SUPREME COURT OF FLORIDA

MX INVESTMENTS, INC.,
d/b/a DAYS INN 1-75,

Petitioner,

vs.

CASE NO. 89,623
DCA CASE NO, 95-4099

WILLIAM D. CRAWFORD and
JOAN F. CRAWFORD,

Respondents.
_____/

RESPONDENTS' ANSWER BRIEF

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TABLE OF CONTENTS

PAGE NO.

CITATIONS OF AUTHORITIES

Other Authorities:

SUMMARY OF ARGUMENT

The plain language of §768.79, Florida Statutes, requires entry of a judgment as a condition precedent for the recovery of attorney fees pursuant to an offer of judgment. Nowhere in the statute does the legislature provide for an award of attorney fees based upon voluntary dismissal.

In order for this court to adopt the reasoning of the Second District Court of Appeal and allow an award of attorney fees to Petitioner, it would be necessary to ignore the plain language of the statute and base the decision upon the court's own notion of what should be done rather than what is statutorily authorized. Such a result would amount to judicial legislation; supplementing the efforts of the legislature by judicial decree.

ARGUMENT

5768.79, FLORIDA STATUTES DOES NOT AUTHORIZE AN AWARD OF ATTORNEY FEES UPON VOLUNTARY DISMISSAL OF AN ACTION

In this action for damages resulting from personal injury, the Respondents took a voluntary dismissal, without prejudice, pursuant to Rule 1.420(a)(1), Florida Rules of Civil Procedure. Subsection (d) of that rule provides only for the imposition of costs, but is silent as to an entitlement to attorney fees. Petitioner sought to impose attorney fees pursuant to §768.79, Florida Statutes, because it served an offer of judgment which was rejected by plaintiffs prior to the voluntary dismissal.

The plain language of §768.79 requires entry of a judgment in favor of a party as a condition precedent for such recovery. Nowhere in the statute does the legislature provide for an award of attorney fees based upon voluntary dismissal. The statute says:

> If a defendant serves an offer which is not accepted by the plaintiff, ***and if the judgment obtained by the plaintiff*** is at least 25 percent less than the amount of the offer, the defendant shall be awarded . . . attorney's fees . . . . (emphasis supplied)

The statute, in subsection (6)(b), goes on the define the term "judgment obtained" as:

> ... the amount of the net judgment entered, plus any collateral source payments received or due as of the date of judgment entered, plus any post-offer collateral source payments received or due as of the date of the judgment, plus any post-offer settlement amounts by which the verdict was reduced.

The definition is absolutely silent as to voluntary dismissals. Had the legislature

chosen to do so, it could have explicitly provided for attorney fees upon voluntary dismissal, or it could have included the concept of voluntary dismissal in the above definition. However, it did not.

As this court is well aware, upon voluntary dismissal, the trial court loses jurisdiction as to all matters except the imposition of costs. It is without power to enter a defendant's judgment in the main case. It may only enter a cost judgment in favor of the ***defendant.*** Accordingly, in order for this court to accept defendant/appellant's argument and award attorney fees to defendant/appellant, it would be necessary to ignore the plain language of the statute and base the award upon the court's own notion of what should be done. This would amount to judicial legislation; supplementing the efforts of the legislature by judicial decree.

Petitioner's argument for attorney fees pursuant to §768.79 is completely without legal, factual or statutory basis. Petitioner ignores the plain language of the statute which explicitly and unmistakably requires a "judgment obtained by the plaintiff' as a prerequisite to an award of attorney fees. Where the language of a statute is clear, the court may not go outside the statute to give it a different meaning. ***Reed By and Through Lawrence*** v. *Bowen*, 503 So.2d 1265 (Fla 2nd DCA 1986) Similarly, in *Makar* ***v. Investors Real Estate Management, Inc.,*** 553 So.2d 298 (Fla 1st DCA 1989), the court held:

> A basic tenet of statutory construction is that "where the language of a statute clearly limits its application to a particular class of cases, leaving no room for doubt as to the intention of the

> legislature, the statute may not be enlarged or expanded to cover cases not falling within its provisions. (at 299)

Florida law is explicit as to what constitutes a "judgment." The ***court*** in *Makar* defines "judgment" as "a court's decision on the ***merits*** as to whether the plaintiff shall obtain the relief sought in the litigation." ***Makar*** at 299. See also Rule 1.420(a), Fla. R. Civ. P. (Providing ***inter alia*** that a first dismissal is without prejudice, and only a second dismissal operates as an "adjudication on ***the*** merits"); ***Chassan Professional Wallcovering, Inc. v. Victor Frankel, Inc.,*** 608 So.2d 91 (Fla 4th DCA 1992); ***Xerox Corp. v.*** *Sharifi,* 502 So.2d 1003 (Fla 5th DCA 1987). Since plaintiffs voluntarily dismissed their claim and the trial court did not render a judgment on the merits, the trial court is without jurisdiction to award attorney fees pursuant to $768.79.

Indeed, ***the court*** in *Makar* invited the legislature to change this situation if that was its intent. Subsequent to the decision in *Makar*, the legislature did address $768.79, but retained the ***exact*** *pre-Makar* statutory language pertaining to the entitlement of fees, as is quoted above.

The legislature did amend the statute to provide for the filing of a motion by the offeror within 30 days of judgment, or after voluntary dismissal. §768.79(6) However, the additional language relates only to the time for filing the motion and has nothing whatsoever to do with entitlement to fees under the statute. Having been invited by the

court in *Makar* to address the issue', the legislature did not do so and chose not to change the language regarding entitlement to fees. Petitioner inaccurately attempts to hang its argument upon this inapposite statutory language, asking this court to read between the legislative lines.

