage liability insurance, or other security, for motor vehicles registered in this state, and with respect to motor vehicle accidents, a limitation on the right to claim damages for pain, suffering, mental anguish and inconvenience.

Section 3. Definitions.—As used in this act:

(1) "Motor vehicle" means a sedan, station wagon or jeep type vehicle not used as a public livery conveyance for passengers, and includes any other four-wheel motor vehicle used as a utility automobile and a pickup or panel truck with a load capacity of 1,500 pounds or less which is not used primarily in the occupation, profession or business of the insured.

(2) "Owner" means a person who holds the legal title to a motor vehicle, or in the event a motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for the purposes of this act.

(3) "Named insured" means a person, usually the owner of a vehicle, identified in a policy by name as the insured under the policy.

(4) "Relative residing in the same household" means a relative of any degree by blood or by marriage, who usually makes his home in the same family unit, whether or not temporarily living elsewhere.

Section 4. Required security.—

(1) Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as required by subsection (3) of this section in effect continuously throughout the registration or licensing period.

(2) Every nonresident owner or registrant of a motor vehicle which, whether operated or not, has been physically present within this state for more than ninety (90) days during the preceeding three hundred sixty-five (365) days, shall thereafter maintain security as defined by subsection (3) of this section in effect continuously throughout the period such motor vehicle remains within this state.

(3) Such security shall be provided by one of the following methods:

(a) Security by insurance may be provided with respect to such motor vehicle by an insurance policy delivered or issued for delivery in this state by an authorized or eligible insurer as otherwise defined in this code, which qualifies as evidence of automobile or motor vehicle liability insurance under chapter 324, Florida Statutes, "the financial responsibility law", except as modified to provide the benefits and exemptions contained in this act.

Any such policy of liability insurance covering motor vehicles registered or licensed in this state and any policy of insurance represented or sold as providing the security required hereunder for registered and licensed motor vehicles under this act shall be deemed to provide insurance for the payment of such benefits; or

(b) Security may be provided with respect to any motor vehicle by any other method approved by the department of insurance as affording security equivalent to that afforded by a policy of insurance, provided such security is continuously maintained throughout the motor vehicle's registration or licensing period. The person filing such security shall have all of the obligations and rights of an insurer under this act.

(4) An owner of a motor vehicle with respect to which security is required by this act who fails to have such security in effect at the time of an accident shall have no immunity from tort liability, and be personally liable for the payment of benefits under section 7. With respect to such benefits, such an owner shall have all of the rights and obligations of an insurer under this act.

Section 5. Proof of security; security requirements; penalties.—

(1) The provisions of chapter 324, Florida Statutes, which pertain to the method of giving and maintaining proof of financial responsibility, and which govern and define a motor vehicle liability policy, shall apply to filing and maintaining proof of security or financial responsibility required by this act. It is intended that the provisions of chapter 324, Florida Statutes, relating to proof of financial responsibility required of each operator and each owner of any motor vehicle, shall continue in full force and effect.

(2) Any person who gives information required in a report or otherwise as provided for in this act, knowing or having reason to believe that such information is false, or who shall forge, or, without authority, sign any evidence of proof of security, or who files or offers for filing any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority, shall, upon conviction, be punished by fine not to exceed one thousand dollars (\$1,000) or imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

(3) This act does not apply to any motor vehicle owned by the state or by a political subdivision of the state, nor to any motor vehicle owned by the federal government.

Section 5A. Subsection (2) of section 5 of this act is created to read:

Section 5. Proof of security; security requirements; penalties.—

(2) Any person who gives information required in a report or otherwise as provided for in this act, knowing or having reason to believe that such information is false or who shall forge, or, without authority, sign any evidence of proof of security, or who files or offers for filing any such evidence

of proof, knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a misdemeanor of the first degree, punishable as provided in sections 775.082 or 775.083.

Section 5B. In the event CS for HB 935, introduced in the 1971 regular session of this act will stand repealed and be omitted from the Florida Statutes. In the event CS for HB 935 is not enacted into law, section 5A of this act will stand repealed and be omitted from the Florida Statutes.

Section 6. Operation of a motor vehicle illegal without security; penalties.—

(1) Any owner or registrant of a motor vehicle with respect to which security is required under subsection (1) or (2) of section 4 who operates such motor vehicle or permits it to be operated in this state without having in full force and effect security complying with the terms of said subsection (1) or (2) of section 4 shall have his operator's license and registration revoked.

(2) Any motor vehicle liability insurance policy which provides security required pursuant to subsection (3) of section 4 shall also be deemed to comply with the applicable limits of liability required under the financial responsibility or compulsory laws of any other state.

Section 7. Required personal injury protection benefits; exclusions; priority.—

(1) Every insurance policy complying with the security requirements of section 4 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices, necessary ambulance, hospital, nursing services, funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a motor vehicle or motorcycle, all as specifically provided in subsection (2) and paragraph (d) of subsection (4) of this section, to a limit of five thousand dollars (\$5,000) for loss sustained by any such person as a result of bodily injury, sickness, disease or death arising out of the ownership, maintenance or use of a motor vehicle as follows:

(a) Medical benefits. all reasonable expenses for necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices, necessary ambulance, hospital and nursing services. Such benefits shall include also, necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing in accordance with his religious beliefs.

(b) Disability benefits: one hundred percent (100%) of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to eighty-five percent (85%), from inability to work proximately caused

by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household. All disability benefits payable under this provision shall be paid not less than every two weeks.

(c) Funeral, burial or cremation benefits: funeral, burial or cremation expenses in an amount not to exceed one thousand dollars (\$1,000) per individual.

(2) Any insurer may exclude benefits:—

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy, or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;
2. Convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;
3. While committing a felony.

(3) Insurer's rights of reimbursement and indemnity:—

(-) No subtraction from personal protection insurance benefits will be made because of the value of a claim in tort based on the same bodily injury, but after recovery is realized upon such a tort claim, a subtraction will be made to the extent of the recovery, exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tortfeasor or his insurer or insurers. If personal protection insurance benefits have already been received, the claimant shall repay to the insurer or insurers out of the recovery a sum equal to the benefits received, but not more than the recovery exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tortfeasor or his insurers or insurer. The insurer or insurers shall have a lien on the recovery to this extent. No recovery by an injured person or his estate for loss suffered by him will be subtracted in calculating benefits due a dependent after the death, and no recovery by a dependent for loss suffered by the dependent after the death will be subtracted in calculating benefits due the injured person except as provided in paragraph (c) of subsection (1) of section 7.

(b) The insurer shall be entitled to reimbursement of any payments made under the provisions of subsection (3) of this section based upon such equitable distribution of the amount recovered as the court may determine less the pro rata share of all court costs expended by the plaintiff in the prosecution of the suit to recover such amount against a third-party tortfeasor including a reasonable attorney's fee for the plaintiff's attorney. The

proration of the reimbursement shall be made by the judge of a trial court handling the suit to recover damages in the third-party action against the tortfeasor upon application therefor and notice to the carrier.

(c) Indemnity from one paying in tort without regard for rights of insurer having reimbursement interest.—A personal protection insurer with a right of reimbursement under this section, if suffering loss from inability to collect such reimbursement out of a payment received by a claimant upon a tort claim is entitled to indemnity from one who, with notice of the insurer's interest, made such a payment to the claimant without making the claimant and the insurer joint payees as their interests may appear, or without obtaining the insurer's consent to a different method of payment.

(d) In the event an injured party or his legal representative is entitled to bring suit against a third party tortfeasor under the provisions of section 8, and fails to bring such suit against such third party tortfeasor within one year after the last payment of any benefits under subsection (1) of section 7, the insurer of such injured party, upon giving thirty (30) days written notice to such injured party, shall have the right to bring suit against such third party, in its own name or in the name of the injured person or his legal representative, to recover the amount of the benefits paid pursuant to the provisions of section 7 of this act to or for the benefit of such injured person; provided, however, that the prosecution or settlement of such suit without the consent of the injured person or his legal representative shall be without prejudice to such person.

(4) Benefits due from an insurer under this act shall be primary, except that benefits received under any workmen's compensation law shall be credited against the benefits provided by subsection (1) of section 7, and 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 this act.

(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 this act.

(b) Personal injury protection insurance benefits shall be overdue if not paid within thirty (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 thirty (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 thirty (30) days after such written notice is furnished to the insurer; provided, however, that any payment shall not be deemed overdue where the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any benefits are over-

due, 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.

(c) All overdue payments shall bear simple interest at the rate of ten percent (10%) per annum.

(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 motor vehicle or motorcycle 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, 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 2 of this paragraph (d), provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle with respect to which security is required under this act.

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 motor vehicle or motorcycle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself:

a. The owner of a motor vehicle with respect to which security is required under this act, or

b. Entitled to personal injury benefits from the insurer of the owner 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) of section 7, 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.

(5) Charges for treatment of injured persons.— 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 only a reasonable amount for the products, services, and accommodations rendered. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, and accommodations in cases involving no insurance.

(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 this act against whom a claim has been made, furnish forthwith, in a form approved by the department of insurance, 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, and dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment, and dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment, and 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.

(e) The injured person shall be furnished upon demand 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.

(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 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 city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of 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.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an

examining physician, at least one of which reports must set out his 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 his 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 may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(8) With respect to any dispute under the provisions of this act between the insured and the insurer, the provisions of section 627.0127, Florida Statutes, shall apply.

Section 8. Tort exemption; limitation on right to damages.—

(1) Every owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for damages because of bodily injury, sickness or disease arising out of the ownership, operation, maintenance or use of such motor vehicle in this state to the extent that the benefits described in subsection (i) of section 7 are payable for such injury, or would be payable but for any exclusion or deductible authorized by this act, under any insurance policy or other method of security complying with the requirements of section 4, or by an owner personally liable under section 4 for the payment of such benefits, unless a person is entitled to maintain an action for pain, suffering, mental anguish and inconvenience for such injury under the provisions of subsection (2) of this section.

(2) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury under paragraph (a) of subsection (1) of section 7 or which would be payable but for any exclusion or deductible authorized by this act exceed one thousand dollars (\$1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function, or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed

in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars (\$1,000). Any person receiving ordinary and necessary services normally performed by a nurse from a relative or a member of his household shall be entitled to include the reasonable value of such services in meeting the requirements of this subsection.

Section 9. (1) The owner of a motor vehicle as defined in section 3 is not required to maintain security with respect to property damage to his motor vehicle, but may elect to purchase either full or basic coverage for accidental property damage to his motor vehicle.

(2) Every insurer providing security under this act shall offer the owner either full or basic coverage for accidental property damage to the insured motor vehicle as follows:

(a) Full coverage shall provide insurance without regard to fault for accidents occurring within the United States of America, its territories or possessions or Canada.

(b) Basic coverage shall be limited to insurance against damage caused by the fault of another resulting from contact between the insured vehicle and a vehicle with respect to which security is required under this act.

(3) The insurer may include within the terms and conditions applicable to full or basic coverage such other provisions as it customarily applies to collision coverage for private passenger automobiles in other states, including deductibles without limitation.

(4) Every owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, and every other person or organization legally responsible for the acts or omissions of such an owner, registrant, operator or occupant, is hereby exempted from tort liability for damage because of accidental property damage to motor vehicles arising out of the ownership, operation, maintenance or use of such motor vehicle in this state, provided that a person shall not be exempt from such liability if he was operating the motor vehicle without the express or implied consent of its owner or an insured under the owner's policy or if his willful and wanton misconduct was the proximate cause of the accident. This exemption applies only with respect to property damage to motor vehicles subject to this act but shall not be applicable as to a motor vehicle damaging a parked vehicle.

(5) Notwithstanding paragraph (4) above, an owner who has elected not to purchase insurance with respect to property damage to his motor vehicle may maintain an action of tort therefor against the owner, registrant, operator or occupant of a motor vehicle causing such damage if such damage exceeds five hundred and fifty dollars (\$550), and the insurer of an owner who has elected to purchase full or basic collision coverage for his motor vehicle shall have the right, if the damage to such motor vehicle

exceeds the above amount, to recover the amount of the benefits it has paid and, in behalf of its insured, any deductible amount from the insurer of the owner, registrant, operator or occupant of a motor vehicle causing such damage. The issues of liability in such a case and the amount of recovery shall be decided on the basis of tort law, and shall be determined by agreement between the insurers involved, or if they fail to agree by arbitration.

Section 10. Each insurer providing security as required by this act to any owner shall, at the election of the owner, issue a policy endorsement, approved as to content by the department of insurance and subject to such other reasonable regulations regarding said endorsement as the department may make after appropriate hearing, which endorsement shall provide that there shall be deducted from personal protection benefits that would otherwise be or become due to the policyholder alone or to the policyholder and relatives residing in his household, an amount of either two hundred and fifty dollars (\$250), five hundred dollars (\$500) or one thousand dollars (\$1,000), again as the policyholder elects, said amount to be deducted from the amounts otherwise due each person subject to the deduction. Any person electing such an endorsement or subject to such an endorsement as a result of the policyholder's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator or occupant of a motor vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by this act.

Section 11. Notwithstanding any other provision of this act, the rights of residents of this state to claim damages in tort shall not be diminished when such residents are involved in motor vehicle accidents with persons not required to provide security under this act.

Section 12. Implementation of this act.—

(1) The department of insurance shall adopt rules and regulations necessary to implement the provisions of this act.

(2) Notwithstanding any other provision of law, all insurers issuing insurance coverage under this act shall comply with the following provisions:

(a) Within sixty (60) days after the effective date of this act, each insurer shall file its proposed manual, rules, rates and rating plans with the department for approval. Rates for required financial responsibility coverage after the effective date of sections 1 through 11 of this act shall be reduced by each insurer by not less than fifteen percent (15%), calculated as a percentage of the combined required financial responsibility rate of such insurer in effect on June 7, 1971, or of the combined required financial responsibility rate of such insurer approved by the commissioner and in effect at the time of the filing of the new rates required herein. There shall be no exception to the requirements of this provision, unless the department shall find that the use of the rates required

herein by any insurer will result in rates which are inadequate under section 627.082, Florida Statutes, to the extent that such rates jeopardize the solvency, as defined in section 631.011, Florida Statutes, of the insurer required to use such rates. Notwithstanding the provisions of Chapter 71-3(B), Laws 1971, no rate for the insurance required by this act shall be increased prior to January 1, 1973, unless the insurer proposing such rate increase shall show that the rates required herein are inadequate as defined in section 627.082, Florida Statutes.

(b) Within sixty (60) days from the date of filing by such insurer, the department may approve or disapprove the filing. If no action is taken by the department within sixty (60) days, the filing shall be deemed approved.

(c) If the department approves the filing or the filing otherwise become effective, the manual, rules, rates and rating plans shall take effect upon the effective date of sections 1 through 11 of this act. If the department disapproves the filing, the insurer shall revert to a rate level for required coverage which shall be lower, by not less than fifteen percent (15%), than the combined premiums for required financial responsibility coverage at the time such proposed new rates were filed.

(d) Upon complying with this subsection, any insurer appealing an order of disapproval may use the rates set forth in the disapproved filing during the pendency of the appeal, so long as such rates do not exceed its rates for required financial responsibility coverage at the time of its rate filing required herein. As a condition to the use of such disapproved rates, the insurer must enter into a legally binding agreement with the department to secure the repayment to the insurer's policyholders of the difference between the insurer's proposed rate and that rate which would be lower, by not less than fifteen percent (15%), than the combined

premiums for required financial responsibility coverage at the time such proposed new rates were filed. In addition to the repayment of the difference in premium, the company shall agree to pay to the insured the legal rate of interest on any money refunded.

(e) Any private passenger automobile liability policy in force on January 1, 1972 and thereafter, shall reflect by endorsement any reduction in rates for the required coverage under this act as filed by the insurer and such reduction shall be computed on a pro rata basis for the remaining term of said policy. Such endorsement may be issued at the renewal date of the policy or the termination of the policy. Any return premium shall be credited to the renewal policy or if the policy is terminated the return premium shall be refunded to the insured.

(f) For the purposes of the implementation of this act, rating organizations as defined in chapter 627 shall be permitted until January 1, 1973, to develop and furnish rates and forms to their members or subscribers. Provided, however, that members and subscribers of rating organizations shall not participate in the decisions or deliberations of such organizations in the development of such rates under this act.

Section 13. If any provision of this act, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this and the provisions of this act are declared to be severable.

Section 14. This act shall become effective July 1, 1971; provided, however the provisions of sections 1 through 11 of this act shall not become effective until January 1, 1972, and shall not apply to accidents or injuries occurring before said date.

Chapter 76-266, Laws 1976

House Bill Nos. 2825, 3042, 3043, 3044, 3155
An act relating to liability and insurance therefor; amending s. 324.021 (7), Florida Statutes; changing the financial responsibility limits; amending s. 324.051(2), Florida Statutes, changing the property damage operative amount in the financial responsibility law; amending s. 627.727(1), Florida Statutes, and adding a subsection; providing for limits of uninsured motorist coverage; amending s. 627.736 (2), (3), (6) and (7), Florida Statutes; providing for the tolling of the 30-day personal injury protection benefit payment period under certain conditions; providing that no insurer paying personal injury protection benefits shall have a lien on recoveries in tort; providing that a claimant in any tort claim for which personal injury protection benefits have been paid shall have no right to recover in tort any damages for personal injury protection benefits paid; providing for jury instructions relating to said dam-

ages; deleting language relating to equitable distribution and insurer actions; providing that a sworn statement relating to treatment, services, and costs be provided the insurer by a physician, hospital, clinic or other medical institution; providing that no cause of action for invasion of privacy or violation of the physician-patient privilege shall be due to compliance with the discovery provisions of said section; providing that notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured; providing for the withholding of personal injury protection benefits when an insured unreasonably refuses to submit to a medical examination upon the request of an insurer; amending s. 627.737 (2), Florida Statutes, and adding a subsection; providing for conditions under which a plaintiff may recover damages in tort for bodily injury or disease arising out of the ownership, maintenance, operation or use of a motor vehicle; providing for dismissal without prejudice if the threshold provi-

sions of said section are not met; amending s. 627.739, Florida Statutes, relating to deductibles for personal injury protection benefits; creating s. 627.7375, Florida Statutes; prohibiting fraud or intent to commit fraud to violate part x of chapter 627, Florida Statutes; providing penalties; adding subsection (7) to s. 20.13, Florida Statutes, and creating s. 626.989, Florida Statutes, creating a Division of Fraudulent Claims within the Department of Insurance; creating s. 627.4132, Florida Statutes; prohibiting stacking of coverages; creating s. 627.7377, Florida Statutes; providing for physical damage deductibles; creating s. 627.7262, Florida Statutes; providing for joinder of insurers and procedures for disqualification of insurers; repealing s. 627.738, Florida Statutes, relating to tort liability for property damage; repealing s. 627.740, Florida Statutes, relating to tort claims; repealing s. 627.741 (2), Florida Statutes, relating to compliance with ss. 627.730-627.741, Florida Statutes, by insurers; providing that the Department of Insurance shall review the level of automobile insurance rates; providing for severability; providing an effective date.

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

Section 1. Subsection (7) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

(7) Proof of Financial Responsibility.—That proof of ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of \$10,000 because of bodily injury to, or death of, one person in any one accident; subject to said limits for one person, in the amount of \$20,000 because of bodily injury to, or death of, two or more persons in any one accident; and in the amount of \$5,000 because of injury to or destruction of property of others in any one accident.

Section 2. Subsection (2) of section 324.051, Florida Statutes, is amended to read:

324.051 Reports of accidents; suspensions of licenses and registrations.—

(2) (a) Thirty days after receipt of notice of any accident involving a motor vehicle within this state which has resulted in bodily injury or death to any person, or total damage of \$500 or more to property, the department shall suspend the licenses of the operators and all registrations of the owners of the vehicles involved in such accident and in case of a nonresident owner or operator, shall suspend such nonresident's operating privilege in this state, unless such operator or owner shall prior to the expiration of such 30 days be found by the department to be exempt from the operation of this chapter, based upon evidence in its files satisfactory to the department that:

1. No injury was caused to the person or property of anyone other than such operator or owner, or

2. The motor vehicle was legally parked at the time of such accident, or

3. The motor vehicle was owned by the United States Government, this state, any political subdivision of this state or any municipality therein, or

4. Such operator or owner had been finally adjudicated not to be liable by a court of competent jurisdiction, or

5. Such operator or owner had secured a duly acknowledged written agreement providing for release from liability by all parties injured as the result of said accident and had complied with one of the provisions of s. 324.031, or

6. Such operator or owner has deposited with the Department of Insurance security to conform with s. 324.061, and has complied with one of the provisions of s. 324.031, or

7. One year has elapsed since such owner or operator was suspended pursuant to s. 324.051 (4), the owner or operator has complied with one of the provisions of s. 324.031, and no bill of complaint of which the department has notice has been filed in a court of competent jurisdiction.

(b) This subsection shall not apply:

1. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance or bond; nor

4. To any person who has obtained from the department a certificate of self-insurance in accordance with s. 324.171 or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than those specified in s. 324.021 (7).

Section 3. Subsection (1) of section 627.727, Florida Statutes, is amended, subsections (2)-(4) are renumbered subsections (3)-(5), and a new subsection (2) is added to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.—

(1) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, however, that the coverage required under this section shall not be applicable when, or to the extent that, any insured named in the policy shall reject the coverage; and

provided further, that when a vehicle is leased for a period of 1 year or longer and the lessor of such vehicle by the terms of the lease contract provides liability coverage on the leased vehicle in a policy wherein the lessee is a named insured or on a certificate of a master policy issued to the lessor, the lessee of such vehicle shall have the sole privilege to reject uninsured motorist coverage. Unless the named insured, or lessee having the privilege of rejecting uninsured motorist coverage, requests such coverage in writing, the coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer. The coverage provided under this section shall be excess over but shall not duplicate the benefits available to an insured under any workmen's compensation law, personal injury protection benefits, disability benefits law, or any similar law; under any automobile liability or automobile medical expense coverages; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident. Such coverage shall not inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law.

(2) The limits of uninsured motorist coverage shall be not less than the limits of bodily injury liability insurance purchased by the named insured or such lower limit complying with the company's rating plan as may be selected by the named insured, but in any event the insurer shall make available, at the written request of the insured, limits up to \$100,000 each person, \$300,000 each occurrence, irrespective of the limits of bodily injury liability purchased, in compliance with the company's rating plan.

Section 4. Subsections (2), (3), (6), and (7) of section 627.736, Florida Statutes, are amended to read:

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

(2) Authorized Exclusions.—Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy, or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;
2. Being convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;
3. While committing a felony.

Whenever an insured is charged with conduct as set forth in subparagraphs 2. or 3., the 30-day payment provision of paragraph (b) of subsection (4) shall be held in abeyance and the insurer shall

withhold payment of any personal injury protection benefits pending the outcome of the case at the trial level. If the charge is nolle prosequi or dismissed or the insured is acquitted, the 30-day payment provision shall run from the date the insurer is notified of such action.

(Substantial rewording of subsection. See s. 627.736(3), F.S., for present text.)

(3) Insured's rights to recovery of special damages in tort claims.—No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise, for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured party or his legal representative who is entitled to bring suit under the provisions of s. 627.737 shall have no right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, shall not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid or payable.

(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. 627.730-627.741 against whom a claim has been made, furnish forthwith, in a form approved by the Department of Insurance, 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, and dates and costs of such treatment of the injured person, 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 said treatment or services was incurred as a result of such bodily injury, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment, and dates and costs of treatment. Said 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 or physician-patient privilege or invasion of the right of privacy shall be against any physician, hospital, clinic or other medical institution com-

plying with the provisions of this section. The person requesting such records and said sworn statement shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment, and 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 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 city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of 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.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his 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 his 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 may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of 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.

Section 5. Subsection (2) of section 627.737, Florida Statutes, is amended and subsection (3) is added to read:

627.737 Tort exemption; limitation on right to damages.—

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.741, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part in:

(a) loss of a body member, or
(b) permanent loss of a bodily function, or
(c) permanent injury within a reasonable degree of medical probability other than scarring or disfigurement, or

(d) significant permanent scarring or disfigurement, or

(e) a serious non-permanent injury which has a material degree of bearing on the injured person's ability to resume his normal activity and life-style during all or substantially all of the ninety day period after the occurrence of the injury, and the effects of which are medically or scientifically demonstrable at the end of such period, or

(f) death.

(3) when a defendant, in a proceeding brought pursuant to ss. 627.730-627.741, questions whether the plaintiff has met the requirements of s. 627.737(2), then the defendant may file an appropriate motion with the court and the court shall, on a one-time basis only, 30 days before the date set for the trial or the pre-trial hearing, whichever is first, by examining the pleadings and the evidence before it, ascertain whether the plaintiff will be able to submit some evidence that the plaintiff will meet the requirements of s. 627.737(2). If the court finds that the plaintiff will not be able to submit such evidence then the court shall dismiss the plaintiff's claim without prejudice.

Section 6. Section 627.739, Florida Statutes, is amended to read:

627.739 Deductible endorsement.—Each insurer providing security as required by ss. 627.730-627.741 to any owner shall, at the election of the owner, issue a policy endorsement, approved as to content by the Department of Insurance and subject to such other reasonable regulations regarding said endorsement as the department may make after appropriate hearing, which endorsement shall provide that there shall be deducted from personal protection benefits that would other-

wise be or become due to the policyholder alone or to the policyholder and relatives residing in his household an amount of either \$250, \$500, or \$1,000, or \$2,000 again as the policyholder elects, said amount to be deducted from the amounts otherwise due each person subject to the deduction. Any person electing such an endorsement or subject to such an endorsement as a result of the policyholder's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator, or occupant of a motor 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. 627.730-627.741.

Section 7. Section 627.7375, Florida Statutes, is created to read:

627.7375 Fraud.—

(1) Any insured party or insurer or insurance adjuster who, with intent, knowingly and willfully conspires to fraudulently violate any of the provisions of this part, or who, due to fraud on such person's part, does knowingly and willfully violate any of the provisions of this part is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, or any other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this part or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In the event that a physician, osteopath, chiropractor or practitioner is adjudicated guilty of a violation of this section, the State Board of Medical Examiners as set forth in chapter 458, the State Board of Osteopathic Medical Examiners as set forth in chapter 459, or the Florida State Board of Chiropractic Examiners as set forth in chapter 460, or other appropriate licensing authority, whichever is appropriate, shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopath, chiropractor or practitioner.

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this part or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) No person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraud-

ulently violate any of the provisions of this part. Any hospital administrator or employee who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any adjudication of guilt for a violation of this section, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this part is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to \$5,000 by the licensing agency as set forth in chapter 395.

Section 8. Subsection (7) is added to Section 20.13, Florida Statutes, to read:

20.13 Department of Insurance.—There is created a Department of Insurance.

(7) There is created within the Department of Insurance a Division of Fraudulent Claims to enforce the provisions of s. 626.989.

Section 9. Section 626.989, Florida Statutes, is created to read:

626.989 Division of Fraudulent Claims; investigative powers; accident reports to division; personnel and expenses; division of costs.—

(1) The Division of Fraudulent Claims shall have authority to investigate allegedly fraudulent claims alleging loss or damages arising out of the ownership, operation, maintenance, or use of a motor vehicle, as defined in section 320.01, anywhere within the state, filed by a claimant against any person insured by an insurance company which has issued a policy of insurance providing protection or indemnity to the insured owner and to any other person operating, maintaining, or using such motor vehicle with the consent, expressed or implied, of the insured; and any other claim covered by insurance resulting from the ownership, operation, maintenance, or use of such motor vehicle.

(2) Any company which believes that such a fraudulent claim is being made shall, within 60 days of the receipt of such notice, send to the Division of Fraudulent Claims, on a form prescribed by the department, the information requested and such additional information relative to the accident and the parties claiming loss or damages because of the accident as the department may require. The Division of Fraudulent Claims shall review such reports and select such claims as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such claim to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists in the submission of the claim. The Division of Fraudulent Claims shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney having jurisdiction with respect to any such violation as provided in s. 624.310.

(3) No insurer, nor the employees or agents of any insurer, shall be subject to civil liability for libel or otherwise by virtue of the filing of reports or furnishing other information required by this section or required by the Division of Fraudulent

Claims as a result of the authority herein granted.

(4) All costs of administration and operation of said Division of Fraudulent Claims shall be borne by the insurers licensed to write motor vehicle insurance in this state. The Insurance Commissioner shall equally divide such costs among all such companies, charging each such company an identical amount adequate to provide the total cost of each fiscal year of operation. Such costs as derived by said assessment shall be allocated to the State Treasurer's and Insurance Commissioner's Regulatory Trust Fund. The total number of positions to be allocated to the Division of Fraudulent Claims shall not exceed 25 employees and the total cost shall not exceed \$500,000 for said fiscal year.

Section 10. Section 627.4132, Florida Statutes, is created to read:

627.4132 Stacking of coverages prohibited.—If an insured or named insured is protected by any type of motor vehicle insurance policy for liability, uninsured motorist, personal injury protection, or any other coverage, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident; provided that if none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles shall not be added to or stacked upon that coverage. This section shall not apply to reduce the coverage available by reason of insurance policies insuring different named insureds.

Section 11. Section 627.7377, Florida Statutes, is created to read:

627.7377 Physical Damage Deductibles.—In providing collision coverage for physical damage to an insured's motor vehicle, insurers shall make available upon request deductibles of \$500 or any other amount for which the parties may contract, subject to the insurer's filed rating plan.

Section 12. Section 627.7262, Florida Statutes, is created to read:

627.7262 Non-joinder of insurers.—(1) No motor vehicle liability insurer shall be joined as a party defendant in an action to determine the insured's liability; however, each insurer which does or may provide liability insurance coverage

to pay all or a portion of any judgment which might be entered in the action shall file a statement, under oath of a corporate officer, setting forth the following information with regard to each known policy of insurance:

- (a) The name of the insurer.
- (b) The name of each insured.
- (c) The limits of liability coverage.

(d) A statement of any policy or coverage defense which said insurer reasonably believes is available to said insurer filing the statement at the time of filing said statement.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to said statement.

(3) If the statement or any amendment thereto indicates that a policy or coverage defense has been or will be asserted, then the insurer may be joined as a party.

(4) After the rendition of a verdict, or final judgment by the court if the case is tried without a jury, the insurer may be joined as a party and judgment may be entered by the court based upon the statement or statements herein required.

(5) The rules of discovery shall be available to discover the existence and policy provisions of liability insurance coverage.

Section 13. Sections 627.738, 627.740, and subsection (2) of section 627.741, Florida Statutes, are hereby repealed.

Section 14. Within 60 days after October 1, 1977, the Department of Insurance shall review the level of Florida automobile insurance rates for the purpose of insuring that premium or rate reductions resulting from the provisions of this act are being passed on to the insurance policy buyers.

Section 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, it is the legislative intent that the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 16. This act shall take effect October 1, 1976, and shall apply to all claims arising out of accidents occurring on or after said date.

Approved, June 27, 1976

1977, Senate Bill 1181*

Be it enacted by the Legislature of the State of Florida:

Section 1. Short Title.—This act shall be known and may be cited as "The Florida Insurance and Tort Reform Act of 1977."

Section 4. Subsection (3) is added to section 320.02, Florida Statutes, to read:

320.02 Application for registration; forms.—

(3) (a) Proof that personal injury protection benefits have been purchased when required under s. 627.733 shall be made by the applicant at the time of registration of any motor vehicle owned as defined in s. 627.732. The issuing agent shall refuse to issue registration if such proof of purchase is not made. Insurers shall furnish uniform proof

*NOTE: Only sections of bill dealing with no-fault are reproduced here.

of purchase cards in such form as prescribed by the Department of Highway Safety and Motor Vehicles, and such card, or an insurance policy, an insurance policy binder, a certificate of insurance, or such proof as may be prescribed by the Department of Highway Safety and Motor Vehicles shall be accepted as such proof. As an aid in implementing Section 42 of this Act such cards shall also indicate the existence of any bodily injury liability insurance voluntarily purchased. The Department of Insurance shall require that such uniform cards as specified by the Department of Highway Safety and Motor Vehicles be furnished by insurers providing such benefits. Any person altering such card or duplicating or counterfeiting such card in order to furnish such proof or to permit another person to furnish such proof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) When an operator owning a motor vehicle or motor vehicles comes under the operation of the financial responsibility requirements of chapter 324, such operator shall provide proof of compliance with such financial responsibility requirements at the time of registration of any such motor vehicle through the use of a uniform proof of purchase of insurance card specifying such coverage, or an insurance policy, an insurance policy binder, a certificate of insurance, or by such other method of furnishing such proof as may be required by the Department of Highway Safety and Motor Vehicles. The issuing agent shall refuse to issue registration of a motor vehicle if such proof of purchase is not made. The Department of Insurance shall require that such uniform cards as specified by the Department of Highway Safety and Motor Vehicles be furnished by insurers writing motor vehicle liability insurance in this state. Any person altering such card or duplicating or counterfeiting such card in order to furnish such proof or to permit another person to furnish such proof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsections (1) and (2) of section 324.021, Florida Statutes, 1976 Supplement, are amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) Motor Vehicle.—Every self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semi-trailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or "moped," as defined in s. 316.003 (2). However, the term "motor vehicle" shall not include any motor vehicle as defined in s. 627.732 (1), when the owner of such vehicle has complied with the requirements of ss. 627.730-

627.741, inclusive, unless the provisions of s. 324.051 apply, and in such case until January 1, 1979, such owner shall establish proof of compliance with such sections in the manner provided for evidence of insurance as set forth in s. 325.19 (7) at the time of inspection of any such motor vehicle, and after such date the applicable proof of insurance provisions of s. 320.02 shall apply.

(2) Department.—The Department of Highway Safety and Motor Vehicles Insurance.

Section 20. Present subsections (2), (3) and (4) of section 626.989, Florida Statutes, 1976 Supplement, are renumbered as subsections (4), (5) and (6), respectively, and new subsections (1), (2), (3) and (4) are added to said section to read:

626.989 Division of Fraudulent Claims; investigative powers; subpoena powers; accident reports to division; personnel and expenses; division of costs.—

(1) If, by its own inquiries or as a result of complaints, the Division of Fraudulent Claims has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates s. 627.7375 or s. 624.15, it may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence. The department shall not compel the attendance of any person or matter in any such investigation except pursuant to subsection (3).

(2) If matter that the division seeks to obtain by request is located outside the state, the person so requested may make it available to the division or its representative to examine the matter at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf and it may respond to similar requests from officials of other states.

(3) The division may request that an individual who refuses to comply with any such request be ordered by the circuit court to provide the testimony or matter. The court shall not order such compliance unless the division has demonstrated to the satisfaction of the court that the testimony of the witness or the matter under request has a direct bearing on a violation of s. 627.7375 or s. 624.155 or is pertinent and necessary to further such investigation. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he is entitled by law may not be subjected to a criminal proceeding or to a civil penalty with respect to the act concerning which he is required to testify or produce relevant matter.

(4) The department's papers, documents, reports or evidence relative to the subject of an investigation under this section shall not be subject to public inspection for so long as the department deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, such papers, documents, reports or evidence relative to the subject of an investigation under this section shall not be subject to subpoena until opened for public inspection by the department.

unless the department consents; or after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena.

Section 30. Subsection (3) of section 627.727, Florida Statutes, is amended and subsections (6) and (7) are added to said section to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.—

(3) For the purpose of this coverage, the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle when the liability insurer thereof:

(a) Is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; or

(b) Has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist's coverage, applicable to the injured person.

(6) If an injured person or in the case of death, the personal representative, agrees to settle a claim with a liability insurer and its insured for the limits of liability, and such settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an uninsured motorist claim against the uninsured motorist insurer, then such settlement agreement shall be submitted in writing to the uninsured motorist insurer, which shall have a period of 30 days from receipt thereof in which to agree to arbitrate the uninsured motorist claim and approve the settlement, waive its subrogation rights against the liability insurer and its insured, and authorize the execution of a full release. If the uninsured motorist insurer does not agree within 30 days to arbitrate the uninsured motorist claim and approve the proposed settlement agreement, waive its subrogation rights against the liability insurer and its insured, and authorize the execution of a full release, the injured person or in the case of death, the personal representative, may file suit joining the liability insurer's insured and the uninsured motorist insurer to resolve their respective liability for any damages to be awarded; provided, however, that in such action, the liability insurer's coverage shall first be exhausted before any award may be entered against the uninsured motorist insurer, and any such award against the uninsured motorist insurer shall be excess and subject to the provisions of s. 627.727 (1). Any award in such action against the liability insurer's insured shall be binding and conclusive as to the injured person and uninsured motorist insurer's liability for damages up to its coverage limits. The provisions of s. 627.428 shall not apply to any section brought pursuant to this section against the uninsured motorist insurer.

(7) The legal liability of an uninsured motorist coverage insurer shall not include damages in tort for pain, suffering, mental anguish and inconvenience unless the injury or disease is described in one or more of paragraphs (a) through (f) of s. 627.737 (2).

Section 33. Section 627.736, Florida Statutes, 1976 Supplement, is amended to read:

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

(1) Required Benefits.—Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection provided for payment of all reasonable expenses incurred for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices; necessary ambulance, hospital, nursing services; and funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled motor vehicle or motorcycle, all as specifically provided in subsections (2) and (4) (d), to a limit of \$5,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) Medical benefits.—Eighty percent of all reasonable expenses for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and necessary ambulance, hospital, and nursing services. Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his religious beliefs.

(b) Disability benefits.—Eighty percent of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to 60 percent, from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household. All disability benefits payable under this provision shall be paid not less than every 2 weeks.

(c) Any insurer providing medical or disability benefits which have been reduced under this section shall also provide a corresponding rate reduction to the insured in proportion to reduction of benefits provided.

(d) Funeral, burial or cremation benefits.—Funeral, burial, or cremation expenses in an amount not to exceed \$1,000 per individual.

(e) Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section and no such insurer shall require the purchase of any other motor vehicle coverage as a condition for providing such required benefits. Such insurers shall make such benefits available through normal marketing channels. Any insurer writing motor vehicle liability insurance in this state failing to comply with such availability requirement as a general business practice shall be deemed to have violated part VII of Chapter 626

and such violation shall constitute an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance, and any such insurer committing such violation shall be subject to the penalties afforded in such part as well as those which may be afforded elsewhere in the insurance code.

(2) Authorized Exclusions.—Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;
2. Being convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;
3. While committing a felony.

Whenever an insured is charged with conduct as set forth in subparagraphs 2. or 3., the 30-day payment provision of paragraph (4) (b) shall be held in abeyance, and the insurer shall withhold payment of any personal injury protection benefits pending the outcome of the case at the trial level. If the charge is nolle prossed or dismissed or the insured is acquitted, the 30-day payment provision shall run from the date the insurer is notified of such action.

(3) Insured's rights to recovery of special damages in tort claims.—No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured party who is entitled to bring suit under the provisions of s. 627.737, or his legal representative, shall have no right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, shall not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid or payable.

(4) Benefits; When Due.—Benefits due from an insurer under ss. 627.730-627.741 shall be primary, except that benefits received under any workmen's compensation law or Medicaid as provided under 42 USC 1396 et seq. shall be credited against the benefits provided by subsection (1) and 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. 627.730-627.741.

(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. 627.730-627.741.

(b) Personal injury protection insurance benefits 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. However, any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. 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.

(c) All overdue payments shall bear simple interest at the rate of 10 percent per annum.

(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, 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 the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.741.

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:

a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.741, 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.

(5) Charges for treatment of injured persons.— 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 only a reasonable amount for the products, services, and accommodations 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 guardian has countersigned the invoice or bill upon which such charges are to be paid as being actually rendered to the best knowledge of the insured or his guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, and accommodations in cases involving no insurance.

(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. 627.730-627.741 against whom a claim has been made, furnish forthwith, in a form approved by the Department of Insurance, 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, 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 said treatment or services was incurred as a result of such bodily injury, and produce forthwith, and permit the inspection and copying of, his or its records regarding such history, condition, treatment, dates, and costs of treatment. Said 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 physician-patient privilege or invasion of the right of privacy shall be against any physician, hospital, clinic, or other medical institution complying with the provisions of this section. The person requesting such records and said sworn statement shall pay all reason-

able costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, and treatment, and 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 request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examination requested by an insurer shall be borne entirely by the insurer. Such examination shall be conducted within the city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of 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.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his 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 his 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 may have,

in relation to the claim for benefits, regarding the testimony of every other person who has examined, or may thereafter examine, him 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.

(8) With respect to any dispute under the provisions of ss. 627.730-627.741 between the insured and the insurer, the provisions of s. 627.428 shall apply.