Contained within the appendix is a complete copy of the legislative history of the pertinent amendments to $768.79, Florida Statutes. (Appendix A) Nowhere in these documents will this court find any reference to a legislative intent to allow attorney fees upon voluntary dismissal. The legislature could have done that, but it chose not to.

Petitioner argues that the legislative intent was to allow attorney fees upon voluntary dismissal, and points to the additional language of the statute referencing voluntary dismissals. Petitioner overlooks the fact that the additional language pertains only to the time for filing a motion for fees, but does not affect the basis for entitlement to those fees. Defendant would like for the statute to read in its favor, but it does not.

The District Court below, relied on its prior decision in *Makar*, which is directly on point to the instant issue. Based on identical operative statutory language, the court ruled that fees were not allowable when a voluntary dismissal was taken. The court said:

> Under section 768.79(1)(a), a defendant is entitled to recover costs and attorney's fees following an offer of judgment that the plaintiff did not accept, "*if the judgment obtained by the*

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[1] The court said, "Unless and until the legislature amends the offer ofjudgment and settlement statutes to apply to voluntary dismissals, plaintiffs should be permitted to exercise their option to dismiss their cause at least once without being subjected to an assessment of attorney's fees. *Makar* at 299

> *plaintiff* is at least 25 percent less than such offer." In order for the defendant to recover, there must be a *judgment* for the plaintiff.
>
> * * *
>
> No judgment was entered in this case, because the case was terminated pursuant to a voluntary dismissal. . . . A voluntary dismissal operates as an adjudication on the merits only when a plaintiff has previously dismissed an action involving the same claim. (At 299)

In the instant case, Respondents have not previously dismissed the action. Therefore, there has been no adjudication on the merits and no *judgment.*

Petitioner asserts that this court should adopt the decision in *Tampa Letter Carriers, Inc. V. Carrie Mack*, *649* So.2d 890 (Fla 2nd DCA 1995), but that decision does not rule directly on the point at issue. It simply allows for the possibility that entitlement to fees is not eliminated "simply because the case is terminated by a voluntary dismissal." The case does not specify under what circumstances that might occur, and certainly does not address the factual scenario of the instant case. Indeed, *Tampa Letter Carriers* most probably contemplates a second dismissal which would then operate as an adjudication on the merits, possibly giving rise to an entitlement to fees.

The Second District court of Appeal has entered a further decision with regard to this issue.[2] Respondent contends that this decision, which simply reiterates *Tampa Letter Carriers,* is incorrect, and is a classic example of the inertial effect of *obiter dictum. Tampa Letter Carriers,* as noted above, simply allows for the possibility of attorney fees

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[2] *Tangerine Bay Company v. Derby Road Investments, 664* So.2d 1045 (Fla 2nd DCA 1995)

upon voluntary dismissal. *Tangerine Bay Company* then misconstrues the *dictum* in *Tampa Letter Carriers* as a judicial determination that in all cases attorney fees are allowable after a first voluntary dismissal without prejudice.

The 4th District Court of Appeal jumped on this inertial bandwagon in its decision in *Special's Trading Co. v. International Consumer Corp., 679* So.2d 369 (Fla 4th DCA 1966). But none of these cases from these two districts contain a logical analysis of the point at issue. However, the decision rendered by the District Court below does make a thorough and logical analysis in concluding that the legislature did not create a right to attorney fees subsequent to voluntary dismissal.

CONCLUSION

In giving the operative language of the statute its plain meaning and effect, this court should adopt the decision of the **1st** District Court of Appeal in *MX Investments v. Crawford,* Case No. 95-4099 (Fla 1st DCA 1996).

CERTIFICATE OF SERVTCE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular United States Mail this 1st day of ~~March,~~ April, 1997 to Francis J. Carroll, Jr., Esquire, Boehm, Brown, Rigdon, Seacrest & Fischer, P. A., Post Office Box 65 11, Daytona Beach, Florida 32122.

By: _____

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APPENDIX

INDEX TO APPENDIX

SENATE *STAFF* ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	2	REFERENCE	ACTION
	Stupski	Fort	1.	INS	Fav/CS
2.			3.		
4.			4.		
1.					

SUBJECT:
3.
Insurance

BILL NO. AND SPONSOR:

CS/SB 2670 by Insurance and Senator Langley

I. SUMMARY:

A. Present Situation:

The committee substitute makes several amendments to various portions of the Insurance Code. In addition, Sections 22 through 42 amend several aspects of the code and other laws relating to motor vehicles.

B. Effect of Proposed Changes and Section-by-Section Analysis:

This bill revises the information required to be contained in the annual reports issued by the Department of Insurance (department); provides authority for the department to require audited financial statements based on statutory principles consistent with the insurance laws of the state of domicile with certain exceptions; revises certain allowable investments; clarifies the valuation of certain assets; increases *fees* for service of process upon the department; revises certain notice requirements: requires certain policy forms to include a reduced paid-up nonforfeitute benefit; revises restrictions in the sale of credit life and credit disability insurance: deletes certain insurer reporting requirements; and specifies a delivery time for home warranties: and makes several amendments relating to motor vehicle insurance.

Section 1. Currently, the department is required to include information regarding availability, affordability, and profitability of manually rated commercial multiperil and commercial casualty lines of insurance. The report must contain information from Florida and countrywide: regarding loss reserves, premiums written, premiums earned, incurred losses, paid losses, allocated loss adjustment expenses, renewal ratio and other relevant information. Renewal ratios collected from insurance companies must be held confidential unless the data reveals a violation of the Florida Insurance Code or rules adopted by the department.