Section 36. Section 627.7375, Florida Statutes, 1976 Supplement, is amended to read:

627.7375 False and fraudulent claims.—

(1) Any person who, with the intent to injure, defraud or deceive any insurance company:

(a) Presents or causes to be presented any written or oral statement as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or

(b) Prepares or makes any written or oral statement that is intended to be presented to any insurance company in connection with or in support of any claim for payment in other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) All claims forms shall contain a statement in a form approved by the department that clearly states in substance the following: "Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim containing any false, incomplete or misleading information is guilty of a felony of third degree."

(2) Any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, or any other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this part, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In the event that a physician, osteopath, chiropractor, or practitioner is adjudicated guilty of a violation of this section, the State Board of Medical Examiners as set forth in chapter 458, the State Board of Osteopathic Medical Examiners as set forth in chapter 459, or the Florida State Board of Chiropractic Examiners as set forth in chapter 460, or other appropriate licensing authority, whichever is appropriate, shall hold an administrative

hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopath, chiropractor, or practitioner.

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this part, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) No person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this part. Any hospital administrator or employee who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any adjudication of guilt for a violation of this section, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this part is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to \$5,000 by the licensing agency as set forth in chapter 395.

(5) Any insurance company damaged as a result of a violation of any provision of this section where there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses including attorneys' fees at the trial and appellate courts.

(6) For the purposes of this section "statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test result, or other evidence of loss, injury, or expense.

(7) The provisions of this section shall also apply as to any insurer or adjusting firm or their agents or representatives who with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in this section.

(8) It is unlawful for any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership, or association to solicit any business in and about city receiving hospitals, city and county receiving hospitals, county hospitals, justice courts, municipal courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever for the purpose of making motor vehicle tort claims. Any person who violates the provisions of this subsection

tion is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) It is unlawful for any attorney to solicit any business relating to the representation of persons injured in a motor vehicle accident for the purpose of filing a motor vehicle tort claim. Any attorney who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Whenever any circuit or special grievance committee acting under the jurisdiction of the Supreme Court shall find probable cause to believe that an attorney is guilty of a violation of this section, such committee shall forward to appropriate state attorney a copy of the finding of probable cause and the report being filed in the matter.

Section 37. Section 627.739, Florida Statutes, 1976 Supplement, is amended to read:

627.739 Personal injury protection; optional limitations; deductibles.—In order to prevent duplication with other private or governmental insurance or benefits for senior citizens and others with access to such insurance or benefits, each insurer providing the coverage and benefits described in s. 627.736 (1) shall offer to the named insured's modified forms of personal injury protection as described in this section. Such election may be made by the named insured to apply to the named insured alone, or to the named insured and dependent relatives residing in the same household. Any person electing such modified coverage or subject to such 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. 627.730-627.741. Premium reductions for each modification or combination of modifications shall be adequate to recognize the reduction in hazard and shall be subject to the approval of the Department of Insurance.

(1) Insurers shall offer to each applicant and to each policyholder upon the renewal of an existing policy, deductibles, in amounts of \$250, \$500, \$1,000, and \$2,000, \$3,000 and \$4,000 said amount to be deducted from the benefits otherwise due each person subject to the deduction and shall explain to each applicant or policyholder that if they have coverage under private or governmental disability plans they may avail themselves of deductibles or other modifications as provided in subsections (1), (2), and (3).

(2) Insurers shall offer coverage wherein at the election of the named insured all benefits payable under 42 USC 1395, the federal "medicare" program, or to active or retired military personnel and their dependent relatives shall be deducted from those benefits otherwise payable pursuant to s. 627.736 (1).

(3) Insurers shall offer coverage wherein at the election of named insured the benefits for loss of

gross income and loss of earning capacity described in s. 627.736 (1) (b) shall be excluded.

(4) Insurers shall offer, at the election of the named insured, one of the following options:

(a) Either a direct payment to the policyholder or a payment to any person, corporation, association or other business entity which performs repair work upon the motor vehicle, or a combination of the foregoing; or

(b) A payment to any person, corporation, association, or other business entity performing repair work upon the motor vehicle, where the payee is under contract with the insurer to perform such work at stipulated rates which are no greater than eighty-five (85) percent of prevailing rates for similar work within the county where the payee performs the work upon the motor vehicle.

(5) Each insurer may prepare and distribute to each of its policyholders a listing of all business entities under contract with the insurer to perform motor vehicle repair work at the rates described in paragraph (1) (b) of this section. The listing shall include a clear and plain explanation of the options provided as required by this section, and shall further state that if the policyholder elects to have required motor vehicle repair work done by any such business entity, the rates stipulated in the contract with the insurer shall be all of the consideration which the business entity will demand for such work and shall be paid by the insurer.

(6) Insurers may offer coverage wherein at the election of the named insured medical services shall be limited to specified medical providers, including hospitals, which specified medical provider may be a health maintenance organization, as provided in chapter 641, part II, Florida Statutes.

Section 43.—There shall be no private passenger motor vehicle insurance rate increases for bodily injury liability, personal injury protection benefits, or uninsured motorist coverage, excluding rates charged for coverage under the automobile joint underwriting association established under s. 627.351 (1), prior to January 1, 1978. The rate cap provided by this section shall take effect at 12:01 a.m., June 4, 1977. This shall not prevent rate reduction.

Section 44. If any provision of this act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are declared to be severable.

Section 45. This act shall take effect July 1, 1977, and shall apply to all claims arising out of accidents occurring after said date, except that: section 4 shall take effect January 1, 1978; sections 19, 21, 22, 23, 24, 25, 31, 32, 33, and 37 shall take effect September 1, 1977; and sections 43, 44, and 45 shall take effect upon becoming a law.

Became law July 5, 1977,
without governor's signature

Chapter 78-374, Laws 1978
Senate Bill No. 1308

An act relating to motor vehicle insurance; amending s. 627.727 (7), Florida Statutes; providing that uninsured motorist coverage shall not include damages for pain and suffering except for specified injuries or death; amending s. 627.732 (1), Florida Statutes; providing definitions of "motor vehicle", "private passenger motor vehicle", and "commercial motor vehicle"; amending s. 627.736 (1), Florida Statutes; providing for \$10,000 in personal injury protection coverage; amending s. 627.737 (2), Florida Statutes; providing for limitations on rights to damages for pain, suffering, mental anguish, and inconvenience in tort actions arising out of use of a motor vehicle; amending s. 627.7372 (1), Florida Statutes; providing for the admission into evidence in certain actions the amount of all collateral sources paid or payable to the claimant, and prohibiting an award of damages which are otherwise paid or payable; amending s. 627.739 (1), Florida Statutes, relating to personal injury protection to revise amounts of deductibles; creating s. 627.7405, Florida Statutes; providing personal injury protection benefits for the insured, certain relatives, operators, and passengers of a commercial motor vehicle or other Florida residents struck by a commercial motor vehicle in Florida; repealing s. 627.735 (2), Florida Statutes, relating to the compliance of motor vehicle liability insurance policies with financial responsibility or compulsory insurance laws of other states; providing for review by the Department of Insurance of the rates of all licensed motor vehicle insurers; providing for issuance of orders by the Department of Insurance to require new rate schedules where existing rates are unfairly discriminatory; creating s. 627.343, Florida Statutes; requiring the Department of Insurance to promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating motor vehicle insurance rates, premiums, competition, and availability; requiring insurers to file annual statements with the department; providing that the department may require insurers to report certain loss and expense experience; repealing s. 627.342, Florida Statutes, which provides for annual risk classification reporting by insurers; providing an effective date.

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

Section 1. Subsection (7) of section 627.727, Florida Statutes, is amended to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.—

(7) The legal liability of an uninsured motorist coverage insurer shall not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is described in one or more of paragraphs (a) through (d) of s. 627.737 (2).

Section 2. Subsection (1) of section 627.732, Florida Statutes, is amended to read:

627.732 Definitions.—As used in ss. 627.730-627.741:

(1) "Motor vehicle" means any self-propelled vehicle which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semi-trailer designed for use with such vehicle, except mopeds, as defined in s. 316.003 (2), and includes:

(a) A "private passenger motor vehicle" which is any motor vehicle which is a sedan, station wagon or jeep type vehicle not used at any time as a public or livery conveyance for passengers and, if not used primarily for occupational, professional or business purposes, a motor vehicle of the pickup, panel, van, camper or motor home type.

(b) A "commercial motor vehicle" which is any motor vehicle which is not a private passenger motor vehicle.

The term motor vehicle, however, does not include any self-propelled vehicle with less than four wheels or a mobile home.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

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

(1) REQUIRED BENEFITS.—Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices; necessary ambulance, hospital, and nursing services; and funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, all as specifically provided in subsection (2) and paragraph (4) (d), to a limit of \$10,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

Section 4. Subsection (2) of section 627.737, Florida Statutes, is amended to read:

627.737 Tort exemption; limitation on right to damages; punitive damages.—

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.741, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part of:

(a) Significant and permanent loss of an important bodily function.

(b) Permanent injury within a reasonable degree of medical probability, other than scarring or dis-

figurement.

(c) Significant and permanent scarring or disfigurement.

(d) Death.

Section 5. Subsection (1) of section 627.7372, Florida Statutes, is amended to read:

627.7372 Collateral sources of indemnity.—

(1) In any action for personal injury or wrongful death arising out of the ownership, operation, use or maintenance of a motor vehicle, the court shall admit into evidence the total amount of all collateral sources paid to the claimant, and the court shall instruct the jury to deduct from its verdict the value of all benefits received by the claimant from any collateral source.

Section 6. Subsection (1) of section 627.739, Florida Statutes, is amended to read:

627.739 Personal injury protection; optional limitations; deductibles; optional methods of payment for repair work.—In order to prevent duplication with other private or governmental insurance or benefits for senior citizens and others with access to such insurance or benefits, each insurer providing the coverage and benefits described in s. 627.736 (1) shall offer to the named insureds modified forms of personal injury protection as described in this section. Such election may be made by the named insured to apply to the named insured alone, or to the named insured and dependent relatives residing in the same household. Any person electing such modified coverage, or subject to such 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. 627.730-627.741. Premium reductions for each modification or combination of modifications shall be adequate to recognize the reduction in hazard and shall be subject to the approval of the Department of Insurance.

(1) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of \$250, \$500, \$1,000, \$2,000, \$3,000, \$4,000, \$6,000 and \$8,000, said amount to be deducted from the benefits otherwise due each person subject to the deduction, and shall explain to each applicant or policyholder that if they have coverage under private or governmental disability plans, they may avail themselves of deductibles or other modifications as provided in subsections (1), (2), and (3).

Section 7. Section 627.7405, Florida Statutes, is created to read:

627.7405 Subrogation.—Notwithstanding any other provisions of ss. 627.730-627.741, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor

vehicle while not an occupant of any self-propelled vehicle.

Section 8. Within 30 days after January 1, 1980, the Department of Insurance shall commence a review of the rates of all licensed motor vehicle insurers in effect at the time. If, after the review, the department finds on a preliminary basis that the rates may be excessive, inadequate, or unfairly discriminatory, the department shall so notify the insurer. Upon being so notified, the insurer shall within 60 days file with the department all information which the insurer believes proves the reasonableness, adequacy, and fairness of the rate. In such instances, the insurer shall carry the burden of proof. In the event the department finds that a rate is excessive, inadequate, or unfairly discriminatory, the department may order that a new rate schedule be thereafter filed by the insurer and further specifying the manner in which noncompliance shall be corrected.

Section 9. Section 627.343, Florida Statutes, is created to read:

627.343 Uniform risk classification reporting system for motor vehicle insurance.—

(1) The department shall establish and promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating rates and premiums and for the purpose of evaluating competition and the availability of motor vehicle insurance in the voluntary market. The system shall divide risks into classifications based upon variations in hazards or expense of claims. The classification system may include any difference among risks that can be demonstrated to have a probable effect upon losses or expenses, but in no event shall the system adopted by the department discriminate among risks based upon race, creed, color, or national origin. This classification system shall divide the state into geographical areas based upon hazards or expenses of claims.

(2) Each insurer shall annually file with the department a statement reflecting the total number of persons insured by the insurer within each classification by coverage, the premium volume in each classification by coverage, the paid and reserved losses incurred in each classification by coverage, the number of cancellations or nonrenewals by the insurer during the period and the number of new insureds during the period. This statement shall be filed annually on a date determined by the department and shall cover a 1-year period.

(3) The department may promulgate rules to require each insurer to report its loss and expense experience by classification, in such detail and as often as may be necessary to aid the department in determining the reasonableness of rates, the validity of loss projections and the validity of the risk classification system.

Section 10. Section 627.342, Florida Statutes, as created by chapter 77-468, Laws of Florida, is hereby repealed.

Section 11. Subsection (2) of section 627.735, Florida Statutes, is hereby repealed.

Section 12. This act shall take effect on January 1, 1979, and shall apply to all accidents occurring on or after the effective date.

Approved, June 20, 1978

COMMENTS ON THE FLORIDA LAW

The 1976, 1977, and 1978 amendments to the Florida no-fault law should improve it, although the degree of improvement won't be known until several years of experience have been accumulated. The elimination of compulsory liability insurance, which is not directly connected with no-fault, is very controversial and was not advocated by insurance industry spokesmen.

The verbal tort limitation has proven to be more effective than the old \$1,000 threshold in removing cases from the liability system. It is harder to abuse the law, since the threshold can no longer be reached by an artificial buildup of medical expenses.

The provisions against fraudulent claims represent a good step forward, one that legislatures in other states would do well to consider. The amendments make claim fraud activity by doctors, lawyers, claim adjusters, hospital officials, or insurance companies a felony. They also provide for a state agency to investigate claims that insurers suspect are fraudulent. Health care providers are required to sign sworn statements that the treatment rendered to accident victims was reasonable and necessary. If these provisions are vigorously enforced, they should prevent much of the claim fraud that allegedly has been so prevalent in south Florida.

Raising the no-fault benefit limit from \$5,000 to \$10,000 is a big step forward, although \$10,000 may still be inadequate for today's inflated economy. The "co-insurance" type restrictions of 80 percent of medical and 60 percent of income coverage further reduces the value of the no-fault coverage. The legislature added these features to discourage overutilization and reduce costs. Again, this change was not suggested by the insurance industry. The amendments, to the extent that they reduce lawsuits, claims, fraud, and overutilization may well justify a still higher no-fault benefit level. An increase, to as much as \$25,000, might be desirable if the reforms in the law continue to prove effective.

**Verbal
Threshold*

This is the supplement to the current financial responsibility law.

s. 323.54

1978 SUPPLEMENT TO FLORIDA STATUTES 1977

s. 324.042

(d) The proposed schedules of operations between the municipalities or territories involved if such service is to be pursuant to schedules.

(e) An agreement on the part of the applicant to conform with and abide by all tariffs and classifications as to freight-forwarding services which may be prescribed by the commission from time to time.

(f) Any such application shall be accompanied by payment of a fee of five hundred dollars to be placed in the Florida Public Service Regulatory Trust Fund.

(3) Upon filing of said application and payment of said fee, the Florida Public Service Commission shall fix a time for hearing on said application which shall not be less than 20 days nor more than 60 days subsequent to the filing of said application, and no application shall be granted or certificate of public convenience and necessity issued without a hearing by the commission. Notice of such hearing shall be given to the applicant and to all certificated motor and rail common carriers serving any part of the route or territory proposed to be served by the applicant and to such other parties in interest as the commission may deem necessary. The commission shall also cause notice of the application to be published at least 14 days prior to the hearing in some newspaper of general circulation in the affected territory or territories.

(4) The commission may issue to the applicant a certificate of public convenience and necessity in a form to be prescribed by it or may refuse to issue the same or may issue it for only partial exercise of the operation sought or may attach to the exercise of the right granted by the certificate such terms, limitations, and conditions which it deems the public interest may require. The certificate shall include a description of the territory in which the freight-forwarding operation is to be conducted, extended, operated or acquired.

(5) In determining whether a certificate shall be issued, the commission shall take into consideration, among other things, the public need for the proposed service, the suitability of the applicant to conduct the proposed operations, the financial responsibility of the applicant and the ability of the applicant to perform efficiently the operations for which authority is requested; provided, that the commission in granting any such certificate shall take into consideration the effect that the granting of such certificate may have on transportation facilities within the territory sought to be served by said applicant, and also that effect upon transportation as a whole within said territory including the effect, if any, upon certificated motor and rail common carriers.

(6) Any certificate of public convenience and necessity issued under the provisions of this section shall contain, among other things, the following:

- (a) The name of the grantee.
- (b) The municipality or territory in which or between which the grantee is permitted to operate.
- (c) A statement of the exact terminals or territories to be served including the specific points at which the forwarding operation is to be originated and the precise points or terminals at which the distribution under such operations is to take place.
- (d) Such additional terms, conditions, provisions or limitations as the commission shall deem neces-

sary or proper in the public interest or in the interest of transportation facilities already existing in the territory sought to be served.

(7) No such certificate of public convenience and necessity may be transferred, assigned, or encumbered unless such transaction is first approved by the commission consistent with the provisions of s. 323.041.

(8) The commission may revoke, suspend, or alter any such certificate of public convenience and necessity for the violation of any provision of this part or the rules and regulations or orders of the commission made under the authority of this part or for other reasonable cause.

(9) All certificates issued hereunder, including those certificates now in effect, shall be renewed annually by the payment of an annual certificate renewal fee of \$500 per certificate, which shall be due on December 31 of each year. If the fee is not paid in advance of the due date, it must be received on or before January 31 of the next year in order for the renewal of the certificate to be effective. All moneys received hereunder shall be deposited in the Florida Public Service Regulatory Trust Fund and disbursed pursuant to s. 350.78(2).

History.—ss. 1, 2, ch. 67-358; ss. 1, 2, ch. 70-427; s. 3, ch. 76-164; s. 98, ch. 77-104; s. 1, ch. 77-457; s. 53, ch. 78-93.

*Note.—Repealed by s. 3, ch. 76-164, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

323.66 Allowance to shippers for transportation service.—If the owner of property transported in service subject to this part directly or indirectly renders any service connected therewith, or furnishes any instrumentality used therein, the charge and the amounts therefor, to such owner, shall be published in tariffs filed in the manner provided in this part and shall be no more than is just and reasonable, and the commission may, on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the freight forwarder or forwarders for the services so rendered, or for the use of the instrumentalities so furnished, and fix the same by appropriate order.

History.—ss. 1, 2, ch. 67-356; s. 3, ch. 76-164; s. 1, ch. 77-457; s. 53, ch. 78-93.
*Note.—Repealed by s. 3, ch. 76-163, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 324

FINANCIAL RESPONSIBILITY

- 324.042 Administration.
- 324.051 Reports of accidents; suspensions of licenses and registrations.
- 324.072 Proof required upon certain convictions.
- 324.042 Administration.—The department shall administer and enforce the provisions of this chapter, and the department may make such rules

and regulations as may be necessary for its administration.

History.—s. 1, ch. 29963, 1955; s. 1, ch. 57-147; ss. 13, 35, ch. 69-102; s. 20, ch. 78-93.
Note.—Former s. 324.01.

324.051 Reports of accidents; suspensions of licenses and registrations.—

(1)(a) Every law enforcement officer who, in the regular course of duty either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, investigates a motor vehicle accident in which property damage exceeds \$500 or in which bodily injury or death occurs shall forward a written report of the accident to the department within 24 hours of completing the investigation. However, when the investigation of an accident will take more than 7 days to complete, a preliminary copy of the accident report shall be forwarded to the department within 24 hours of the occurrence of the accident, to be followed by a final report within 24 hours after completion of the investigation. The report shall be on a form and contain information consistent with the requirements of s. 316.068.

(b) The department is hereby further authorized to require reports of accidents from individual owners or operators whenever it deems it necessary for the proper administration of this chapter, and these reports shall be made without prejudice and shall be for the confidential use of the department. No such report shall be used as evidence in any trial arising out of an accident, but the fact of such report or the failure to report may be certified by the department.

(2)(a) Thirty days after receipt of notice of any accident described in paragraph (1)(a) involving a motor vehicle within this state, the department shall suspend, after due notice and opportunity to be heard, the license of each operator and all registrations of the owner of the vehicles operated by such operator whether or not involved in such accident and, in the case of a nonresident owner or operator, shall suspend such nonresident's operating privilege in this state, unless such operator or owner shall, prior to the expiration of such 30 days, be found by the department to be exempt from the operation of this chapter, based upon evidence satisfactory to the department that:

1. No injury was caused to the person or property of anyone other than such operator or owner.
2. The motor vehicle was legally parked at the time of such accident.
3. The motor vehicle was owned by the United States Government, this state, or any political subdivision of this state or any municipality therein.
4. Such operator or owner has been finally adjudicated not to be liable for damages by a civil court of competent jurisdiction.
5. Such operator or owner has secured a duly acknowledged written agreement providing for release from liability by all parties injured as the result of said accident and has complied with one of the provisions of s. 324.031.
6. Such operator or owner has deposited with the department security to conform with s. 324.061 when applicable and has complied with one of the provisions of s. 324.031.
7. One year has elapsed since such owner or oper-

ator was suspended pursuant to s. 324.051(4), the owner or operator has complied with one of the provisions of s. 324.031, and no bill of complaint of which the department has notice has been filed in a court of competent jurisdiction.

(b) This subsection shall not apply:

1. To such operator or owner if such operator or owner had in effect at the time of such accident or traffic conviction an automobile liability policy with respect to all of the registered motor vehicles owned by such operator or owner.

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident or traffic conviction an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him.

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance or bond.

4. To any person who has obtained from the department a certificate of self-insurance, in accordance with s. 324.171, or to any person operating a motor vehicle for such self-insurer.

5. Such owner or operator was not charged with a moving traffic violation which caused or contributed to the cause of a motor vehicle accident, or such owner or operator was subsequently not found guilty of said moving traffic violation.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than those specified in s. 324.021(7).

(3) Any operator's license or registration certificate or certificates and registration plates which shall be suspended as provided for in this section, shall remain suspended for a period of 3 years unless reinstated as otherwise provided in this chapter.

History.—s. 1, ch. 29963, 1955; s. 2, ch. 57-147; ss. 1, 2, ch. 65-122; s. 4, ch. 65-190; ss. 13, 24, 35, ch. 69-102; s. 2, ch. 71-59; s. 2, ch. 76-266; s. 2, ch. 77-114; s. 1, ch. 77-174; s. 7, ch. 77-468; s. 1, ch. 78-83; s. 20, ch. 78-93.
Note.—As amended by s. 1, ch. 78-83, effective October 1, 1978.
Note.—Former s. 324.04.

324.072 Proof required upon certain convictions.—

(1) Upon the suspension or revocation of a license pursuant to the provisions of s. 318.15, s. 322.26, or s. 322.27, the department shall suspend the registration for all motor vehicles registered in the name of such person, either individually or jointly with another, except that it shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give, and thereafter maintain, proof of financial responsibility with respect to all motor vehicles registered by such person, in accordance with this chapter.

(2) Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed, nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person, until permitted under the laws of this state, and not then unless and until he shall give and

thereafter as required.
History.—77-468; s. 2, ch. 78-93.
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thereafter maintain proof of financial responsibility as required by s. 324.071.

History.—s. 5, ch. 57-147; ss. 13, 24, 33, ch. 69-106; s. 5, ch. 77-118; s. 10, ch. 77-468; s. 2, ch. 78-83.

*Note.—As amended, effective October 1, 1978.

CHAPTER 325

VEHICLE EQUIPMENT SAFETY COMPACT; INSPECTION

PART II

SAFETY EQUIPMENT INSPECTION OF MOTOR VEHICLES

- 325.12 Safety equipment inspection required; exception.
325.14 Inspection certificate required for sold vehicles; exemption.
325.141 Registration required prior to inspection; exception.
325.16 Defective vehicles; repair procedures.
325.18 Construction of part II.
325.19 Requirements for approval before an approval certificate may be issued for a motor vehicle.
325.24 Fees to be charged by safety equipment inspection station.
325.272 Inspection stations; days of operation.

325.12 Safety equipment inspection required; exception.—Every motor vehicle, except ancient motor vehicles licensed under s. 320.086, registered or required to be registered within the state when operated upon any street or highway within the state shall at all times display a current approved certificate which shall be placed on the vehicle as may be designated by the department, indicating that it has been inspected in accordance with the provisions of this part and has been found to comply with the standards and requirements of this part for safety equipment.

History.—s. 1, ch. 67-307; s. 1, ch. 69-16; ss. 24, 33, ch. 69-106; s. 1, ch. 78-363.

325.14 Inspection certificate required for sold vehicles; exemption.—

(1) It is unlawful and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person engaged in the business of buying or selling new or used motor vehicles to sell at retail any used motor vehicle which does not have affixed thereto a current approved inspection certificate as required under s. 325.12.

(2) Any motor vehicle, the sale of which constitutes an occasional or private sale, shall not be driven unless the vehicle has a current valid inspection certificate; however, in the case of a motor vehicle which has been stored or otherwise unused, during which time the inspection certificate has expired, the owner shall obtain authority from the nearest highway patrol station to drive the vehicle to the inspection station.

(3) Nothing in this chapter shall be construed to

require a valid current inspection certificate for any motor vehicle owned by a motor vehicle dealer licensed under s. 320.27 and displaying a dealer tag thereon as authorized by s. 320.13(1)(a).

History.—s. 1, ch. 67-307; s. 1, ch. 74-275; s. 14, ch. 75-66; s. 2, ch. 76-164; s. 45, ch. 77-357; s. 10, ch. 78-412.

*Note.—As amended, effective October 1, 1978.

325.141 Registration required prior to inspection; exception.—

(1) Except as provided in subsection (2), no inspection certificate shall be attached to any motor vehicle without the owner or operator of same first submitting proof to the inspector that the motor vehicle is currently registered under the provisions of chapter 320.

(2) Every vehicle not previously registered in this state but registered in another jurisdiction and subject to the registration requirements in this state shall be inspected prior to registration. In addition to performing the inspection of the vehicle as required by this chapter, the inspection station inspector shall record the motor and serial numbers of the vehicle on the motor vehicle inspection form prior to the attachment of an inspection certificate to the vehicle.

History.—s. 6, ch. 78-412.

*Note.—Effective October 1, 1978.

325.16 Defective vehicles; repair procedures.

—When a motor vehicle required to be inspected under this part shall upon inspection fail to meet the safety requirements of this part, the safety equipment inspection station making such inspection shall issue an authorized receipt and statement for such vehicle indicating that it has been inspected and shall enumerate the defects found. The owner or operator shall have such defects corrected or repaired at any place he chooses. The authorized receipt and statement shall operate as a temporary valid inspection permit for 30 days after the defect is found, during which time the operator shall not be subject to the penalty provided in s. 316.610, for the purpose of allowing the owner or operator of such vehicle to repair the defect. In any case where a part must be ordered to correct a defect and the part cannot be received and installed within the 30-day period herein provided, the authorized receipt and statement, together with a dated copy of the order for the part, shall operate as a temporary valid inspection permit until the part is received, which time period shall not exceed 90 days. The vehicle may be reinspected one time for such defects within 90 days when the owner does not have to wait on a part to be received, or within 90 days when the owner has the authorized receipt and statement together with a dated copy of the order for the part, at the safety equipment inspection station first making the inspection, without additional charge; however, upon payment of the inspection fee, the vehicle may be reinspected at another safety equipment inspection station.

History.—s. 1, ch. 67-307; s. 3, ch. 69-16; s. 4, ch. 74-338; s. 1, ch. 78-117.

This is the current financial responsibility law except as noted.

CHAPTER 324

FINANCIAL RESPONSIBILITY

Note.—Former s. 324.051

- 324.011 Purpose of chapter.
 324.021 Definitions; minimum insurance required.
 324.031 Manner of proving financial responsibility.
 324.042 Administration.
 324.051 Reports of accidents; suspensions of licenses and registrations.
 324.061 Security deposited with Department of Highway Safety and Motor Vehicles; release.
 324.071 Reinstatement; renewal of license; reinstatement fee.
 324.072 Proof required upon certain convictions.
 324.081 Nonresident owner or operator.
 324.091 Notice to department; notice to insurer.
 324.101 Compliance before license or registration allowed.
 324.111 Failure to satisfy judgment; copy to department.
 324.121 Suspension of license and registration.
 324.131 Period of suspension.
 324.141 Installment payments.
 324.151 Motor vehicle liability policies; required provisions.
 324.161 Proof of financial responsibility; surety bond or deposit.
 324.171 Self-insurer.
 324.181 Cancellation of liability policies; plan for apportionment of certain applicants.
 324.191 Consent to cancellation; direction to return money or securities.
 324.201 Return of license or registration to department.
 324.211 Sale by owner during suspension; rights of conditional vendors, mortgagees and lessors.
 324.221 Penalties.
 324.241 Application of law.
 324.251 Short title.

324.011 Purpose of chapter.—It is the intent of this chapter to recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used with due consideration for others and their property, and to promote safety and provide financial security (requirements for) such owners or operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, it is required herein that the operator of a motor vehicle involved in an accident or convicted of certain traffic offenses meeting the operative provisions of s. 324.051(2) shall respond for such damages and show proof of financial ability to respond for damages in future accidents as a requisite to his future exercise of such privileges.

History.—s. 1, ch. 29953, 1955; s. 5, ch. 77-468.

Note.—Bracketed words substituted for "by" by the editors.

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle which is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any bicycle or "moped," as defined in s. 316.003(2). However, the term "motor vehicle" shall not include any motor vehicle as defined in s. 627.732(1), when the owner of such vehicle has complied with the requirements of ss. 627.730-627.741, inclusive, unless the provisions of s. 324.051 apply, and in such case, until January 1, [1978], such owner shall establish proof of compliance with such sections in the manner provided for evidence of insurance as set forth in s. 325.19(7) at the time of inspection of any such motor vehicle, and after such date the applicable proof of insurance provisions of s. 320.02 shall apply.

(2) DEPARTMENT.—The Department of Highway Safety and Motor Vehicles.

(3) OPERATOR.—Every person who is in actual physical control of a motor vehicle.

(4) PERSON.—Every natural person, firm, co-partnership, association or corporation.

(5) NONRESIDENT.—Every person who is not a resident of this state.

(6) LICENSE.—Any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(7) PROOF OF FINANCIAL RESPONSIBILITY.—That proof of ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle:

(a) In the amount of \$10,000 because of bodily injury to, or death of, one person in any one accident;

(b) Subject to said limits for one person, in the amount of \$20,000 because of bodily injury to, or death of, two or more persons in any one accident; and

(c) In the amount of \$5,000 because of injury to, or destruction of, property of others in any one accident.

(8) MOTOR VEHICLE LIABILITY POLICY.—Any owner's or operator's policy of liability insurance furnished as proof of financial responsibility pursuant to s. 324.031, insuring said owner or operator against loss from liability for bodily injury, death and property damage arising out of the ownership, maintenance or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the requirements of s. 324.151, issued by

any insurance company authorized to do business in this state.

(9) OWNER.—A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(10) JUDGMENT.—Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damage.

(11) REGISTRATION.—Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

History.—s. 1, ch. 29963, 1935; ss. 13, 35, ch. 69-106; s. 1, ch. 71-69; s. 100, ch. 71-377; s. 1, ch. 72-297; ss. 1, 2, ch. 73-180; s. 1, ch. 76-268; s. 4, ch. 76-238; s. 1, ch. 77-118; s. 4, ch. 77-468.

Note.—Bracketed date substituted for "1979" by the editors to correct an apparent error. See the effective date of the amendment to s. 320.01 and the effective date of the repeal of s. 325.19(7) by s. 12, ch. 77-468.

324.031 Manner of proving financial responsibility.—The operator or owner of a vehicle may prove his financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.01(8) and s. 324.161, or

(2) Posting with the department a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in s. 324.021(7), or

(3) Furnishing a certificate of the department showing a deposit of cash or securities in accordance with s. 324.161, or

(4) Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

History.—s. 1, ch. 79943, 1935; ss. 13, 35, ch. 69-106.
Note.—Former s. 321.02.

324.042 Administration.—The department shall administer and enforce the provisions of this chapter, and the department may make such rules and regulations as may be necessary for its administration and shall provide for hearings before a referee upon request of persons aggrieved by orders or acts of the department.

History.—s. 1, ch. 29963, 1935; s. 1, ch. 37-147; ss. 13, 35, ch. 69-106.
Note.—Former s. 321.03.

324.051 Reports of accidents; suspensions of licenses and registrations.—

(1)(a) Any sheriff, police department, or peace officer of this state shall, within 10 days following any

accident within the purview of this chapter coming to its or his attention, report such accident in writing to the department. Such report shall contain the following information: Date and place of the accident, description of the cars involved, the names and addresses of owners or operators, the extent of the damage, and such other information as the department may require.

(b) The department is hereby further authorized to require reports of accidents from individual owners or operators whenever it deems it necessary for the proper administration of this chapter, and these reports shall be made without prejudice and shall be for the confidential use of the department. No such report shall be used as evidence in any trial arising out of an accident, but the fact of such report or the failure to report may be certified by the department.

(2)(a) Thirty days after receipt of notice of any judgment being rendered due to an accident involving a motor vehicle within this state which has resulted in bodily injury or death to any person, a judgment of liability for damage of \$500 or more to property, or a traffic conviction for a violation of s. 316.027 or s. 316.028, the department shall suspend the license of the operator against whom such judgment or conviction applies and all registrations of the owner of the vehicles operated by such operator whether or not involved in such accident and, in the case of a nonresident owner or operator, shall suspend such nonresident's operating privilege in this state, unless such operator or owner shall, prior to the expiration of such 30 days, be found by the department to be exempt from the operation of this chapter, based upon evidence in its files satisfactory to the department that:

1. The motor vehicle was owned by the United States Government, this state, or any political subdivision of this state or any municipality therein.

2. Such operator or owner has been finally adjudicated not to be liable by a court of competent jurisdiction.

3. Such operator or owner has secured a duly acknowledged written agreement providing for release from liability by all parties injured as the result of said accident and [has] complied with one of the provisions of s. 324.031.

4. Such operator or owner has deposited with the department security to conform with s. 324.061 when applicable and has complied with one of the provisions of s. 324.031.

5. One year has elapsed since such owner or operator was suspended pursuant to subsection 324.051(4), the owner or operator has complied with one of the provisions of s. 324.031, and no bill of complaint of which the department has notice has been filed in a court of competent jurisdiction.

(b) This subsection shall not apply:

1. To such operator or owner if such operator or owner had in effect at the time of such accident or traffic conviction an automobile liability policy with respect to all of the registered motor vehicles owned by such operator or owner.

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident or traffic conviction an automobile liability policy or bond with respect to his operation of motor

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- warrant -
- see the supplement
- 324.051
- also for
- specific instructions

vehicles not owned by him.

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the department, covered by any other form of liability insurance or bond.

4. To any person who has obtained from the department a certificate of self-insurance, in accordance with s. 324.171, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than those specified in subsection 324.021(7).

(3)(a) The notices of accidents and orders of suspension required under this chapter as a result of accident or conviction cases shall be given to owners and operators either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice or order in an envelope with postage prepaid, addressed to such person at his address as shown by the accident report or records of the department.

(b) The giving of notice and order of suspension by mail is complete upon expiration of four days after deposit in the United States mail. Proof of the giving of notice or orders of suspension in either such manner may be made by the certification of the department by naming the person to whom such notice or order of suspension was given and specifying the time, place and manner of the giving thereof.

(4) Any operator's license or registration certificate or certificates and registration plates which shall be suspended as provided for in this section, shall remain suspended for a period of 3 years unless reinstated as otherwise provided in this chapter.

History.—s. 1, ch. 29963, 1955; s. 7, ch. 57-147; ss. 1, 2, ch. 65-122; s. 6, ch. 66-190; ss. 13, 24, 35, ch. 69-106; s. 2, ch. 71-59; s. 2, ch. 76-264; s. 2, ch. 77-118; s. 1, ch. 77-174; s. 7, ch. 77-468.
*Note.—Bracketed word substituted for "had" by the editors.
*Note.—Former s. 324.04.

324.061 Security deposited with Department of Highway Safety and Motor Vehicles; release.—

(1) Security deposited pursuant to the provisions of s. 324.051(2)(a)(4) with respect to claims for injuries to persons or properties resulting from an accident occurring prior to such deposit shall be in the form and amount determined by the department which, in its judgment, will be sufficient to compensate for all injuries arising out of such accident, but in no case shall the amount exceed the limits as specified in s. 324.021(7).

(2) Such security shall be deposited with the department and shall not be released except under one of the following conditions:

(a) A duly attested written statement of satisfaction by all parties shown to be injured in such accident has been received by the department, or

(b) In the event the depositor has been finally adjudicated by a court of competent jurisdiction not to be liable; or all judgments of liability against the depositor have been satisfied, or

(c) One year shall have elapsed after deposit and during such period the department has not been duly notified of any court action brought for damages.

(d) Upon receipt of an order from a court ordering that such deposit be paid to satisfy a recorded judgment, in whole or in part, resulting from an accident. If the department does not have sufficient funds on deposit to satisfy such judgment it shall forthwith call upon the judgment debtor for the balance, subject to the limits specified in s. 324.021(7). Upon failure of the judgment debtor to make the necessary deposit or to satisfy the judgment in full, the department shall revoke the driving privilege and all registrations of such judgment debtor within 10 days subsequent to notification to the judgment debtor by the department.

(e) In any case in which securities deposited under this section have remained unclaimed for 5 years or more such deposit shall be transferred by the department to the State School Fund, and all interest and income that may accrue from said deposits after the aforesaid period of time, shall belong to said fund.

(3) The department shall invest security deposits in its custody received under this section in excess of current needs in interest-bearing accounts. The interest earned from such investments shall be deposited in a department trust fund, and any security deposits remaining unclaimed after 5 years shall be transferred to the State School Fund as provided in paragraph (2)(e) above.

History.—s. 1, ch. 29963, 1955; s. 3, ch. 57-147; ss. 13, 35, ch. 69-106; s. 2, ch. 71-59; s. 3, ch. 77-118; s. 8, ch. 77-468.
*Note.—Bracketed subparagraph number substituted by the editors for "6" to conform to subparagraph renumbering required by s. 7, ch. 77-468.
*Note.—Former s. 324.041.

324.071 Reinstatement; renewal of license; reinstatement fee.—Any operator or owner whose license or registration has been suspended pursuant to s. 324.051(2), s. 324.072, s. 324.081, or s. 324.121 may effect its reinstatement upon compliance with the provisions of s. 324.051(2)(a)(2, 3, or 4), or s. 324.081(2) and (3), as the case may be, and with one of the provisions of s. 324.031 and upon payment to the department of a nonrefundable reinstatement fee of \$15. Only one such fee shall be paid by any one person irrespective of the number of licenses and registrations to be then reinstated or issued to such person. All such fees shall be deposited to a department trust fund. When the reinstatement of any license or registration is effected by compliance with s. 324.051(2)(a)(3 or 4), the department shall not renew the license or registration within a period of 3 years from such reinstatement, nor shall any other license or registration be issued in the name of such person, unless the operator is continuing to comply with one of the provisions of s. 324.031.

History.—s. 1, ch. 29963, 1955; s. 4, ch. 57-147; s. 6, ch. 65-190; s. 1, ch. 67-279; ss. 13, 21, 33, ch. 69-106; s. 4, ch. 71-59; s. 4, ch. 77-118; s. 9, ch. 77-468.
*Note.—Bracketed subparagraph numbers substituted by the editors for "4, 5, or 6" to conform to subparagraph renumbering required by s. 7, ch. 77-468.
*Note.—Bracketed subparagraph numbers substituted by the editors for "3" to conform to subparagraph renumbering required by s. 7, ch. 77-468.

324.072 Proof required upon certain convictions.—

(1) Upon revocation of a license pursuant to the provisions of s. 322.26, by reason of conviction or forfeiture of bail, the department shall suspend the registration for all motor vehicles registered in the name of such person, either individually or jointly

with another, except that it shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give, and thereafter maintain, proof of financial responsibility with respect to all motor vehicles registered by such person, in accordance with this chapter.

(2) Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed, nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person, until permitted under the laws of this state, and not then unless and until he shall give and thereafter maintain proof of financial responsibility as required by s. 324.071.

History.—s. 6, ch. 57-147; ss. 12, 24, 33, ch. 69-106; s. 5, ch. 77-118; s. 10, ch. 77-468.

324.081 Nonresident owner or operator.—

(1) The department may establish reciprocal agreements with any other states for the purpose of fulfilling the provisions of this chapter and pursuant to such agreements may suspend the license and registration of a resident of this state involved in an accident in another state.

(2) When a nonresident's operating privilege is suspended pursuant to this chapter, the department shall transmit a certified copy of the record of such action to the appropriate official of the reciprocating state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (3).