The bill allows the department discretion in determining what information regarding the availability, affordability, and profitability of manually rate commercial multiperil and casualty lines of insurance should be included in the department's annual report. If renewal ratios are collected from companies there would no longer be a specific provision in this section requiring that the ratios be held confidential.

Section 2. Amends s. 624.418(2)(f) to provide authority for the department to suspend or revoke certificates of authority of health insurers that have net premiums to surplus that exceed 4 to 1 and the financial condition endangers the interests of policyholders.

section 3. Currently an insurer is required to annually file audited financial statements, an opinion, and a letter report of weaknesses with the department.

The audited financial statements and opinions must be based upon generally accepted accounting principles or on statutory principles consistent with the Florida Insurance Code. If an insurer has less than $500,000 in direct written premiums in Florida during the calendar year for which a statement would be prepared or with less than 1,000 policyholders or certificateholders at the end of the calendar year, the insurer is allowed to submit an affidavit sworn by a responsible officer of the insurer specifying the amount of direct premiums written in this state and number of policyholders and certificateholders.

An insurer may also submit an application for exemption from compliance with this filing requirement if the department determines that compliance would result in an undue financial hardship on the insurer due to the cost of preparing the statements. The insurer must file financial statements which have been reviewed or compiled by an independent certified public accountant and which the department determines are sufficiently reliable and complete for the department to evaluate the financial conditions and stability of the insurer. If the insurer is a member of an insurance holding company system, it is required to file an audited consolidated financial statement and opinion.

The committee substitute provides authority for the department to require the filing of statutory financial statements. In requiring submission of statutory financial statements, the department is required to consider the solvency of the company and the best interests of the policyholders.

Section 4. Provides authority for commercial self insurance funds to become domestic mutual insurers by obtaining approval from the Department of Insurance.

The section prohibits the department from approving the plan unless the plan is equitable to members of the Commercial Self Insurance Fund and the plan fulfills the requirements of forming a domestic mutual insurer.

Section 5.

This bill amends s. 624.502, P.S., to increase the service of process fee paid to the department from $7.50 to $15.00 and to include all service of process made upon the Insurance Commissioner not just those required by the Insurance Code.

Section 6. This bill clarifies and codifies the department's current practice regarding the valuation of investments in subsidiaries and related corporations. These investments would be valued in an amount which in the aggregate does not exceed the less of: (a) 10 percent of the insurer's admitted assets, or (b) 50 percent of the insurer's surplus as to policyholders in excess of the minimum surplus as to policyholders as required by the Insurance Code.

Section 7. This bill creates s. 625.181, F.S., to require that assets received by an insurer as a capital or surplus contribution be deemed to be purchased by the insurer at a cost equal to the market value, appraised value, or at prices determined by the department as representing the fair market value.

Section 8. Currently, an insurer is allowed to invest in stocks or other securities of one or more subsidiaries or related corporations with certain limitations. This bill amends s. 625.325, F.S., to codify the department's current

interpretation on the limitation of such investments to provide that at the time any new or additional investment is made, the sum of the insurer's cost of the investment and the aggregate values of all existing investments in the corporation shall not exceed the less of: (1) 10 percent of the insurer's admitted assets or (b) 50 percent of the insurer's surplus as to policyholders in excess of the minimum surplus as to policyholders required to be maintained by the insurer.

Sections 9 and 10. These sections amend ss. 625.50 and 625.52, F.S., to allow the same form and types of deposits and securities for agents as are allowed and accepted for insurers.

Section 11. This section republishes s. 627.331. Subsection (4) is currently not listed in the Florida Statutes due to a statutory revision interpretation that legislation in I.989 repealed this provision.

Section 12. Amends s. 627.4133, F.S., to exempt mortgage guaranty insurers from giving insureds 45-day notice of nonrenewal or of the renewal premiums.

Section I.3. Amends s. 627.476, F.S., to require certain life insurance policies to provide a reduced paid-up nonforfeiture provision.

"Reduced paid-up nonforfeiture benefit" is defined in the bill as a benefit whereby the policy may be continued at the option of the insured a's reduced paid-up life insurance, and includes the amount attributed to such benefit. This requirement would not be applied.to policy forms filed prior to October 1, 1990.

Section 14. Credit life rates are not allowed to contain age restriction&which makeineligible those debtors or lessors 70 years old or under at the time the indebtedness is incurred or which makes eligible those debtors who will be 71 or under on the scheduled maturity date of the indebtedness.

This bill amends s. 627.6785, F.S., to disallow a credit disability rate if it contains an age restriction which makes a debtor or lessor ineligible for coverage if they are 65 or under at the time the indebtedness is incurred. This provision also deletes the allowance for a restriction on credit life rates which would make eligibility based on an age on the scheduled maturity date. Additionally, this section sets forth the minimum time period for which coverage is required.

Section 15. Provides that the deductible provisions of combined additional coverage policies are. not applicable to windshield damage.

Section 16. Technical.

Section 17. This section amends s. 627.803, F.S., to require that contracts or certificates providing variable or indeterminate values in annuity contracts, life insurance contracts, and contracts upon the lives of beneficiaries under life insurance contracts in certain circumstances, state that the initial interest rate is guaranteed only for a limited period of time.

Section 18. This section amends s. 627.915, F.S., to delete certain reporting requirements for insurers transacting medical malpractice, private passenger automobile liability, commercial automobile liability, or other liability insurance since this information is required by other sections of the Insurance Code.

Section 19. This bill amends s. 634.312, F.S., to require that every home warranty be mailed or delivered to the warranty

holder no later than 45 days after the effectuation of coverage.

Section 20.' This section reenacts ss. 624.11(2), 624.316(1)(b), 632.638(3), and 636.091. for purpose of incorporating the amendments made to these sections in this bill,

Section 21. Providing tor future repeal of the provisions in thrs act added to chapter 625.

Section 22. Amends s. 316.066(6), F.S., to provide that failure to file written accident and supplemental reports when required subjects the offender to civil penalties prescribed in s. 318.18(2), F.S.

Section 23. Provides that the failure to use a seat belt when required cannot be considered in mitigation of damages, but is admissible for establishing comparative negligence.

Section 24. Presently, if the estimated costs of repairing the physical and mechanical damage to a vehicle is equal to 80 percent or more of the current retail cost of the vehicle, as established in the Official Used Care Guide of the National Automobile Dealers Association, the DHSMV declares the vehicle unrebuildable and prints a notice on the salvage certificate that the vehicle is unrebuildable and refuses to issue a certificate of title for the vehicle.

This section amends paragraph (b) of subsection (2) of s. 319.30, F.S., to exempt those vehicles that have a retail value of less than $1,500 in undamaged condition from being determined as untebuildable.

Section 25. Requires proof of insurance cards to include name of insurer, policy number, and make, year, and vehicle identification number.

Section 26. Amends s. 322.0261, F.S., to require drivers who are convicted or plead nolo contendere to traffic offenses to take a driver safety education course administered by the DO1 if the driver has: (1) been involved in accidents causing bodily injuries or death, (2) had two accidents within a 2-year period with property damage in an apparent amount of at least $500.

Requires the department to consider factors designed to promote safety in approving a driver improvement course.

Section 27. Removes exemptions due to lack of injuries and court determination of liability from financial responsibility laws.

Section 28. Provides that in the event an insurer does not pay a financial obligation of the insured, the insured license will not be suspended.

Section 29. Amends s. 624.155, F.S., to provide a correct cross-reference.

The committee substitute provides language that.the civil remedy provision of the Insurance Code does not preempt any other statutory or common law remedy. However, double recoveries are prohibited.

The committee substitute provides that damages under the civil remedy section must be reasonably forseeable and may include amounts that exceed policy limits.

Section 30, Reenacts s. 624.468, F.S., to incorporate the changes to s. 624,155, F.S.

Section 31. Requires the Department of Insurance to publish complaint ratios of motor vehicle insurers.

Section 32. Amends s. 626.9541, F.S., to expand the time of subsequent information from 18 to 36 months in order to raise premiums or not renew policies.

Section 33. Current law allows automobile insurers to implement rate changes for up to 30 days before notifying the department of the rate change.

After being notified of the rate change, the department reviews the rate to determine if the rate is excessive, inadequate, or unfairly discriminatory. Section 627.0651, F.S., lists numerous factors such as loss experience for the department to consider in determining whether rates are excessive, inadequate, or unfairly discriminatory.

Current law does not require automobile insurers to refund any premiums collected from rate increases that are subsequently determined as excessive by the department. However, s. 627.066, P.S., provides a method for returning excess profits to the consumer based on 3-year underwriting results.

Except for automobile insurers, property and casualty insurers may either notify *the* department more than 60 days prior to implementing a rate change, to notify the department within 30 days after usinq a new rate. For those insurers that elect to notify the depattment after implementing a rate change, the department is authorized to order refunds for excessive rates.

Under the provisions of the bill, insurers may notify the department 60 days before the pcooosed effective date of a rate filing. Under this "file and use;' method, the department would have 60 days to initiate proceedings to disapprove -the rate filing. Failure of the department to notify the insurer within 60 days of disapproval will allow rate-approval.

The committee substitute provides a use and file method Eor automobile insurers. "Use and file" requires insurer5 to notify the department within 30 days after the effective date of a new rate. The committee substitute requires the department to order credits or refunds for premiums filed through the "use and file" method if' the rate exceeds actuarially justified levels.

This section provides that the practice of using a single zip code as a rating territory is unfairly discriminatory.

The committee substitute clarifies that judgments for bad faith actions are not included in the rate base.

In addition, portions of settlements, relating to bad faith . claims are excluded from the rate base.

Section 34. Transfers s. 627.331(4), F.S., to s. 627.065(13), F.S.

Section 35. Authorizes the Department of Insurance to develop a pilot program to require all insurers to designate *one* county as a single rating territory for personal injury protection benefits.

Section 36. Requires premium discounts for motor vehicles equtpped with antilock brakes.

Section 37. Replaces a provision requiring persons not tnsuced with the insurer to obtain a judgment against an insured of the company prior to bringing suit with a requirement to obtain a settlement or verdict prior to bringing suit.

Provides authority for insurers to recover costs and fees paid on behalf of an insured. Allows joining liability insurers as a party after settlement or judgment.

Section 38. Provides that uninsured motorists coverage must be rejected by the policyholder in writing.

Section 39. Provides provisions in personal injury policies for binding arbitration. Exempts supplies or services provided by entities licensed under chapter 395, from the binding arbitration provisions.

Section 40, Provides procedures and policies for mediating personal injury claims.

Section 41. Extensive rewording of the current law on offers of Judgment and demand. Provides for the inclusion of investigative expenses in awards of costs and attorney fees.

Section 42. Provides a first degree misdemeanor penalty for persons providing false, incomplete, or misleading information on motor vehicle insurance applications with the intent to injure, defraud, or deceive motor vehicle insurers.

Section 43. Requires insurers on October 1, 1992, to report to the department rate savings as a result of the provision of this act.