(3) Upon receipt of such certification that the operating privilege of a resident of this state has been suspended or revoked in any such other reciprocating state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the department to suspend a nonresident's operating privilege had the accident occurred in this state, the department shall suspend the license of such resident if he was the operator, and all of his registrations if he was the owner of a motor vehicle involved in such accident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security.

(4) In the event such nonresident shall at the time have in effect an insurance policy or surety bond issued by any insurance company or surety company not authorized to do business in this state, the department may reinstate such nonresident upon said company furnishing it with power of attorney to accept service of process.

History.—s. 1, ch. 29963, 1955; s. 6, ch. 57-147; ss. 12, 33, ch. 69-106; s. 6, ch. 77-118; s. 11, ch. 77-468.

Note.—Former s. 324.04.

324.091 Notice to department; notice to insurer.—

(1) Each owner and operator involved in an accident or conviction case within the purview of this chapter shall furnish evidence of automobile liability insurance, motor vehicle liability insurance, or surety bond within 30 days from the date of the mailing of notice of accident by the department in such

form and manner as it may designate. Upon receipt of evidence that an automobile liability policy, motor vehicle liability policy, or surety bond was in effect at the time of the accident or conviction case, the department shall forward by United States mail, postage prepaid, to the insurer or surety insurer a copy of such information and shall assume that such policy or bond was in effect unless the insurer or surety insurer shall notify the department otherwise within 20 days from the mailing of the notice to the insurer or surety insurer; provided that if the department thereafter ascertain that an automobile liability policy, motor vehicle liability policy, or surety bond was not in effect and did not provide coverage for both the owner and the operator, it shall at such time take such action as it is otherwise authorized to do under this chapter. Proof of mailing to the insurer or surety insurer may be made by the department by naming the insurer or surety insurer to whom such mailing was made and specifying the time, place and manner of mailing.

(2) Each insurer doing business in this state shall immediately give notice to the department of each motor vehicle liability policy when issued to effect the return of a license which has been suspended under s. 324.051(2); and said notice shall be upon such form and in such manner as the department may designate.

History.—s. 1, ch. 29963, 1955; s. 3, ch. 33-122; ss. 12, 33, ch. 69-106.

Note.—Former s. 324.08.

324.101 Compliance before license or registration allowed.—

In case the operator or owner of a motor vehicle involved in an accident within the state has no license or registration, he shall not be allowed a license or registration until he has complied with the requirements of this chapter to the same extent that would be necessary, if at the time of the accident he had held a license and registration.

History.—s. 1, ch. 29963, 1955.

Note.—Former s. 324.09.

324.111 Failure to satisfy judgment; copy to department.—

Whenever any person fails within 30 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the department immediately after the expiration of said 30 days, a certified copy of such judgment.

History.—s. 1, ch. 29963, 1955; ss. 12, 33, ch. 69-106; s. 5, ch. 77-468.

324.121 Suspension of license and registration.—

(1) The department, upon the receipt of a certified copy of a judgment, as provided in s. 324.111, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section, and in s. 324.141.

(2) If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same

Upon receipt of a policy, motor insurance shall be in effect. In the event of a claim, the insurer shall, at the request of the insured, mail to the insured a copy of the policy and the certificate of insurance. The insurer shall also provide notice to the insured of the date of the expiration of the policy, or of the date of the expiration of the certificate of insurance, if it is otherwise provided in the policy or certificate of insurance. The insurer shall also provide notice to the insured of the date of the expiration of the policy, or of the date of the expiration of the certificate of insurance, if it is otherwise provided in the policy or certificate of insurance.

may be allowed by the department, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or any installments thereof prescribed in s. 324.141, provided the judgment debtor furnished proof of financial responsibility as provided in s. 324.031, such proof to be maintained for 3 years.

History.—s. 1, ch. 29963, 1955; ss. 13, 33, ch. 69-106; s. 6, ch. 71-59.

324.131 Period of suspension.—Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent of the limits stated in s. 324.021(7) and until the said person gives proof of financial responsibility as provided in s. 324.031, such proof to be maintained for 3 years.

History.—s. 1, ch. 29963, 1955.

324.141 Installment payments.—

(1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The department shall not suspend a license, registration or a nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(3) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the department shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter.

History.—s. 1, ch. 29963, 1955; ss. 13, 33, ch. 69-106.

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy to be proof of financial responsibility under s. 324.031(1), shall be issued to owners or operators under the following provisions:

(a) An owner's liability insurance policy shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted and shall insure the owner named therein and any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner, against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles, within the United States or the Dominion of Canada,

subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Each policy shall contain an optional provision for a deductible relating to property damage coverage in an amount not to exceed \$500; provided, however, that such deductible provision in a policy shall not be required when the owner named in the policy specifically rejects the provision.

(b) An operator's motor vehicle liability policy of insurance shall insure the person named therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance.

(c) All such motor vehicle liability policies shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, the limits of liability, and shall contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage or both and is subject to all provisions of this chapter. Said policies shall also contain a provision that the satisfaction by an insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and shall also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the insurance carrier of any of its obligations under said policy.

(2) The provisions of this section shall not be applicable to any automobile liability policy unless and until it is furnished as proof of financial responsibility for the future pursuant to s. 324.031, and then only from and after the date said policy is so furnished.

History.—s. 1, ch. 29963, 1955; s. 24, ch. 57-1; s. 1, ch. 65-489; s. 1, ch. 71-323.
Note.—Former s. 324.10.

324.161 Proof of financial responsibility; surety bond or deposit.—The certificate of the department of a deposit may be obtained by depositing with it \$25,000 cash or securities such as may be legally purchased by savings banks or for trust funds, of a market value of \$25,000 and which deposit shall be held by the department to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages because of bodily injury to or death of any person or for damages because of injury to or destruction of property resulting from the use or operation of any motor vehicle occurring after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

History.—s. 1, ch. 29963, 1955; ss. 13, 33, ch. 69-106.
Note.—Former s. 324.11.

324.171 Self-insurer.—Any person may qualify as a self-insurer by obtaining a certificate of self-insurance from the department which may, in its discretion, upon application of such a person, issue

said certificate of self-insurance, when it is satisfied that such person is possessed of a net unencumbered capital of at least \$40,000. The department may require annual reports from any self-insurer which reports must continue to show at least \$40,000 unencumbered net worth. Whenever the department finds that any self-insurer does not possess \$40,000 of unencumbered net worth it shall revoke the certificate of self-insurance.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106.
Note.—Former s. 324.12.

324.181 Cancellation of liability policies; plan for apportionment of certain applicants.—No motor vehicle liability policy which is obtained to effect the return of any operator's license or registration shall be canceled by an insurer issuing the same unless 10 days' notice of such cancellation shall be given to the department on a form prescribed by it and to the insured, except that when evidence has been furnished of the holding of a motor vehicle liability policy, and subsequently evidence is furnished of the holding of such a policy subsequently procured, the later policy shall, on the date evidence is furnished, terminate the policy as to which evidence was previously furnished with respect to any vehicle designated in both policies.

History.—s. 1, ch. 29963, 1955; s. 1, ch. 61-69; ss. 13, 35, ch. 69-106; s. 12, ch. 77-463.
Note.—Former s. 324.13.

324.191 Consent to cancellation; direction to return money or securities.—The department shall consent to the cancellation of any bond or certificate of insurance furnished as proof of financial responsibility pursuant to s. 324.031, or the department shall return to the person entitled thereto cash or securities deposited as proof of financial responsibility pursuant to s. 324.031:

(1) Upon substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter, or

(2) In the event of the death of the person on whose behalf the proof was filed, or the permanent incapacity of such person to operate a motor vehicle, or

(3) In the event the person who has given proof of financial responsibility surrenders his license and all registrations to the department; providing, however, that no notice of court action has been filed with the department, a judgment in which would result in claim on such proof of financial responsibility.

This section shall not apply to security as specified in s. 324.061 deposited pursuant to s. 324.051(2)(a)6.

History.—s. 1, ch. 29963, 1955; ss. 13, 35, ch. 69-106; s. 7, ch. 77-118.
Note.—Former s. 324.14.

324.201 Return of license or registration to department.—Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, or who shall neglect to furnish other proof upon the request of the department shall immediately return his license and registrations to the department. It shall be unlawful for any person

whose license has been suspended to operate any motor vehicle or for any person whose registrations have been suspended to obtain another motor vehicle for the purpose of circumventing this chapter. If any person shall fail to return to the department the license or registrations as provided herein, the department shall issue a complaint to a court of competent jurisdiction which shall issue a warrant charging such person with a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Such person shall surrender to the court his driver's license, registration and plates for delivery to the department. For the service and execution of such warrant the sheriff shall receive the arrest and other fees authorized by law.

History.—s. 1, ch. 29963, 1955; s. 7, ch. 57-147; ss. 13, 35, ch. 69-106; s. 220, ch. 71-136; s. 96, ch. 73-333.
Note.—Former s. 324.15.
cf.—s. 30.231 Sheriff's fees.

324.211 Sale by owner during suspension; rights of conditional vendors, mortgagees and lessors.—

(1)(a) If an owner's registration has been suspended hereunder, it shall be unlawful for him to transfer such registration or to have registered in any other name the motor vehicle in respect of which such registration was issued until the department is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purpose of this chapter; provided, however, that any owner within the purview of this section may file an application for permission to transfer such registration, which application shall be accompanied by an affidavit of good faith showing that such transfer is not with the intent of defeating the purpose of this chapter. The department, within 10 days subsequent to suspension of the owner's registration, upon request shall furnish proper application and affidavit forms to each such owner along with the notice of suspension, and the owner shall have 15 days from receipt thereof to file such application, which application shall be either approved or rejected by the department within 30 days from the filing thereof.

(b) In addition to the penalties otherwise provided for violation of this section the department may suspend the registration of any vehicle transferred contrary to the provisions of this section.

(2) Nothing in this section or elsewhere in this chapter contained shall affect the rights of any conditional vendor, chattel mortgagee or lessor or any successor in interest of a motor vehicle registered in the name of another as owner who becomes subject to the provisions of this section; and in the event of the repossession or foreclosure of a motor vehicle by such conditional vendor, chattel mortgagee, or lessor, or any successor in interest, pursuant to the exercise of rights to such repossession under the terms of the lien instrument or contract involved, by operation of law or through legal proceedings, the lienholder or lessor repossessioner shall have the right to have delivered to it the registration plates which shall have been surrendered.

History.—s. 1, ch. 29963, 1955; s. 8, ch. 57-147; ss. 13, 35, ch. 69-106; s. 7, ch. 71-59.
Note.—Former s. 324.15.

ities.--

son who violates any of the provisions of this act or stated hereunder shall be guilty of a felony of the punishable as provided in s. 775.082, s. 775.083, or s.

rgon who interferes with, hinders, or opposes any or member of the department in the discharge of his his act shall be guilty of a felony of the third ls as provided in s. 775.082, s. 775.083, or s.

rson who fails to comply with a lawful order issued act within the time fixed by the department or the r review under s. 290.151, whichever is longer, shall elony of the third degree, punishable as provided in 75.083, or s. 775.084.

rability.--

visions of this act are severable, and if any part of red invalid or unconstitutional, such declaration the part which remains.

is cumulative and is intended to supplement existing t shall be construed to repeal any existing law, acted for the protection of public health and safety un of those sections included in this act.

Section 290.32, Florida Statutes, is amended to read:

da participation.--

~~ard--member--from--Florida--shall--be--the--chairman--of--the-- and--Space--Council--when--approved--by--the--Governor; Governor shall appoint the board member from Florida. u Governor may designate another person as his deputy~~

plementary agreement entered into under s. 290.31(6) unditure of funds shall not become effective as to e required funds are appropriated by the Legislature.

partment, agencies and officers of this state and its authorized to cooperate with the board in the any of its activities pursuant to the compact, opored activities have been made known to, and have , either the Governor or the Department of Health and ervices Commerce.

Sections 290.01, 290.02, 290.03, 290.04, 290.051, 290.071, 290.08, 290.09, 290.10, 290.11, 290.12, 290.15, 290.16, 290.17, 290.18, and 290.19, Florida rchy repealed.

This act shall take effect July 1, 1978.

Approved by the Governor June 20, 1978.

Filed in Office Secretary of State June 21, 1978.

This on the 1978 amendments to the no-fault law.

CHAPTER 78-374

Committee Substitute for Senate Bill No. 1308

AN ACT relating to motor vehicle insurance; amending s. 627.727(7), Florida Statutes; providing that uninsured motorist coverage shall not include damages for pain and suffering except for specified injuries or death; amending s. 627.732(1), Florida Statutes; providing definitions of "motor vehicle", "private passenger motor vehicle", and "commercial motor vehicle"; amending s. 627.736(1), Florida Statutes; providing for \$10,000 in personal injury protection coverage; amending s. 627.737(2), Florida Statutes; providing for limitations on rights to damages for pain, suffering, mental anguish, and inconvenience in tort actions arising out of use of a motor vehicle; amending s. 627.7372(1), Florida Statutes; providing for the admission into evidence in certain actions the amount of all collateral sources paid or payable to the claimant, and prohibiting an award of damages which are otherwise paid or payable; amending s. 627.739(1), Florida Statutes, relating to personal injury protection to revise amounts of deductibles; creating s. 627.7405, Florida Statutes; providing personal injury protection benefits for the insured, certain relatives, operators, and passengers of a commercial motor vehicle or other Florida residents struck by a commercial motor vehicle in Florida; repealing s. 627.735(2), Florida Statutes, relating to the compliance of motor vehicle liability insurance policies with financial responsibility or compulsory insurance laws of other states; providing for review by the Department of Insurance of the rates of all licensed motor vehicle insurers; providing for issuance of orders by the Department of Insurance to require new rate schedules where existing rates are unfairly discriminatory; creating s. 627.343, Florida Statutes; requiring the Department of Insurance to promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating motor vehicle insurance rates, premiums, competition, and availability; requiring insurers to file annual statements with the department; providing that the department may require insurers to report certain loss and expense experience; repealing s. 627.342, Florida Statutes, which provides for annual risk classification reporting by insurers; providing an effective date.

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

Section 1. Subsection (7) of section 627.727, Florida Statutes, is amended to read:

627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.--

(7) The legal liability of an uninsured motorist coverage insurer shall not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is described in one or more of paragraphs (a) through (d) of s. 627.737(2).

Section 2. Subsection (1) of section 627.732, Florida Statutes, is amended to read:

627.732 Definitions.--As used in ss. 627.730-627.741:

(1) "Motor vehicle" means a sedan-station-wagon-or-jeep-type vehicle-not-used-as-a-public-livery-conveyance-for-passengers-and includes-any-other-four-wheel-motor-vehicle-used-as-a-utility automobile-and-a-pickup-or-panel-truck-which-is-not-used-primarily-in the-occupation-profession-or-business-of-the-owner-any self-propelled vehicle which is of a type both designed and required to be licensed for use on the highways of this state and any trailer or semi-trailer designed for use with such vehicle, except mopeds, as defined in s. 316.003(2), and includes:

(a) A "private passenger motor vehicle" which is any motor vehicle which is a sedan, station wagon or jeep type vehicle not used at any time as a public or livery conveyance for passengers and, if not used primarily for occupational, professional or business purposes, a motor vehicle of the pickup, panel, van, camper or motor home type.

(b) A "commercial motor vehicle" which is any motor vehicle which is not a private passenger motor vehicle.

The term motor vehicle, however, does not include any self-propelled vehicle with less than four wheels or a mobile home.

Section 3. Subsection (1) of section 627.736, Florida Statutes, is amended to read:

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

(1) REQUIRED BENEFITS.--Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices; necessary ambulance, hospital, and nursing services; and funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, all as specifically provided in subsection (2) and paragraph (4)(d), to a limit of \$10,000 \$5,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

Section 4. Subsection (2) of section 627.737, Florida Statutes, is amended to read:

627.737 Tort exemption; limitation on right to damages; punitive damages.--

(2) In any action of tort brought against the owner, registered operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.741 against any person or organization legally responsible for his or her omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part of:

- (a) Loss of a body member;
- (b) Significant and permanent loss of an important bodily function.
- (c) Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- (d) Significant and permanent scarring or disfigurement.
- (e) A serious nonpermanent injury which has a material degree bearing on the injured person's ability to resume his normal act and lifestyle during all or substantially all of the 90-day period after the occurrence of the injury, and the effects of which medically or scientifically demonstrable at the end of such period.
- (f) Death.

Section 5. Subsection (1) of section 627.7372, Florida Statutes is amended to read:

627.7372 Collateral sources of indemnity.--

(1) In any action for personal injury or wrongful death arising out of the ownership, operation, use or maintenance of a motor vehicle, the court shall admit into evidence the total amount of collateral sources which have been paid to the claimant, and the court shall instruct the jury to deduct from its verdict the value of benefits received by the claimant from any collateral source prior to the commencement of the trial. The court shall also admit into evidence any amount paid by the claimant to secure collateral sources.

Section 6. Subsection (1) of section 627.739, Florida Statutes is amended to read:

627.739 Personal injury protection; optional limited deductibles; optional methods of payment for repair work.--In order to prevent duplication with other private or governmental insurance or benefits for senior citizens and others with access to insurance or benefits, each insurer providing the coverage benefits described in s. 627.736(1) shall offer to the named insured modified forms of personal injury protection as described in this section. Such election may be made by the named insured to apply to the named insured alone, or to the named insured and dependent relatives residing in the same household. Any person electing modified coverage, or subject to such modified coverage as a result of the named insured's election, shall have no right to claim

increased amount of liability

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increased no-fault limits

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. 627.730-627.741. Premium reductions for each modification or combination of modifications shall be adequate to recognize the reduction in hazard and shall be subject to the approval of the Department of Insurance.

(1) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of \$250, \$500, \$1,000, \$2,000, \$3,000, and \$4,000, \$6,000 and \$8,000, said amount to be deducted from the benefits otherwise due each person subject to the deduction, and shall explain to each applicant or policyholder that if they have coverage under private or governmental disability plans, they may avail themselves of deductibles or other modifications as provided in subsections (1), (2), and (3).

(NO FURTHER DEDUCTIBLES)

Section 7. Section 627.7405, Florida Statutes, is created to read:

627.7405 Subrogation.--Notwithstanding any other provisions of ss. 627.730-627.741, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant or any self-propelled vehicle.

Section 8. Within 30 days after January 1, 1980, the Department of Insurance shall commence a review of the rates of all licensed motor vehicle insurers in effect at the time. If, after the review, the department finds on a preliminary basis that the rate may be excessive, inadequate, or unfairly discriminatory, the department shall so notify the insurer. Upon being so notified, the insurer shall within 60 days file with the department all information which the insurer believes proves the reasonableness, adequacy, and fairness of the rate. In such instances, the insurer shall carry the burden of proof. In the event the department finds that a rate is excessive, inadequate, or unfairly discriminatory, the department may order that a new rate schedule be thereafter filed by the insurer and further specifying the manner in which noncompliance shall be corrected.

Section 9. Section 627.343, Florida Statutes, is created to read:

627.343 Uniform risk classification reporting system for motor vehicle insurance.--

(1) The department shall establish and promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating rates and premiums and for the purpose of evaluating competition and the availability of motor vehicle insurance in the voluntary market. The system shall divide risks into classifications based upon variations in hazards or expense of claims. The classification system may include any difference among risks that can be demonstrated to have a probable effect upon losses or expenses, but in no event shall the system adopted by the department

discriminate among risks based upon race, creed, color, or national origin. The classification system shall divide the state into geographical areas based upon hazards or expenses of claims.

(2) Each insurer shall annually file with the department statement reflecting the total number of persons insured by the insurer within each classification by coverage, the premium volume in each classification by coverage, the paid and reserved losses incurred in each classification by coverage, the number of cancellations or nonrenewals by the insurer during the period and the number of new insureds during the period. This statement shall be filed annually on a date determined by the department and shall cover a 1-year period.

(3) The department may promulgate rules to require each insurer to report its loss and expense experience by classification, in as much detail and as often as may be necessary to aid the department in determining the reasonableness of rates, the validity of its projections and the validity of the risk classification system.

Section 10. Section 627.342, Florida Statutes, as created in chapter 77-460, laws of Florida, is hereby repealed.

Section 11. Subsection (2) of section 627.735, Florida Statutes, is hereby repealed.

Section 12. This act shall take effect on January 1, 1979, and shall apply to all accidents occurring on or after the effective date.