Sections 44 and 45. Provides for repeals of this section created in this act in accordance with the repeal scheduled for those chapters.

Section 46. Requires the Department of Insurance to conduct a feasibility study on making automobile coverage available at district tax offices.

Authorizes sufficient expenditures from the Insurance Commissioner's Regulatary Trust Fund to fund the provisions of this act,

Section 47. Provides authorization for expenditures from the Insurance Commissioner's Regulatory Trust Fund to impiement this act,

Section 48. Provides that the act is effective on October 1, 1990, and applies to policies issued or renewed on or after that date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Those insurers required to file statutory financial statements may incur additional costs. Persons requiring service of process on the Insurance commissioner would be charged an increased fee.

Persons 65 and under will be able to purchase credit disability insurance without age being a requirement for qualification.

Provisions of the committee substitute providing authority for the Department of Insurance to return excessive motor vehicle insurance rates may provide economic benefits to policyholders.

B. *Government:*

The Department of Insurance estimates that $150,000 is needed to conduct the feasibility study on providing insurance through tax collector offices.

III. COMMENTS:

Section 41 of the committee substitute attempts to combine ss. 45.061 and 766.79, P.S., regarding offers of settlement. Section 41 is neatly identical to the CS/CS/SB 389 of 1989 which originated from a committee interim project, but did not become law. The changes from last year's bill include:

-- Application of the offer of judgment provisions to any civil action for damages:

-- Calculation of costs, expenses and fees in accordance with the guidelines promulgated by the Supreme Court; and

-- Expansion of the definition for the term "judgment obtained."

However, s. 45.061, F.S., is not repealed as it was in CS/CS/SB 389. As the apparent purpose of the substantial rewording is to consolidate ss. 45.061 and 768.79, F.S., the absence of a repealer of s. 45.061, F.S., would seem to aggravate the present confusion resulting from the interpretation and application of two similar sections. Section 41 deletes the time limitations on when an offer of judgment may be filed which are provided in existing law under ss. 45.061 and 768.79, F.S. Additionally, there are drafting inconsistencies with the use of the term "offer of judgment" in the catch line and throughout part of the text while the term "offer of settlement" is also used in the text.

IV. AMENDMENTS:

None.

CS/SB 2670 -- Insurance Manufacturer and Motor Vehicle Insurance

Committee Substitute for Senate Bill 2670 (Chapter 90-) allows the department discretion in determining what information regarding the availability, affordability, and profitability of manually rate commercial multiperil and casualty lines of insurance should be included in the department's annual report. If renewal ratios are collected from companies there would 'no longer be a- specific provision in this section requiring that the ratios be held confidential.

The bill amends **s. 624.418(2)(f),** F.S., to provide authority for the department to suspend or revoke certificates of authority of health insurers that have net premiums to surplus ratios exceed 4 to 1 and the financial condition endangers the interests of policyholders.

The committee substitute provides authority for the department to require the filing of statutory financial statements.. In requiring submission of statutory financial statements, the department is required to consider the solvency of the company and the best interests of the policyholders.

The bill requires the Department of Insurance to approve a plan authorizing the conversion of commercial self-insurance funds to a domestic mutual insurers.

This bill clarifies and codifies the department's current practice regarding the valuation of investments in . subsidiaries and related corporations. These investments would be valued in an amount which in the aggregate does not exceed the lesser of: 10 percent of the insurer's admitted

assets or 50 percent of the insurer's surplus as to policyholders as required by the Insurance Code.

The bill creates s. 625.181, P.S., to require that assets received by an insurer as a capital or surplus contribution be deemed to be purchased by the insurer at a cost equal to the market value, appraised value, or at prices determined by the department as representing the fair market value.

The bill amends s. 627.4133, P.S., to exempt mortgage guaranty insurers from giving insureds 45-day notice of nonrenewal or of the renewal premium and termination.

The committee substitute amends s. 627.476, F.S., to require certain life insurance policies to provide a reduced paid-up nonforfeiture provision.

"Reduced paid-up nonforfeiture benefit" is defined in the bill as a benefit whereby the policy may be continued at the option of the insured as reduced paid-up life insurance, and includes the amount attributed to such benefit. The requirement would not be applied to policy forms filed prior to October 1, 1990.

Current law prohibits credit life rates containing age restrictions which make ineligible those debtors or lessors 70 years old or under at the time the indebtedness is incurred or which makes eligible those debtors who will be 71 or under on the scheduled maturity date of the indebtedness.

The bill amends s. 627.6785, F.S., to disallow a credit disability rate if it contains an age restriction which makes a debtor or lessor ineligible for coverage if they are 65 or under at the time the indebtedness is incurred. This provision also deletes the allowance for a restriction on credit life rates which would make eligibility based on an

age on the scheduled maturity date. Additionally, this section sets forth the minimum time period for which coverage is required.

This committee substitute amends s. 627.803, P.S., to require that contracts or certificates providing variable or indeterminate values in annuity contracts, life insurance contracts, and contracts upon the lives of beneficiaries under life insurance contracts in certain circumstances, state that the initial interest rate is guaranteed only for a limited period of time.

The bill amends s. 634.312, F.S., to require that every home warranty be sent to the holder no later than 45 days after coverage is in effect.

The committee substitute amends several provisions of the code directly and indirectly relating to automobile insurance.

Section 316.066(6), F.S., is amended to provide that failure to file written accident and supplemental reports when required subjects the offender to civil penalties prescribed in s. 318.18(2), F.S.

The committee substitute provides that the failure to use a seat belt when required cannot be considered in mitigation of damages, but is admissible for establishing comparative negligence.

Presently, if the estimated costs of repairing the physical and mechanical damage to a vehicle is equal to 80 percent or more of the current retail cost of the vehicle, as established in the Official Used Car Guide of the National Automobile Dealers Association, the DHSMV declares the vehicle unrebuildable and prints a notice on the salvage

certificate that the vehicle is unrebuildable and refuses to issue a certificate of title for the vehicle.

This section amends paragraph (b) of subsection (2) of s. 319.30, F.S., to exempt those vehicles that have a retail value of less than $1,500 in undamaged condition from being determined as unrebuildable.

The committee substitute requires proof of insurance cards to include name of insurer, policy number, and make, year, and vehicle identification number.-

In addition, the bill amends s. 322.0261, F.S., to require drivers who are convicted or plead nolo contendere to traffic offenses to take a driver safety education course administered by the DOI if the driver has: (1) been involved in accidents causing bodily injuries or death, (2) had two accidents within a 2-year period with property damage in an apparent amount of at least $500.

The department is required to consider factors designed to promote safety in approving a driver improvement course. The committee substitute removes exemptions from the financial responsibility law as a result of lack of injuries to persons or property and by a determination that the owner or operator was not liable for damages as determined by a court or if the owner or operator was not charged or found guilty of a major traffic infraction.

However, the bill provides that in the event an insurer does not pay a financial obligation of the insured, the insured's license will not be suspended.

The committee substitute provides language that the civil remedy provision of the Insurance Code does not preempt any other statutory or common law remedy. However, double recoveries are prohibited.

The committee substitute provides that damages under the civil remedy section must be reasonably forseeable and may include amounts that exceed policy limits.

Under the provisions of the bill, the Department of Insurance is required to publish complaint ratios of motor vehicle insurers.

The bill amends s. 626.9541, F.S., to authorize insurers to collect additional premiums or refuse to renew based on the occurrence of a third traffic infraction committed within a 36-month period.

Current law allows automobile insurers to implement rate changes for up to 30 days before notifying the department of the rate change.

After being notified of the rate change, the department reviews the rate to determine if the rate is excessive, inadequate, or unfairly discriminatory. Section 627.0651, F.S., lists numerous factors such as loss experience for the department to consider in determining whether fates are excessive, inadequate, or unfairly discriminatory.

Current law does not require automobile insurers to refund any premiums collected from rate increases that are subsequently determined as excessive by the department. However, s. 627.066, F.S., provides a method for returning excess profits to the consumer based on 3-year underwriting results.

Except for automobile insurers, property and casualty insurers may either notify the department more than 60 days prior to implementing a rate change OS to notify the department within 30 days after using a new rate. For those insurers that elect to notify the department after

implementing a rate change, the department is authorized to order refunds for excessive rates.

Under the provisions of the bill, insurers may notify the department 60 days before the proposed effective date of a rate filing, Under this "file and use" method, the department would have 60 days to initiate proceedings to disapprove the rate filing. Failure of the department to notify the insurer within 60 days of disapproval will allow rate approval.

The committee substitute provides a use and file method for automobile insurers. "Use and file" requires insurers to notify the department within 30 days after the effective date of a new rate. The committee substitute requires the department to order credits or refunds for premiums filed through the "use and file" method if the rate exceeds actuarially justified levels.

This section provides that the practice of using a single zip code as a rating territory is unfairly discriminatory.

The committee substitute clarifies that judgments for bad faith actions are not included in the rate base.

In addition, portions of settlements, relating to bad faith claims are excluded from the rate base.

The bill authorizes the Department of Insurance to develop a pilot program to require all insurers to designate one county as a single rating territory for personal injury protection benefits.

Provisions of the committee substitute require premium discounts for motor vehicles equipped with antilock brakes.

Section 627.7262, F.S., is amended to authorize joining insurers as a party defendant at the time of settlement Or

judgment: is entered unless the insurer denied coverage or defended under reservation of rights.

In addition, the bill provides authority for insurers to recover costs and fees paid on behalf of an insured.

Section 627.727, F.S., is amended to require written rejection of uninsured motorists coverage an behalf of al.1 insureds in order to reject this coverage.

The bill requires insurers to place provisions in personal injury policies for binding arbitration for settlement of medical benefit claims disputes.

The committee substitute provides procedures and policies for mediating personal injury claims.

Extensive rewording of the current law on offers and demand of judgment is provided by the bill.

A first degree misdemeanor penalty for persons providing false, incomplete, or misleading information on motor vehicle insurance applications with the intent to injure, defraud, or deceive motor vehicle insurers is provided in the bill.

A provision in the bill requires insurers on October 1, 1992, to report to the department rate savings as a result of the provision of this act.

Additionally, the bill:

Requires the Department of Insurance to conduct a feasibility study on making automobile coverage available at district tax offices.

Authorizes sufficient expenditures from the Insurance Commissioner's Regulatory Trust Fund to fund the provisions of this act; and,

Provides authorization for expenditures from the Insurance Commissioner's Regulatory Trust Fund to implement this act.

Sections of the bill amend various sections of the code relating to service warranty associations. Provisions of the committee substitute:

-- Defines "manufacturer" for purposes of service warranty associations.

-- Requires the maintenance of net worth of not less than $10 million as a condition of being a manufacturer.

-- Provides for service warranty associations meeting the definition of manufacturer to meet separate licensure requirements.

-- Licensure requirements for service warranty associations require filing copies of articles of incorporation, evidence of complying with applicable statutory requirements, and when required by the department, additional information listing state of incorporation, location of home affairs, and names and addresses of board of directors and managing executive officer.