Approved by the Governor June 20, 1978.

Filed in Office Secretary of State June 21, 1978.

CHAPTER 78-375

Senate Bill No. 1357

AN ACT relating to the Department of Commerce; amending ss. 288.03(21)-(23) and 288.34(1)(k) and (l), Florida Statutes; providing for certain guidelines concerning per diem, travel, operational and promotional advancements and reimbursements; adding a subsection to s. 288.35, Florida Statutes; providing a definition; providing an effective date.

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

Section 1. Subsections (21), (22), and (23) of section 288.03, Florida Statutes, are amended to read:

288.03 Powers and duties of division.--The general purposes of the Division of Economic Development of the Department of Commerce shall be to guide, stimulate, and promote the coordinated, efficient and beneficial development of the state and its regions, counties and municipalities in accordance with present and future needs and resources and the requirements of the prosperity, convenient comfort, health, safety, and general welfare of the people of the

*This is the original
no-fault case.*

LAWS OF FLORIDA CHAPTER 71-252

CHAPTER 71-252

Conference Committee Substitute for
House Bill No. 1821

AN ACT relating to motor vehicle insurance; providing definitions; requiring security by motor vehicle owners; requiring motor vehicle no-fault reparation insurance and liability insurance up to certain limits and limiting tort liability; providing penalties for failure to show proof of security; providing personal injury protection benefits; providing for priority of payment of benefits; providing for tort exemptions and limitation on damages; providing no-fault property protection; providing for certain deductibles; providing for subrogation; providing that the department shall adopt rules and regulations necessary to implement this act; providing rights of residents; providing that insurers file proposed manual, rules, rates and rating plans with the department for approval; providing that insurers shall make certain rate reductions; providing for severability; providing an effective date.

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

Section 1. Short title.—This act may be cited and known as the "Florida automobile reparations reform act."

Section 2. Purpose.—The purpose of this act is to require medical, surgical, funeral and disability insurance benefits to be provided without regard to fault under motor vehicle policies that provide bodily injury and property damage liability insurance, or other security, for motor vehicles registered in this state, and with respect to motor vehicle accidents, a limitation on the right to claim damages for pain, suffering, mental anguish and inconvenience.

Section 3. Definitions.—As used in this act:

(1) "Motor vehicle" means a sedan, station wagon or jeep type vehicle not used as a public livery conveyance for passengers, and includes any other four-wheel motor vehicle used as a utility automobile and a pickup or panel truck which is not used primarily in the occupation, profession or business of the insured.

(2) "Owner" means a person who holds the legal title to a motor vehicle, or in the event a motor vehicle is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for the purposes of this act.

(3) "Named insured" means a person, usually the owner of a vehicle, identified in a policy by name as the insured under the policy.

(4) "Relative residing in the same household" means a relative of any degree by blood or by marriage, who usually makes his home in the same family unit, whether or not temporarily living elsewhere.

Section 4. Required security.—

(1) Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as required by subsection (3) of this section in effect continuously throughout the registration or licensing period.

(2) Every nonresident owner or registrant of a motor vehicle which, whether operated or not, has been physically present within this state for more than ninety (90) days during the preceding three hundred sixty-five (365) days, shall thereafter maintain security as defined by subsection (3) of this section in effect continuously throughout the period such motor vehicle remains within this state.

(3) Such security shall be provided by one of the following methods:

(a) Security by insurance may be provided with respect to such motor vehicle by an insurance policy delivered or issued for delivery in this state by an authorized or eligible insurer as otherwise defined in this code, which qualifies as evidence of automobile or motor vehicle liability insurance under chapter 324, Florida Statutes, "the financial responsibility law", except as modified to provide the benefits and exemptions contained in this act. Any such policy of liability insurance covering motor vehicles registered or licensed in this state and any policy of insurance represented or sold as providing the security required

hereunder for registered and licensed motor vehicles under this act shall be deemed to provide insurance for the payment of such benefits; or

(b) Security may be provided with respect to any motor vehicle by any other method approved by the department of insurance as affording security equivalent to that afforded by a policy of insurance, provided such security is continuously maintained throughout the motor vehicle's registration or licensing period. The person filing such security shall have all of the obligations and rights of an insurer under this act.

(4) An owner of a motor vehicle with respect to which security is required by this act who fails to have such security in effect at the time of an accident shall have no immunity from tort liability, and be personally liable for the payment of benefits under Section 7. With respect to such benefits, such an owner shall have all of the rights and obligations of an insurer under this act.

Section 5. Proof of security; security requirements; penalties.—

(1) The provisions of chapter 324, Florida Statutes, which pertain to the method of giving and maintaining proof of financial responsibility, and which govern and define a motor vehicle liability policy, shall apply to filing and maintaining proof of security or financial responsibility required by this act. It is intended that the provisions of chapter 324, Florida Statutes, relating to proof of financial responsibility required of each operator and each owner of any motor vehicle, shall continue in full force and effect.

(2) Any person who gives information required in a report or otherwise as provided for in this act, knowing or having reason to believe that such information is false, or who shall forge, or, without authority, sign any evidence of proof of security, or who files or offers for filing any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority, shall, upon conviction, be punished by fine not to exceed one thousand dollars (\$1,000) or imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

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(3) This act does not apply to any motor vehicle owned by the state or by a political subdivision of the state, nor to any motor vehicle owned by the federal government.

Section 5A. Subsection (2) of section 5 of this act is created to read:

Section 5. Proof of security; security requirements; penalties.—

(2) Any person who gives information required in a report or otherwise as provided for in this act, knowing or having reason to believe that such information is false or who shall forge, or, without authority, sign any evidence of proof of security, or who files or offers for filing any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a misdemeanor of the first degree, punishable as provided in sections 775.082 or 775.083.

Section 5B. In the event CS for HB 935, introduced in the 1971 regular session of the legislature is enacted into law, subsection (2) of section 5 of this act will stand repealed and be omitted from the Florida Statutes. In the event CS for HD 935 is not enacted into law, section 5A of this act will stand repealed and be omitted from the Florida Statutes.

Section 6. Operation of a motor vehicle illegal without security; penalties.—

(1) Any owner or registrant of a motor vehicle with respect to which security is required under subsection (1) or (2) of section 4 who operates such motor vehicle or permits it to be operated in this state without having in full force and effect security complying with the terms of said subsection (1) or (2) of section 4 shall have his operator's license and registration revoked.

(2) Any motor vehicle liability insurance policy which provides security required pursuant to subsection (3) of section 4 shall also be deemed to comply with the applicable limits of liability required under the financial responsibility or compulsory laws of any other state.

Section 7. Required personal injury protection benefits; exclusions; priority.—

(1) Every insurance policy complying with the security requirements of section 4 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices, necessary ambulance, hospital, nursing services, funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a motor vehicle or motorcycle, all as specifically provided in subsection (2) and paragraph (d) of subsection (4) of this section, to a limit of five thousand dollars (\$5,000) for loss sustained by any such person as a result of bodily injury, sickness, disease or death arising out of the ownership, maintenance or use of a motor vehicle as follows:

(a) Medical benefits: all reasonable expenses for necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices, necessary ambulance, hospital and nursing services. Such benefits shall include also, necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing in accordance with his religious beliefs.

(b) Disability benefits: one hundred percent (100%) of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to eighty-five percent (85%), from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household. All disability benefits payable under this provision shall be paid not less than every two weeks.

(c) Funeral, burial or cremation benefits: funeral, burial or cremation expenses in an amount not to exceed one thousand dollars (\$1,000) per individual.

(2) Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy, or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;
2. Convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired;
3. While committing a felony.

(3) Insurer's rights of reimbursement and indemnity:

(a) No subtraction from personal protection insurance benefits will be made because of the value of a claim in tort based on the same bodily injury, but after recovery is realized upon such a tort claim, a subtraction will be made to the extent of the recovery, exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tortfeasor or his insurer or insurers. If personal protection insurance benefits have already been received, the claimant shall repay to the insurer or insurers out of the recovery a sum equal to the benefits received, but not more than the recovery exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery, but only to the extent that the injured person has recovered said benefits from the tortfeasor or his insurers or insurer. The insurer or insurers shall have a lien on the recovery to this extent. No recovery by an injured person or his estate for loss suffered by him will be subtracted in calculating benefits due a dependent after the death, and no recovery by a dependent for loss suffered by the dependent after the death will be subtracted in calculating benefits due the injured person except as provided in paragraph (c) of subsection (1) of section 7.

(b) The insurer shall be entitled to reimbursement of any payments made under the provisions of subsection (3) of this section based upon such equitable distribution of the amount recovered as the court may determine less the pro rata share of all court costs expended by the plaintiff in the prosecution of the suit to recover such amount against a third-party tortfeasor, including a reasonable attorney's fee for the plaintiff's attorney. The proration of the reimbursement shall be made by the judge of a trial court handling the suit to recover damages in the third-party action against the tortfeasor upon application therefor and notice to the carrier.

(c) Indemnity from one paying in tort without regard for rights of insurer having reimbursement interest.—A personal protection insurer with a right of reimbursement under this section, if suffering loss from inability to collect such reimbursement out of a payment received by a claimant upon a tort claim is entitled to indemnity from one who, with notice of the insurer's interest, made such a payment to the claimant without making the claimant and the insurer joint payees as their interests may appear, or without obtaining the insurer's consent to a different method of payment.

(d) In the event an injured party or his legal representative is entitled to bring suit against a third party tortfeasor under the provisions of section 8, and fails to bring such suit against such third party tortfeasor within one year after the last payment of any benefits under subsection (1) of section 7, the insurer of such injured party, upon giving thirty (30) days written notice to such injured party, shall have the right to bring suit against such third party, in its own name or in the name of the injured person or his legal representative, to recover the amount of the benefits paid pursuant to the provisions of section 7 of this act to or for the benefit of such injured person; provided, however, that the prosecution or settlement of such suit without the consent of the injured person or his legal representative shall be without prejudice to such person.

(4) Benefits due from an insurer under this act shall be primary, except that benefits received under any workmen's compensation law shall be credited against the benefits provided by subsection (1) of section 7, and be due and payable as loss

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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 this act.

(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 this act.

(b) Personal injury protection insurance benefits shall be overdue if not paid within thirty (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 thirty (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 thirty (30) days after such written notice is furnished to the insurer; provided, however, that any payment shall not be deemed overdue where the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. 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, post-paid envelope, or, if not so posted, on the date of delivery.

(c) All overdue payments shall bear simple interest at the rate of ten percent (10%) per annum.

(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 motor vehicle or motorcycle 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, its territories or possessions or Canada by the owner while occupying the owner's motor vehicle.

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3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1 or 2 of this paragraph (d), provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle with respect to which security is required under this act.

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 motor vehicle or motorcycle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself:

a. The owner of a motor vehicle with respect to which security is required under this act, or

b. Entitled to personal injury benefits from the insurer of the owner 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) of section 7, 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.

(5) Charges for treatment of injured persons.—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 only a reasonable amount for the products, services, and accommodations rendered. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, and accommodations in cases involving no insurance.

(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 this act against whom a claim has been made, furnish forthwith, in a form approved by the department of insurance, 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, and dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment, and dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment, and 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.

(e) The injured person shall be furnished upon demand 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.

(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

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claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon 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 city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of 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.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his 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 his 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 may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(8) With respect to any dispute under the provisions of this act between the insured and the insurer, the provisions of section 627.0127, Florida Statutes, shall apply.

Section 8. Tort exemption; limitation on right to damages.—

(1) Every owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for damages because of bodily injury, sickness or disease arising out of the ownership, operation, maintenance or

use of such motor vehicle in this state to the extent that the benefits described in subsection (1) of section 7 are payable for such injury, or would be payable but for any exclusion or deductible authorized by this act, under any insurance policy or other method of security complying with the requirements of section 4, or by an owner personally liable under section 4 for the payment of such benefits, unless a person is entitled to maintain an action for pain, suffering, mental anguish and inconvenience for such injury under the provisions of subsection (2) of this section.

(2) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury under paragraph (a) of subsection (1) of section 7 or which would be payable but for any exclusion or deductible authorized by this act exceed one thousand dollars (\$1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function, or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars (\$1,000). Any person receiving ordinary and necessary services normally performed by a nurse from a relative or a member of his household shall be entitled to include the reasonable value of such services in meeting the requirements of this subsection.

Section 9. (1) The owner of a motor vehicle as defined in section 3 is not required to maintain security with respect to property damage to his motor vehicle, but may elect to purchase either full or basic coverage for accidental property damage to his motor vehicle.

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(2) Every insurer providing security under this act shall offer the owner either full or basic coverage for accidental property damage to the insured motor vehicle as follows:

(a) Full coverage shall provide insurance without regard to fault for accidents occurring within the United States of America, its territories or possessions or Canada.

(b) Basic coverage shall be limited to insurance against damage caused by the fault of another resulting from contact between the insured vehicle and a vehicle with respect to which security is required under this act.

(3) The insurer may include within the terms and conditions applicable to full or basic coverage such other provisions as it customarily applies to collision coverage for private passenger automobiles in other states, including deductibles without limitation.

(4) Every owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required by this act, and every other person or organization legally responsible for the acts or omissions of such an owner, registrant, operator or occupant, is hereby exempted from tort liability for damages because of accidental property damage to motor vehicles arising out of the ownership, operation, maintenance or use of such motor vehicle in this state, provided that a person shall not be exempt from such liability if he was operating the motor vehicle without the express or implied consent of its owner or an insured under the owner's policy or if his willful and wanton misconduct was the proximate cause of the accident. This exemption applies only with respect to property damage to motor vehicles subject to this act but shall not be applicable as to a motor vehicle damaging a parked vehicle.

(5) Notwithstanding paragraph (4) above, an owner who has elected not to purchase insurance with respect to property damage to his motor vehicle may maintain an action of tort therefor against the owner, registrant, operator or occupant of a motor vehicle causing such damage if such damage exceeds five hundred and fifty dollars (\$550), and the insurer of an owner who has elected to purchase full or basic collision coverage for his motor vehicle shall have the right, if the damage to such

motor vehicle exceeds the above amount, to recover the amount of the benefits it has paid and, in behalf of its insured, any deductible amount from the insurer of the owner, registrant, operator or occupant of a motor vehicle causing such damage. The issues of liability in such a case and the amount of recovery shall be decided on the basis of tort law, and shall be determined by agreement between the insurers involved, or if they fail to agree by arbitration.

Section 10. Each insurer providing security as required by this act to any owner shall, at the election of the owner, issue a policy endorsement, approved as to content by the department of insurance and subject to such other reasonable regulations regarding said endorsement as the department may make after appropriate hearing, which endorsement shall provide that there shall be deducted from personal protection benefits that would otherwise be or become due to the policyholder alone or to the policyholder and relatives residing in his household, an amount of either two hundred and fifty dollars (\$250), five hundred dollars (\$500) or one thousand dollars (\$1,000), again as the policyholder elects, said amount to be deducted from the amounts otherwise due each person subject to the deduction. Any person electing such an endorsement or subject to such an endorsement as a result of the policyholder's election shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator or occupant of a motor vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by this act.

Section 11. Notwithstanding any other provision of this act, the rights of residents of this state to claim damages in tort shall not be diminished when such residents are involved in motor vehicle accidents with persons not required to provide security under this act.

Section 12. Implementation of this act.—

(1) The department of insurance shall adopt rules and regulations necessary to implement the provisions of this act.

(2) Notwithstanding any other provision of law, all insurers

issuing insurance coverage under this act shall comply with the following provisions:

(a) Within sixty (60) days after the effective date of this act, each insurer shall file its proposed manual, rules, rates and rating plans with the department for approval. Rates for required financial responsibility coverage after the effective date of sections 1 through 11 of this act shall be reduced by each insurer by not less than fifteen percent (15%), calculated as a percentage of the combined required financial responsibility rate of such insurer in effect on June 7, 1971, or of the combined required financial responsibility rate of such insurer approved by the commissioner and in effect at the time of the filing of the new rates required herein. There shall be no exception to the requirements of this provision, unless the department shall find that the use of the rates required herein by any insurer will result in rates which are inadequate under Section 627.082, Florida Statutes, to the extent that such rates jeopardize the solvency, as defined in section 631.011, Florida Statutes, of the insurer required to use such rates. Notwithstanding the provisions of Chapter 71-3(B), Laws 1971, no rate for the insurance required by this act shall be increased prior to January 1, 1973, unless the insurer proposing such rate increase shall show that the rates required herein are inadequate as defined in Section 627.082, Florida Statutes.

(b) Within sixty (60) days from the date of filing by such insurer, the department may approve or disapprove the filing. If no action is taken by the department within sixty (60) days, the filing shall be deemed approved.

(c) If the department approves the filing or the filing otherwise becomes effective, the manual, rules, rates and rating plans shall take effect upon the effective date of sections 1 through 11 of this act. If the department disapproves the filing, the insurer shall revert to a rate level for required coverage which shall be lower, by not less than fifteen percent (15%), than the combined premiums for required financial responsibility coverage at the time such proposed new rates were filed.

(d) Upon complying with this subsection, any insurer appealing an order of disapproval may use the rates set forth in

the disapproved filing during the pendency of the appeal, so long as such rates do not exceed its rates for required financial responsibility coverage at the time of its rate filing required herein. As a condition to the use of such disapproved rates, the insurer must enter into a legally binding agreement with the department to secure the repayment to the insurer's policyholders of the difference between the insurer's proposed rate and that rate which would be lower, by not less than fifteen percent (15%), than the combined premiums for required financial responsibility coverage at the time such proposed new rates were filed. In addition to the repayment of the difference in premium, the company shall agree to pay to the insured the legal rate of interest on any money refunded.

(e) Any private passenger automobile liability policy in force on January 1, 1972 and thereafter, shall reflect by endorsement any reduction in rates for the required coverage under this act as filed by the insurer and such reduction shall be computed on a prorata basis for the remaining term of said policy. Such endorsement may be issued at the renewal date of the policy or the termination of the policy. Any return premium shall be credited to the renewal policy or if the policy is terminated the return premium shall be refunded to the insured.

(f) For the purposes of the implementation of this act, rating organizations as defined in chapter 627 shall be permitted until January 1, 1973, to develop and furnish rates and forms to their members or subscribers. Provided, however, that members and subscribers of rating organizations shall not participate in the decisions or deliberations of such organizations in the development of such rates under this act.

Section 13. If any provision of this act, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are declared to be severable.

Section 14. This act shall become effective July 1, 1971; provided, however the provisions of sections 1 through 11 of this

LAWS OF FLORIDA CHAPTER 71-253

act shall not become effective until January 1, 1972, and shall not apply to accidents or injuries occurring before said date.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 24, 1971.

CHAPTER 71-253

Senate Bill No. 297

AN ACT relating to community colleges; requiring that teaching faculty members teach not less than fifteen (15) classroom contact hours per week; providing exemptions; providing an effective date.

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

Section 1. Each full-time member of the teaching faculty at any institution under the supervision of the division of community colleges of the department of education who is paid wholly from funds appropriated from the minimum foundation fund shall teach a minimum of fifteen (15) classroom contact hours per week at such institution provided, however, that the required classroom contact hours per week may be reduced upon approval of the president of the institution in direct proportion to specific duties and responsibilities assigned the faculty member by his departmental chairman or other appropriate college administrator, such specific duties to include specific research duties, or specific duties associated with developing television, video tape, or other specifically assigned innovative teaching techniques or devices, or assigned responsibility for off-campus student internship or work study programs. A classroom contact hour consists of a regularly scheduled one (1) hour period of classroom activity in a course of instruction which has been approved by the board of trustees of the community college. Any full-time faculty member who is paid partly from minimum foundation funds and partly from other funds or appropriations shall teach a minimum number of classroom contact hours per



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

MAR 28 1983

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 28, 1983

MEMORANDUM

TO: Representative Joe Hayes
Attention: Jeff Day

FROM: David Teal *Teal*
Research Staff

RE: Automobile Liability Insurance
Research Request Number 83-128

Jeff Day, of your staff, asked for information relating to automobile liability insurance. More specifically, he requested the latest estimates of the proportion of uninsured motorists in Alaska, the number of vehicles registered in the state, the number of licensed drivers, and the amount of property damage and personal injury caused by uninsured motorists.

Insured vs. Uninsured Motorists

As you may know, automobile liability insurance policies generally cover some persons not named on the policies; as far as the insurance provider is concerned, the unit of exposure is the vehicle, not the policy-holder or the number of potential operators. This factor makes determining the number of uninsured drivers very difficult and is the reason that data are usually presented in terms of uninsured vehicles rather than uninsured persons.