-- Eliminates manufacturers from providing satisfactory proof of competent and trustworthy management, and filing and bond requirements of s. 634.405, F.S.

-- Eliminates manufacturers from obtaining approval from the department for mergers and acquisitions..

-- Use of annual statements filed with the Security and Exchange Commission for annual information submission requirements.

-- Subjects service warranty manufacturers to the provisions of chapter 631, in the event of involuntary dissolution or liquidation of the manufacturer.

STATEMENT OF SUBSTANTIAL **CHANGES** CONTAINED *IN* COMMITTEE *SUBSTITUTE* **FOR** **Senate** Bill 2670

The **committee** substitute provides authority for the Department of Insurance to require statutory annual *financial* statements under limited circumstances.

A provision for the department to approve plans and procedures for converting **commercial** *self-insurance* funds into domestic mutual insurance is included in the committee substitute,

The committee substitute makes several changes **to** statute relating to motor vehicle insurance.

Provisions providing penalties for failing to file required accident reports, allowing failure to use a seat belt as **admissible** evidence for determining comparative negligence, implementing mandatory drivers improvement courses, are included in the committee substitute.

In addition, the committee substitute lengthens the period of an occurrence of a noncriminal traffic infraction from 18 months to 36 months in order to impose a **surcharge,** prohibits the use of a single zip code as a rating territory, and provides discounts for cars equipped with **antilock** brakes.

The committee substitute amends the motor vehicle insurance rating law to provide authority for refunding collected premiums that are subsequently determined as'excessive.

A provision for settling PIP claim disputes through binding arbitration and mediation are included in the committee substitute,

The committee substitute rewrites the current offer of judgment statute.

Committee on Insurance

Pamela Burch Fort
Staff Director

(FILE TWO COPIES WITB THE SECRETARY OF THE SENATE)

A-17

(VS-88: File with Secretary of Senate) BILL VOTE SHEET BILL NO. SB 2 , ,

COMMITTEE ON: Insurance

DATE: May 21. 1990

TIME: 10:15 A.M. - 12:15 P.M.

PLACE: Room A. Senate Office Building

OTHER COMMITTEE REFERENCES:
(in order shown)

None.

ACTION:

___ Favorably with amendments

X Favorably with Committee Substitute

___ Unfavorably

___ Submitted as a Committee Bill

___ Temporarily Passed

___ Reconsidered

___ Not Considered

___ No Quorum

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	05/21/90 Motion to hear Prop. cs									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		D.C. Childers										
X		Deratany										
x		Jenninss										
X		Scott										
X		Thomas										
		Walker										
X		MAJORITY LEADER Weinstein										
X		VICE-CHAIRMAN Langley										
x		CHAIRMAN W.D. Childets										
8 *	cl	TOTAL	FWO -									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

* Present at the table without objection

Please Complete: The Key sponsor appeared (x)
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( )

A-18

STORAGE NAME: s2670s1z.in
DATE : June 21, 1990

AS PASS BY THE LEGISLATURE

HOUSE OF REPRESENTATIVES
COMMITTEE ON INSURANCE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/SB 2670

RELATING TO: Insurance

SPONSOR(S): Committee on Insurance and Senator Langley

EFFECTIVE DATE: October 1, 1990

DATE BECAME LAW: June 21, 1990

CHAPTER #: 90-119, Laws of Florida

COMPANION BILL(S): HBS 1871, 2259, 2637, 2707, 2857, 2961, and 3079

OTHER COMMITTEES OF REFERENCE: (1)

(2)

****

I. SUMMARY:

(See section-by-section analysis)

A. PRESENT SITUATION:

(See section-by-section analysis)

B. EFFECT OF PROPOSED CHANGES:

(See section-by-section analysis)

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Currently, the department is required to include information regarding availability, affordability, and profitability of manually rated commercial multiperil and commercial casualty lines of insurance. The report must contain information from Florida and countrywide: regarding loss reserves, premiums written, premiums earned, incurred losses, paid losses, allocated loss adjustment expenses, renewal ratio and other relevant information. Renewal ratios collected from insurance companies must be held confidential unless the data reveals a violation of the Florida Insurance Code or rules adopted by the department.

This bill allows the department discretion in determining what information regarding the availability, affordability, and profitability of manually rated commercial multiperil and casualty lines of insurance should be included in the department's annual report. If renewal ratios are collected from companies there would no longer be a specific provision in this

section requiring that the ratios be held confidential.

Section 2. Amends s. 624.418, F.S., to apply the exemptions from certain specified ratio requirements listed in s. 624.4095, F.S. to s. 624.418, F.S. which penalizes insurers for violations of the ratio requirement. This revision conforms with solvency requirements which were enacted during the 1989 session.

Section 3. Currently an insurer is required to annually file audited financial statements, an opinion, and a letter report of weaknesses with the department.

The audited financial statements and opinion must be based upon generally accepted accounting principles or on statutory principles consistent with the Florida Insurance Code. If an insurer has less than $500,000 in direct written premiums in Florida during the calendar year for which a statement would be prepared or with less than 1,000 policyholders or certificateholders at the end of the calendar year, the insurer is allowed to submit an affidavit sworn by a responsible officer of the insurer specifying the amount of direct premiums written in this state and number of policyholders and certificateholders.

An insurer may also submit an application for exemption from compliance with this filing requirement if the department determines that compliance would result in an undue financial hardship on the insurer due to the cost of preparing the statements. The insurer must file financial statements which have been reviewed or compiled by an independent certified public accountant and which the department determines are sufficiently reliable and complete for the department to evaluate the financial condition and stability of the insurer. If the insurer is a member of an insurance holding company system, it is required to file an audited consolidated financial statement and opinion.