The Division of Insurance prepared statistics on the number of uninsured vehicles in Alaska, but included several caveats in the analysis. (See Attachment A.) That study used information from several sources and produced two estimates of the number of uninsured vehicles during several years. The estimates are so dissimilar that one must question their value. For example, the estimate of uninsured vehicles in 1980 was 40.5 percent by one method and 11.0 percent by the other method.

A third method, which was used by the Division of Drivers' Services in the Department of Public Safety, is likely to provide a much better estimate of the proportion of motorists in Alaska that are uninsured. The division reviewed records of accidents that occurred during January of 1981 and found that 21 percent of motorists involved in accidents were uninsured. A repeat of the study in January of 1982 showed that

Representative Hayes

March 28, 1983

Page 2

20 percent of motorists were uninsured. Applying the 20 percent figure to the vehicle registration statistics presented later in this memorandum produces an estimate of about 100,000 uninsured vehicles in the state. Figures for 1983 have not been compiled.

Liability Limits

Jeff Day noted that liability limits of \$100,000 per person (to a maximum of \$300,000 per accident) for bodily injury and \$50,000 for property damage--traditionally written as 100/300/50--are "standard" and wondered how many insured drivers currently carry less than this amount of liability insurance. I was unable to find any written record of the number of motorists that purchase more insurance than is required by law, but it is worth noting that Alaska currently requires 25/50/10 and that Hawaii is the only state with higher limits than Alaska. (See Attachment B.)

The only way to determine the number of policies written for limits higher than the minimum is to contact the individual insurance companies. A reasonable estimate could be obtained by contacting State Farm, Allstate, Criterion, and United Services. Together, these companies insure about 70 percent of Alaska's motorists.

I was able to contact Allstate and State Farm Insurance Companies, and spokesmen for both said that their most common coverage is 100/300/50. In this sense, the 100/300/50 policy is the industry standard. According to State Farm Insurance, the additional cost of 100/300/50 amounts to only about \$20 per year more than the 25/50/10 coverage. The company also pointed out that law suits now commonly exceed Alaska's current minimums.

Damage and Injury Caused by Uninsured Motorists

There are no requirements that records on this subject be maintained. Don Koch, of the Division of Insurance, stated that he wouldn't even be able to "guesstimate" because he felt that much of the damage is unreported and/or uncompensated. A similar opinion was expressed by representatives of the insurance industry.

As you may be aware, uninsured motorist coverage is a mandatory offering in Alaska. This means that insurance companies must offer the coverage and inform clients of its availability. There is no requirement that the coverage be purchased.

Registered Vehicles and Licensed Drivers

According to Sharon Naus, of the Division of Drivers' Services in the Department of Public Safety, there were 316,797 persons holding valid Alaska drivers licenses on January 10, 1983. She also reported that 407,870 vehicles were registered in Alaska in calendar year 1982. The following table shows the number of registered vehicles by vehicle type.

Motor Vehicles Registered in Alaska
Calendar Year 1982

<u>Vehicle Type</u>	<u>Number</u>
Passenger Auomobiles	217,719
Motorcycles	14,504
Commercial Trailers	10,079
Utility Trailers	37,999
Commercial Trucks	19,361
Pick-ups	106,851
Buses	1,357
TOTAL	407,870

Source: Department of Public Safety 3/83

* * *

In addition to material obtained from the Division of Insurance, I am attaching a recent House Research Agency memorandum on the subject of compulsory insurance. If you have questions about information presented in this memorandum and its attachments or have additional questions, please call.

Attachments

- A) Alaska Drivers: Insured vs. Uninsured (Division of Insurance, undated)
- B) Liability Limits (Division of Insurance, undated)
- C) Research Request 83-48

ALASKA DRIVERS
Insured vs. Uninsured

The division's statistical needs respond to rate-making and solvency issues. Nevertheless, it has made an attempt to obtain some feeling as to what portion of the public may be uninsured. Unfortunately, a number of caveats must be placed on this information. The sources for the data used in the calculation come from several areas and in each case, this data is untested and has been subject to some adjustment or assumption which may cast suspicion on its accuracy.

You will note the substantial difference between the two charts. The reason for this difference is attributed to the different interpretation of what constitutes a private passenger type risk. The caveats following each chart detail the source of the numbers.

The data that follows is useful for "guesstimating" the percentage of insured motor vehicles in Alaska. It does not relate to insured persons in Alaska. To our knowledge, there is currently no source for arriving at a number of insured persons since a policy, when written, covers some persons not named automatically.

The unit of exposure, as far as the insurer is concerned, is the number of vehicles not the number of potential operators.

Chart 1. (From Division of Insurance 1982 Statistical Analysis)

(1) Year	(2) Registered Autos	(3) Insured Car Years	(4) % Insured	(5) % Uninsured
1975	199,536	117,355	58.8	41.2
1976	221,386	120,964	54.6	45.4
1977	226,389	121,635	53.7	46.3
1978	232,425	123,581	53.2	46.8
1979	229,403	132,391	57.7	42.3
1980	230,040	136,895	59.5	40.5

(1) This column is on a calendar basis.

(2) The number of registered automobiles was obtained from the Division of Planning and Research in the Department of Transportation and Public Facilities of the State of Alaska. The number of auto registrations derives from the following types of license plates:

- Regular
- Personalized
- Call Letter
- Other, including legislator, historic vehicle
- Pickups and vans
- Farm trucks

The numbers have been adjusted to remove duplicate registrations. They do not include unregistered vehicles, nor is there a method to arrive at a reasonable "guesstimate" of that number. Prior to 1977, pickups and vans were included in the freight-light trucks classification. We have made an adjustment to separate the pickups and vans from that classification, based on the relationship during 1977-79 of the pickups and vans classification to the freight-light trucks classification. Official automobiles (State, federal and municipal) are not included. Some fleets of automobiles have been included but are not identifiable by name or number. The chart relates only to private passenger registrations and insurance.

(3) These figures were obtained from the Automobile Insurance Plans Service Office (AIPSO), a licensed rating organization for this State. Included are voluntary and assigned risk nonfleet private passenger vehicles insured. An insured car year is one automobile insured for one year, so that, if a car is insured for six months, that would be 1/2 car year.

(4) = (3) ÷ (2)

(5) = 100% - (4)

Chart 2 (from AIPSO Ins. Facts, 1982)

<u>Year</u>	<u>Registered Autos*</u>	<u>Insured Car Years+</u>	<u>% Insured</u>	<u>% Uninsured</u>
1973	111,455	99,430	89.2	10.8
1974	135,902	99,430	70.2	29.8
1975	141,921	117,355	82.7	17.3
1976	154,093	120,964	78.5	21.5
1977	159,896	121,635	76.1	23.9
1978	162,578	123,619	82.2	17.8
1979	153,402	132,391	86.3	13.7
1980	153,774	136,895	89.0	11.0

* Represents number of passenger car registrations based on data from U.S. DOT, Federal Highway Administration, Highway Statistics Division, Office of Highway Planning. (A) Includes all new and renewal passenger car registrations. (B) Includes passenger car fleet vehicles, taxi cabs, and miscellaneous private passenger-car type vehicles registered as passenger cars. (C) Includes passenger car registrations made throughout the year, although vehicle may have been registered only a portion of the year. (D) Vehicles registered in one name and later sold and registered in another name count as two registrations, etc.

+ Represents 1/12 of the number of exposure months of liability insurance on vehicles rated as private passenger nonfleet type risks. (A) Includes many pickup trucks insured as passenger car type but not so registered. (B) May include other vehicles insured as passenger car risks, but registered as antiques, station wagons, vanity, press, ham radio, etc. (C) Does not include motorcycles recreational vehicles, nonowner risks, and cars rated in a fleet or self-insured.

In view of the interest being expressed by a number of persons in reviewing the limits of liability required by the Alaska Safety Responsibility Act (financial responsibility law) the Division of Insurance has updated exhibits originally prepared when the limits were last revised in 1975.

EXHIBIT A reflects the purchasing power or value of the dollar based on the annual average value as measured by consumer prices. The base year utilized is 1959, the year of Alaska Statehood. The indices used were developed by the U. S. Bureau of Labor Statistics. Column (3) shows the limits of liability for bodily injury applicable to the particular year. Column (5) does the same for property damage. The figures for 1982 and 1983 are projections and are not firm.

EXHIBIT B is the same concept as EXHIBIT A except it uses the date of last change of limits as the base year and thus uses a shorter span of years.

EXHIBIT C is an excerpt from the FC&S BULLETINS published by the National Underwriter Company of Cincinnati, Ohio. It depicts the current (as of January 1983) limit of liability for each state of the United States and for each province in Canada.

March 1, 1983

Division of Insurance
Department of Commerce & Economic Development
State of Alaska

. PURCHASING POWER OF FINANCIAL RESPONSIBILITY LAW LIMITS USING 1959
(statehood) AS BASE YEAR

(1) Year	(2) Purchasing Power indx	(3) B.I. Limits (000)	(4) Purchasing Power of (3)	(5) P.D. Limit (000)	(6) Purchasing Power of (5)
1959	1.000	10/20	10000/20000	5	5000
1960	.984	10/20	9840/19680	5	4920
1961	.975	10/20	9750/19500	5	4875
1962	.964	10/20	9640/19280	5	4820
1963	.953	10/20	9530/19060	5	4765
1964	.940	10/20	9400/18800	5	4700
1965	.924	10/20	9240/18480	5	4620
1966	.899	10/20	8990/17980	5	4495
1966	.899	15/30	13485/26970	5	4495
1967	.873	15/30	13095/26190	5	4365
1968	.838	15/30	12570/25140	5	4190
1969	.796	15/30	11940/23880	5	3980
1970	.751	15/30	11265/22530	5	3755
1971	.720	15/30	10800/21600	5	3600
1972	.698	15/30	10470/20940	5	3490
1973	.657	15/30	9855/19710	5	3285
1974	.587	15/30	8805/17610	5	2935
1975	.542	15/30	8130/16260	5	2710
1975	.542	25/50	13550/27100	10	5420
1976	.512	25/50	12800/25600	10	5120
1977	.481	25/50	12025/24050	10	4810
1978	.447	25/50	11175/22350	10	4470
1979	.402	25/50	10050/20100	10	4020
1980	.355	25/50	8875/17750	10	3550
1981	.325	25/50	8125/16250	10	3250
1982est.	.310	25/50	7750/15500	10	3100
1983est.	.295	25/50	7375/14750	10	2950

Proposals

1983est.	.295	50/100	14750/29500	25	7375
1983est	.295	100/200	29500/59000	25	7375

Prepared by: Alaska Division of Insurance
Based on U.S. Bureau of Labor Statistics
Date: March 1, 1983

PURCHASING POWER OF FINANCIAL RESPONSIBILITY LAW LIMITS USING 1975 (date of last change in financial responsibility law limits) AS BASE YEAR

(1) Year	(2) Purchasing Power Indx	(3) B.I. Limits (000)	(4) Purchasing Power of (3)	(5) P.D. Limit (000).	(6) Purchasing Power of (5)
1975	1.000	25/50	25000/50000	10	10000
1976	.945	25/50	23625/47250	10	9450
1977	.887	25/50	22175/44350	10	8870
1978	.824	25/50	20600/41200	10	8240
1979	.742	25/50	18550/37100	10	7420
1980	.654	25/50	16350/36700	10	6540
1981	.599	25/50	14975/29950	10	5990
1982est.	.572	25/50	14300/28600	10	5720

Prepared by: Alaska Division of Insurance
 Based on: U.S. Bureau of Labor Statistics
 Date: March 1, 1983



Official Business

Alaska State Legislature

Senate

Office of the President

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: June 3, 1983

TO: Senator Dick Eliason
Chairperson, Senate Labor and Commerce Committee

FROM: Senator Jay Kerttula
Senate President

RE: HB 7, requiring mandatory auto insurance.

The attached material was recently received in my office. I am forwarding it to you for the perusal of you and your committee.

Attachment

JMK:jdk

May 26, 1983

Joe M. Huddleston
509 West Third Avenue
Anchorage, Alaska 99501

JUN 1 1983
The Honorable Jalmar M. Kerttula
Pouch "V"
Juneau, Alaska 99811

Dear Jay:

I would like to take this opportunity to direct to you my thoughts on pending legislation. House Bill No. 7 and Senate Bill No. 223 is proposed legislation which requires compulsory insurance in order to obtain a driver's license or vehicle tags. The idea of compulsory insurance does have surface appeal, but I believe that it does not stand close scrutiny. As you know, I am an attorney practicing law in Anchorage. I am significantly involved in insurance defense actions and I have researched this subject at length.

As I mentioned above, the idea of compulsory insurance does have a degree of surface appeal. However, our several sister states have experimented with this type of legislation to their prejudice. New York adopted a compulsory insurance law in 1956, and a study undertaken by the University of Michigan in 1963 reported that the law was unenforced, unenforceable, and a complete failure. A New York Daily News "study" reported that the law had failed to achieve its aims and was, in fact, counterproductive.

In the main our sister states have found that the compulsory insurance laws (1) cannot be enforced; (2) are costly to administer; and (3) increase insurance premiums for responsible drivers.

Notwithstanding the above, my three major reservations concerning this legislation are that it will (1) significantly increase the premium rates for responsible policy holders; (2) significantly increase the case loads at the Superior Court level; and (3) engender disrespect for law.

A superficial review of this subject might suggest that the respective insurance carriers would be in favor of this type of legislation. What greater boon could one envision to the insurance industry than legislation which mandates that everyone must buy their product? However, the insurance industry has

realized that compulsory insurance creates a bureaucracy in state government and in private industry and, further, significantly raises insurance premium rates.

I would suggest to you that this Bill is simply a make work project for attorneys. In the situation where an insured motorist is involved in an accident with an uninsured motorist, he has recourse to his uninsured motorist benefits. This is a very common situation and in almost all of these situations no lawsuit is filed. The insured motorist simply settles with his own insurance carrier or, in a relatively few cases, the matter is taken to arbitration. The overwhelming majority of this type of case does not involve an attorney and is settled without recourse to the court. The savings to the taxpayer are incalculable.

The requirement that every driver obtain insurance will negate the effect of the uninsured motorist benefits and result in a proliferation of lawsuits rather than the insured simply settling the case with his own insurance company or demanding arbitration. This will be an excellent benefit for attorneys but will be a disservice to the citizens of the state of Alaska in that it will increase insurance premiums, increase state and private industry bureaucracy, increase the expense at the Superior Court level and prevent the speedy resolution of claims through the uninsured motorist provisions.

As I stated above, my research has indicated that the system of compulsory insurance is not effective in that it is unenforceable. The costs of enforcement through the Department of Motor Vehicles is prohibitive. A California study revealed that persons were applying for insurance, or actually obtaining it, and then cancelling the insurance as soon as they obtained their license. A Pennsylvania study reflected that the Department of Motor Vehicles in that state was bogged down in a bureaucratic morass. On average, forty thousand notices of cancellation or lapses of payment were processed each month by that department. The most recent information from New York reflects that the costs of enforcement were in excess of seven million dollars per year. South Carolina also spent in excess of one million dollars to enforce its compulsory law in the fiscal year ending April 30, 1979. It is the experience of our system of jurisprudence that laws that are unenforced or unenforceable are a disservice to the legislature and a disservice to the people of the state.

AN ALTERNATIVE SOLUTION

The concept that citizens of the state of Alaska should be protected from physical and financial reverses of this type is

The Honorable Jalmar Kerttula

May 26, 1983

Page 3

laudable and should be pursued. However, there is a much more effective method of insuring that this type of physical and financial protection is available. Many states, for instance Oregon, require that each insurance policy contain uninsured motorist benefits. Under this type of provision, when an insured driver is involved in an accident with an uninsured motorist he simply files a claim with his own insurance company rather than dealing with the financially irresponsible individual that caused the collision in the first place. Requiring uninsured motorist coverage in every policy precludes the necessity of increasing either government or private industry bureaucracy. Requiring uninsured motorist provisions in every policy is easily enforceable as the respective carriers would not be allowed to sell insurance that did not include these benefits. Additionally, uninsured motorist coverage is very inexpensive to the policy holder. I would request that you review your own insurance policy and compare the costs of uninsured motorist coverage with the costs of general bodily injury liability coverage. The UM coverage generally costs just a few dollars.

It is my firm belief that the passage of House Bill No. 7, Senate Bill No. 223 will result in a morass of bureaucracy and paperwork and significant expense to the citizens of the state of Alaska. Additionally, compulsory insurance will significantly raise the premium rates that each of us must pay for insurance. Unfortunately, it is the experience of the citizens of the state of Alaska that we are compelled to pay an inordinate price for goods and services that are available in the Lower 48 on a less expensive basis. I do not believe that this additional cost should be passed along to the citizens of the state of Alaska. I would appreciate your thoughts or comments on this. I wish to thank you for your courtesy in this matter.

Sincerely yours,

Joe M. Huddleston
Joe M. Huddleston
509 West Third Avenue
Anchorage, Alaska 99501

JMH/ph



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y. State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 28, 1983

MEMORANDUM

TO: Representative Joe Hayes
Attention: Jeff Day

FROM: David Teal *Teal*
Research Staff

RE: Automobile Liability Insurance
Research Request Number 83-128

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As you may be aware, uninsured motorist coverage is a mandatory offering in Alaska. This means that insurance companies must offer the coverage and inform clients of its availability. There is no requirement that coverage be purchased.

*Oregon -
requires un-
insured
insurance -
for each insurance
policy -*

*20% of 400,000
vehicles*

*80,000
uninsured
??*

Registered Vehicles and Licensed Drivers

According to Sharon Naus of the Division of Drivers' Services in the Department of Public Safety, there were 316,797 persons holding valid Alaska drivers licenses on January 10, 1983. She also reported that 407,870 vehicles were registered in Alaska in calendar year 1982. The following table shows the number of registered vehicles by vehicle type.

Motor Vehicles Registered in Alaska
Calendar Year 1982

<u>Vehicle Type</u>	<u>Number</u>
Passenger Automobiles	217,719
Motorcycles	14,504
Commercial Trailers	10,079
Utility Trailers	37,999
Commercial Trucks	19,361
Pick-ups	106,851
Buses	1,357
TOTAL	407,870

Source: Department of Public Safety 3/83

* * *

In addition to material obtained from the Division of Insurance, I am attaching a recent House Research Agency memorandum on the subject of compulsory insurance. If you have questions about information presented in this memorandum and its attachments or have additional questions, please call.

Attachments

- A) Alaska Drivers: Insured vs. Uninsured (Division of Insurance, undated)
- B) Liability Limits (Division of Insurance, undated)
- C) Research Request 83-48

ALASKA DRIVERS
Insured vs. Uninsured

The division's statistical needs respond to rate making and solvency issues. Nevertheless, it has made an attempt to obtain some feeling as to what portion of the public may be uninsured. Unfortunately, a number of caveats must be placed on this information. The sources for the data used in the calculation come from several areas and in each case, this data is untested and has been subject to some adjustment or assumption which may cast suspicion on its accuracy.

You will note the substantial difference between the two charts. The reason for this difference is attributed to the different interpretation of what constitutes a private passenger type risk. The caveats following each chart detail the source of the numbers.

The data that follows is useful for "guesstimating" the percentage of insured motor vehicles in Alaska. It does not relate to insured persons in Alaska. To our knowledge, there is currently no source for arriving at a number of insured persons since a policy, when written, covers some persons not named automatically.

The unit of exposure, as far as the insurer is concerned, is the number of vehicles not the number of potential operators.

Chart 1. (From Division of Insurance 1982 Statistical Analysis)

(1) Year	(2) Registered Autos	(3) Insured Car Years	(4) % Insured	(5) % Uninsured
1975	199,536	117,355	58.8	41.2
1976	221,386	120,964	54.6	45.4
1977	226,389	121,635	53.7	46.3
1978	232,425	123,581	53.2	46.8
1979	229,403	132,391	57.7	42.3
1980	230,040	136,895	59.5	40.5

(1) This column is on a calendar basis.

(2) The number of registered automobiles was obtained from the Division of Planning and Research in the Department of Transportation and Public Facilities of the State of Alaska. The number of auto registrations derives from the following types of license plates:

- Regular
- Personalized
- Call Letter
- Other, including legislator, historic vehicle
- Pickups and vans
- Farm trucks

The numbers have been adjusted to remove duplicate registrations. They do not include unregistered vehicles, nor is there a method to arrive at a reasonable "guesstimate" of that number. Prior to 1977, pickups and vans were included in the freight-light trucks classification. We have made an adjustment to separate the pickups and vans from that classification, based on the relationship during 1977-79 of the pickups and vans classification to the freight-light trucks classification. Official automobiles (State, federal and municipal) are not included. Some fleets of automobiles have been included but are not identifiable by name or number. The chart relates only to private passenger registrations and insurance.

(3) These figures were obtained from the Automobile Insurance Plans Service Office (AIPSO), a licensed rating organization for this State. Included are voluntary and assigned risk nonfleet private passenger vehicles insured. An insured car year is one automobile insured for one year, so that, if a car is insured for six months, that would be 1/2 car year.

$$(4) = (3) \div (2)$$

$$(5) = 100\% - (4)$$

Chart 2 (from AIPSO Ins. Facts, 1982)

<u>Year</u>	<u>Registered Autos*</u>	<u>Insured Car Years+</u>	<u>% Insured</u>	<u>% Uninsured</u>
1973	111,455	99,430	89.2	10.8
1974	135,902	99,430	70.2	29.8
1975	141,921	117,355	82.7	17.3
1976	154,093	120,964	78.5	21.5
1977	159,896	121,635	76.1	23.9
1978	162,578	123,619	82.2	17.8
1979	153,402	132,391	86.3	13.7
1980	153,774	136,895	89.0	11.0

* Represents number of passenger car registrations based on data from U.S. DOT, Federal Highway Administration, Highway Statistics Division, Office of Highway Planning. (A) Includes all new and renewal passenger car registrations. (B) Includes passenger car fleet vehicles, taxi cabs, and miscellaneous private passenger-car type vehicles registered as passenger cars. (C) Includes passenger car registrations made throughout the year, although vehicle may have been registered only a portion of the year. (D) Vehicles registered in one name and later sold and registered in another name count as two registrations, etc.

+ Represents 1/12 of the number of exposure months of liability insurance on vehicles rated as private passenger nonfleet type risks. (A) Includes many pickup trucks insured as passenger car type but not so registered. (B) May include other vehicles insured as passenger car risks, but registered as antiques, station wagons, vanity, press, ham radio, etc. (C) Does not include motorcycles recreational vehicles, nonowner risks, and cars rated in a fleet or self-insured.

ATTACHMENT B

In view of the interest being expressed by a number of persons in reviewing the limits of liability required by the Alaska Safety Responsibility Act (financial responsibility law) the Division of Insurance has updated exhibits originally prepared when the limits were last revised in 1975.

EXHIBIT A reflects the purchasing power or value of the dollar based on the annual average value as measured by consumer prices. The base year utilized is 1959, the year of Alaska Statehood. The indices used were developed by the U. S. Bureau of Labor Statistics. Column (3) shows the limits of liability for bodily injury applicable to the particular year. Column (5) does the same for property damage. The figures for 1982 and 1983 are projections and are not firm.

EXHIBIT B is the same concept as EXHIBIT A except it uses the date of last change of limits as the base year and thus uses a shorter span of years.

EXHIBIT C is an excerpt from the FC&S BULLETINS published by the National Underwriter Company of Cincinnati, Ohio. It depicts the current (as of January 1983) limit of liability for each state of the United States and for each province in Canada.

March 1, 1983

Division of Insurance
Department of Commerce & Economic Development
State of Alaska

PURCHASING POWER OF FINANCIAL RESPONSIBILITY LAW LIMITS USING 1959
(statehood) AS BASE YEAR

(1) Year	(2) Purchasing Power index	(3) B.I. Limits (000)	(4) Purchasing Power of (3)	(5) P.D. Limit (000)	(6) Purchasing Power of (5)
1959	1.000	10/20	10000/20000	5	5000
1960	.984	10/20	9840/19680	5	4920
1961	.975	10/20	9750/19500	5	4875
1962	.964	10/20	9640/19280	5	4820
1963	.953	10/20	9530/19060	5	4765
1964	.940	10/20	9400/18800	5	4700
1965	.924	10/20	9240/18480	5	4620
1966	.899	10/20	8990/17980	5	4495
1966	.899	15/30	13485/26970	5	4495
1967	.873	15/30	13095/26190	5	4365
1968	.838	15/30	12570/25140	5	4190
1969	.796	15/30	11940/23880	5	3980
1970	.751	15/30	11265/22530	5	3755
1971	.720	15/30	10800/21600	5	3600
1972	.698	15/30	10470/20940	5	3490
1973	.657	15/30	9855/19710	5	3285
1974	.587	15/30	8805/17610	5	2935
1975	.542	15/30	8130/16260	5	2710
1975	.542	25/50	13550/27100	10	5420
1976	.512	25/50	12800/25600	10	5120
1977	.481	25/50	12025/24050	10	4810
1978	.447	25/50	11175/22350	10	4470
1979	.402	25/50	10050/20100	10	4020
1980	.355	25/50	8875/17750	10	3550
1981	.325	25/50	8125/16250	10	3250
1982est.	.310	25/50	7750/15500	10	3100
1983est.	.295	25/50	7375/14750	10	2950

Proposals

1983est.	.295	50/100	14750/29500	25	7375
1983est	.295	100/200	29500/59000	25	7375

Prepared by: Alaska Division of Insurance
Based on: U.S. Bureau of Labor Statistics
Date: March 1, 1983

PURCHASING POWER OF FINANCIAL RESPONSIBILITY LAW LIMITS USING 1975 (date of last change in financial responsibility law limits) AS BASE YEAR

(1) Year	(2) Purchasing Power Indx	(3) B.I. Limits (000)	(4) Purchasing Power of (3)	(5) P.D. Limit (000)	(6) Purchasing Power of (5)
1975	1.000	25/50	25000/50000	10	10000
1976	.945	25/50	23625/47250	10	9450
1977	.887	25/50	22175/44350	10	8870
1978	.824	25/50	20600/41200	10	8240
1979	.742	25/50	18550/37100	10	7420
1980	.654	25/50	16350/36700	10	6540
1981	.599	25/50	14975/29950	10	5990
1982est.	.572	25/50	14300/28600	10	5720

Prepared by: Alaska Division of Insurance
 Based on: U.S. Bureau of Labor Statistics
 Date: March 1, 1983

TABLE OF LIMITS

Financial Responsibility and Compulsory Insurance Laws

The table that follows displays the minimum financial responsibility and compulsory Liability insurance limits for all states, the District of Columbia, and the Canadian provinces. (Limits are expressed in thousands.)

Alabama	\$10/20/5	New Brunswick	100
Alaska	25/50/10	Newfoundland	75
Alberta	100	New Hampshire	25/50/25
Arizona	15/30/10	New Jersey	15/30/5
Arkansas	25/50/15	New Mexico	15/30/5
British Columbia	100	New York	10/20/5*
California	15/30/5	Northwest Territories	50
Colorado	15/30/5	North Carolina	25/50/10
Connecticut	20/40/5	North Dakota	25/50/10
Delaware	10/20/5	Nova Scotia	100
District of Columbia	10/20/5	Ohio	12.5/25/7.5
Florida	10/20/5	Oklahoma	10/20/10
Georgia	10/20/10	Ontario	200
Hawaii	25/Unlimited/10	Oregon	15/30/5
Idaho	10/20/5	Pennsylvania	15/30/5
Illinois	15/30/10	Prince Edward Island	100
Indiana	15/30/10	Quebec	50†
Iowa	20/40/15	Rhode Island	25/50/10
Kansas	25/50/10	Saskatchewan	100
Kentucky	10/20/5	South Carolina	15/30/5
Louisiana	5/10/1	South Dakota	15/30/10
Maine	20/40/10	Tennessee	10/20/5
Manitoba	50	Texas	10/20/5
Maryland	20/40/10	Utah	20/40/10‡
Massachusetts	10/20/5	Vermont	20/40/10
Michigan	20/40/10	Virginia	25/50/10
Minnesota	25/50/10	Washington	25/50/10
Mississippi	10/20/5	West Virginia	20/40/10
Missouri	25/50/10	Wisconsin	25/50/10
Montana	25/50/5	Wyoming	10/20/5
Nebraska	15/30/10	Yukon	75
Nevada	15/30/10		

*50/100 for wrongful death.

†Because Quebec has a complete no-fault system for bodily injury, the minimum limit applies only to property damage within Quebec and combined bodily injury and property damage outside Quebec.

‡Or, \$30,000 combined single limit.



ATTACHMENT C
 ALASKA STATE LEGISLATURE
 HOUSE OF REPRESENTATIVES
 RESEARCH AGENCY

Alaska State Legislature
 January, 1983
 (201) 265-1991

32 states -
 compulsory -

Mainly "no-fault"

March 8, 1983

MEMORANDUM

TO: Representative Hiljo Koponen
 FROM: David Teal
 Research Staff
 RE: Insurance Pools
 Research Request Number 83-48

You asked the House Research Agency to explore potential advantages of providing insurance to a single pool versus competing pools. Although other possibilities exist, the implication of a single pool is compulsory insurance underwritten by the government.¹

In our conversation of March 2, you indicated an interest in applying the single pool concept to automobile insurance in Alaska. According to Don Koch, of the Division of Insurance in the Department of Commerce and Economic Development, 32 states now have some type of compulsory automobile insurance and 29 of those states adopted compulsory insurance laws (primarily no-fault) within the past 12 years. However, Jerry Sheehan, of the American Insurance Association, said these states require motorists to obtain an insurance policy from the private sector; no state acts as the underwriter (that is, the risk-taker) for automobile insurance.²

Several Canadian provinces are much more involved in providing automobile insurance. British Columbia, Manitoba, Saskatchewan and Quebec all have government-run corporations that underwrite automobile insurance. In my research of this topic, I spoke with Andy Neimers (Community

¹ Other forms of single pool insurance include (1) contracting with underwriters in the private sector for exclusive coverage of Alaska's population and (2) excluding private sector insurers from the market without making government-provided coverage mandatory. Both forms would require strong government involvement.

² Hawaii probably comes closest to providing insurance; the State pays insurance premiums for motorists on welfare. Note, however, that the underwriters are private sector insurance companies, not the State.

Relations Officer for the Insurance Corporation of British Columbia) and Lynn Holson, who works for the government insurance corporation in Saskatchewan. They listed the following as some of the advantages of the single pool concept.

- The pool made insurance more readily available to some sections of the population. One reason for government involvement was the alleged reluctance of private sector insurers to offer insurance in remote areas. Another allegation was that the premiums charged to young drivers were out of proportion to the risks.
- Security is greater when all motorists are insured. Innocent victims of accidents are assured of compensation for their losses.
- Administrative costs of a single pool can be much lower than for competing pools, such as those found in states that have compulsory insurance laws which require purchase of insurance from the private sector. This applies in particular to enforcement. A single pool can process information faster and more accurately than is likely to occur when information is not centrally gathered and processed.
- Premiums are lower. The need for profit is eliminated when the government acts as the underwriter.
- Income can be invested within the province.
- ~~The private sector is not excluded~~ from the insurance business. Policies are obtained from (and commissions are paid to) private insurance companies. In addition, private sector insurers can write policies in excess of the required coverage. In fact, very little "excess" insurance is purchased from private insurers because they cannot compete with the government premium structure. People can (and often do) purchase excess coverage from the government.

Both Canadian sources said the single pool concept has some opposition, but they said it tended to be philosophical/political rather than being aimed at the cost or efficiency of the programs. Note, however, that British Columbia had a fixed premium structure that subsidized drivers with poor driving records when the program began in 1973. According to Mr. Neimers, the program ran up a deficit of \$180 million and required a government bailout. He said the new "bonus/malice" premium schedule has reduced subsidies and claimed that the corporation now operates at

a breakeven level. Saskatchewan continues to charge a single fee for the minimum liability coverage.

The Canadians tie insurance to vehicle registration; our two sources recommended that Alaska adopt the same system if the State adopts the single pool concept. They voiced concern that linking insurance to a license to drive might result in people driving without a license. They noted that license plates are highly visible evidence of insurance while a driver's license might be examined only after an accident. Although the registration plates are evidence of insurance and are associated with the bulk of premium payments, the Canadians also assess a fee for a driver's license. The fee provides insurance coverage for auto accidents even if the holder is a pedestrian at the time of the accident.

As mentioned earlier in this memorandum, none of the United States provides automobile insurance in the same way as the Canadian provinces. However, several states--Nevada, North Dakota, Ohio, Washington, West Virginia and Wyoming--apply the single pool concept to workers' compensation insurance. I discussed the single pool concept with Jacqueline McClintock, director of the the Division of Workers' Compensation, and with Don Koch. They countered many of the advantages listed earlier in this memorandum and noted several disadvantages to adopting the single pool concept in Alaska. Their points are listed below.

- There is no compelling actuarial reason to have a single risk pool; when combined with policy-holders in other states, the competing pools are large enough to accurately project losses.
- There is not significant problem with availability of automobile insurance in rural Alaska.
- A government-run insurance program is a heavy intrusion into private industry. Increased government involvement would be a reversal of the current trend; many jobs would be shifted from the private sector to the state payroll.
- Alaska's new spending limitation could affect the State's ability to fund the personnel required to operate an insurance program.
- A government-run insurance program might have many hidden costs such as legal fees absorbed by the Attorney General's office.
- The downward pressure which competition places on rates and the inherent inefficiency of government may more than offset the gains due to the elimination of profit.

Representative Koponen
March 8, 1983
Page 4

- Compulsory insurance is costly because (1) the policy is unlikely to have exclusions, (2) fraud is eliminated as a defense if the insurance carrier must go to court, and (3) insurance coverage must be certified.
- Even compulsory insurance is unlikely to provide 100% coverage.
- Although a State corporation might invest more heavily in the state than would a large national corporation, additional investments may not be all that attractive; some analysts claim that Alaska has surplus liquidity.

Other solutions may provide similar security at a lower cost and/or with less disruption of the market and less impact on personal freedom. Options include:

- mandatory offering of underinsured as well as uninsured motorist coverage, for personal property as well as for bodily injury;
- stronger financial responsibility laws, such as "habitual offenders" provisions or a fee assessed at the time an uninsured (or unbonded) vehicle is registered and a fee if an uninsured vehicle is involved in an accident; and
- an "unsatisfied judgment fund" or similar program to compensate innocent victims of automobile accidents.

As you are aware, insurance is a complex topic with few solutions that solve all problems. The House Research Agency has performed research on automobile insurance in the past and has a voluminous file on the subject. Copies of released material are attached to this memorandum. If you or your staff wish to examine our files or would like us to perform additional work, please contact us.

Attachments

Summary, Choice of a Regulatory Environment for Automobile Insurance,
SRI International, 1979

The Manitoba Auto Insurance Plan

Research Requests: 69

81-16

81-22

81-173

ECUSE RESEARCH AGENCY
Pouch Y - State Capitol
Juneau, Alaska 99811
465-3991

MEMORANDUM

March 6, 1980

TO: Representative Sally Smith

FROM: Peter B. Froehlich

RE: Uninsured Motorists and the Motor Vehicle Safety Responsibility Act (AS 28.20) (Research Request No. 69)

You recently asked this agency to explore possible methods to "tighten up" the Motor Vehicle Safety Responsibility Act (AS 28.20). In the course of our research on the Act, we learned that the Senate Commerce Committee has been studying the same issue. That committee has received a report from Richard Block, former director of the Division of Insurance, addressing amendments to the Act, as well as other approaches to the problem of uninsured motorists in Alaska. Senator Bradley has recently introduced one bill as a result of Mr. Block's report (SB 460 authorizing municipalities to impose mandatory insurance). Another, which will amend and tighten up the Motor Vehicle Safety Responsibility Act is currently being drafted by the Legal Services Division of the Legislative Affairs Agency for the committee.

In light of the existence of Mr. Block's report and the legislation which Senate Commerce Committee intends to introduce amending the Act, you have instructed us that completion of our research pursuant to your request was not necessary. Nonetheless, we offer this memorandum as a brief summary of our work thus far.

* * * * *

The problem at hand is that over 50% of the registered private vehicles in Alaska are completely uninsured. In 1978, according to Division of Insurance statistics, the figure was 49.1%. Although that year is the most recent for which complete data is available, the trend has been an increase in the figure each year.

The answer to the problem is not at all simple, and many possibilities have been suggested. Mandatory insurance appears to be the least popular for several reasons. In the states which have tried it, enforcement and administration has been an expensive burden and insurance rates have often climbed faster than in states without mandatory insurance.

"No fault" insurance is perhaps a more workable solution, but has not been popular with insurance carriers, attorneys and others in Alaska when it has been considered by the legislature in the past.

Amendment of the existing Motor Vehicle Safety Responsibility Act may be the most feasible answer. This approach would take advantage of the main body of an existing chapter of the Alaska Statutes. It would therefore result in less disruption, adjustment and staff increase in the existing bureaucracy which implements the Act. It would be simpler both to legislate and to administer. Because fewer people would be forced by law to buy insurance, individual freedom of choice would be preserved to a greater degree. While all possible problems with uninsured drivers would not be solved, significant improvement could result from amending the Act.

The Motor Vehicle Safety Responsibility Act was enacted in 1959 during the first legislative session after Statehood. The Act deals with two separate subjects: 1) the requirement of deposit of security by uninsured motorists involved in an accident (AS 28.20.050-220); and 2) the requirement of proof of financial responsibility for the future by motorists convicted of certain offenses or involved in an accident (AS 28.20.230-600). The Act has been amended 13 times from 1964 through 1977. However, none of these amendments were really substantive. They merely made minor changes such as raising dollar amounts (e.g., ch 202 SLA 1976 and ch 144 SLA 1977), repealing some sections and subsections (e.g., 53 SLA 1973 and ch 135 SLA 1977), and substituting the Department of Public Safety for the Department of Revenue in the administration of the Act (e.g., ch 214 SLA 1976). Although the Alaska Supreme Court made several specific suggestions for substantive amendments to the Act in Paulson vs. National Indemnity Co. 498 P2 d731 (AK 1972), no remedial action was taken by the legislature. The Act has been significantly interpreted in one other Alaska Supreme Court case, Hart vs. National Indemnity Co. 422 P2 d1015 (AK 1967). It has been cited or applied in at least 9 other cases, including three Alaska Supreme Court cases, two Federal District Court cases, and four Alaska Superior Court cases.

Several amendments to the Act have been suggested either by others contacted during our research or by the research itself. First, of course, are the suggestions of the Alaska Supreme Court in the Paulson decision 498 P2 d731 at 757. These suggestions are directed at tightening the requirements of the second part of the Act for proof of financial responsibility for the future by motorists involved in accidents. The court suggested the repeal of language in AS 28.20.410 and 440 which allows a motorist to satisfy the act by insuring only one of several vehicles he owns.

Representative Sally Smith

March 6, 1980

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Two amendments were suggested by Ken Moore, director of the Division of Insurance in a January 24, 1980 letter to Senator Hackney. These amendments would 1) prevent registration of a vehicle or renewal thereof by anyone required under the Act to file proof of responsibility for the future who did not do so; and 2) make any falsification of such proof punishable by a fine or jail sentence. The latter suggested amendment appears to be covered by existing AS 28.20.570. The first suggestion, essentially tightening the relationship between the Act and AS 28.10 (Vehicle Registration) appears to be necessary and desirable; however, it would be susceptible to devious compliance by an individual who obtains an insurance policy, registers his car, and then cancels his policy.

Another possible amendment to tighten the Act would be repealing AS 28.20.260(b) which exempts anyone involved in an accident who establishes his freedom from fault in court from the proof of financial responsibility in the future requirement. The Department of Public Safety in 13 AAC 08.110 has implemented this section by providing that only those who "in the department's opinion" stand a "reasonable possibility" of being held liable in court need provide the required proof. Eliminating the exemption of AS 28.20.250(b) would force more people to prove financial responsibility and save the department from making its finding as to reasonable possibility of liability. However, it would also force innocent parties to accidents to buy what would probably be high risk, high cost "SR 22" insurance.

One last amendment which has been suggested may be the most effective measure. It is a suggestion which apparently arose from Mr. Block's report to the Senate Commerce Committee and will be included in that committee's bill. This approach would follow the example of New Mexico and enact a fairly stiff penalty (fine and/or jail) for any uninsured motorist who is involved in an accident in which he has any fault.

In conclusion, we should note that the whole area of automobile insurance and solutions to the problem of uninsured motorists is very complex, and no perfect solutions seem to be available. If you have any further questions or desire any additional background information on this matter, please contact us.

PBF/dp