This bill amends s. 624.424, F.S., to allow the Department to require that an insurer file an audited financial statement based upon statutory principles consistent with the insurance laws of the state of domicile rather than based on general accounting principles.

Section 4. This bill authorizes a commercial self-insurance fund to become a domestic mutual insurer if the department approves the plan to convert based on a determination that the plan is equitable to the fund members and that the requirements of forming a domestic mutual insurer have been met.

Section 5. This bill amends s. 624.502, F.S., to increase the service of process fee paid to the department from $7.50 to $15.00 and to include all service of process made upon the Insurance Commissioner not just those required by the Insurance Code.

Section 6. This bill clarifies and codifies the department's current practice regarding the valuation of investments in

subsidiaries and related corporations. These investments would be valued in an amount which in the aggregate does not exceed the lesser of: (a) 10 percent of the insurer's admitted assets or (b) SO percent of the insurer's surplus as to policyholder; in excess of the minimum surplus as to policyholders as required by the Insurance Code.

Section 7. This bill creates s. 625.181, F.S., to require that assets received by an insurer as a capital or surplus contribution be deemed to be purchased by the insurer at a cost equal to the market value, appraised value or at prices determined by the department as representing the fair market value.

Section a. Currently, an insurer is allowed to invest in stocks or other securities of one or- more subsidiaries or related corporations with certain limitations. This bill amends s. 625.325, F.S., to codify the department's current interpretation on the limitation of such investments to provide that at the time any new or additional investment is made, the sum of the insurer's cost of the investment and the aggregate values of all existing investments in the corporation shall not exceed the lesser of: (a) 10 percent of the insurer's admitted assets or (b) SO percent of the insurer's surplus as to policyholders in excess of the minimum surplus as to policyholders required to be maintained by the insurer.

Section 9 and 10, These sections amend ss. 625.50 and 625.52, F.S., -to allow the same form and types of deposits and securities for agents as are allowed and accepted.:for-insurers.

Section 11. This section re-publishes s. 627.331. Subsection (4) was inadvertently repealed during the 1989 regular session and reenacted in a 1989 special session, but was not republished in the 1989 Florida Statutes.

Section 12. This bill amends 627.4133, F.S., to exempt mortgage guaranty insurance from the 45 day notice requirement for nonrenewal. This is due to the fact that mortgage guarantee insurance is paid on a one time fee basis and therefore is not subject to the nonrenewal provisions.

Section 13. Currently, an insurer may have an extended term policy without offering a reduced paid-up nonforfeiture clause. This section amends s. 627.476, F.S., to require certain life insurance policies to provide a reduced paid-up nonforfeiture provision. "Reduced paid-up nonforfeiture benefit" is defined as a benefit whereby the policy may be continued at the option of the insured as reduced paid-up life insurance and includes the amount attributed to such benefit. This requirement would not be applied to policy forms filed prior to October 1, 1990.

Section 14. Credit life rates are not allowed to contain age restrictions which makeineligible those debtors or lessors 70 years old or under at the time the indebtedness is incurred or which makes ineligible those debtors who will be 71 or under on the scheduled maturity date of the indebtedness.

This bill amends s. 627.6785, F.S., to disallow a credit disability rate if it contains an age restriction which makes a debtor or lessor ineligible for coverage if they are 65 or under at the time the indebtedness is incurred. However, the bill allows credit life coverage to be terminated at age 71 and credit disability coverage to be terminated at age 65 on the loan anniversary date or upon the maturity date of the loan, whichever is earlier. (This section takes effect July 1, 1991.)

Section 15. This section amends s. 627.7288, F.S., to make a clarifying revision.

Section 16, This section amends s. 627.782, F.S., to make a technical revision.

Section 17. This section amends s. 627.803, F.S., to require that contracts or certificates providing variable or indeterminate values in annuity contracts, life insurance contracts, and contracts upon the lives of beneficiaries under life insurance contracts in certain circumstances, state that the initial interest rate is guaranteed only for a limited period of time.

Section 18. This section amends s. 627.915, F.S., to delete certain reporting requirements for insurers transacting medical malpractice, private passenger automobile liability, commercial automobile liability, or other liability insurance since this information is required by other sections of the Insurance Code.

Section 19. This bill amends s. 634.312, F.S., to require that every home warranty contract be mailed or delivered to the warranty holder no later than 45 days after the effectuation of coverage.

Section 20. This section reenacts ss. 624.11 (2), 624.316 (1)(b), 629.518, 632.638 (3), and 635.091 for the purpose of incorporating the amendments made to ss. 624.418 and 627.915 in this bill.

Section 21 provides for the review and repeal on October 1, 1991, of any section which is added to chapter 625, i.e., s. 625.181 as created by section 7.

Section 22 amends section 45.061, F.S., relating to offers of settlement to provide that it does not apply to causes of action that accrue after the effective date of this act (October 1, 1990). Such causes of action would be subject to section 768.79, as amended by section 48 of this bill.

Section 23. Currently drivers involved in an accident resulting in bodily injury or death or damage to property of $500 are required to file a report with the Department of Highway Safety and Motor Vehicles (DHSMV) within 5 days, unless the investigating officer has made a written report.

This section amends s. 316.066(6), F.S., to impose a penalty ($3: fine) for failing, refusing or neglecting to make a timely accident report.

Section 24. Currently seat belts are required by law for those passengers in the front seat of a vehicle. However, the enforcement of the statute does not occur until the driver has been detained for a suspected violation of other sections of law.

This section further amends s. 316.614(10), F.S., to add that if any person fails to use a seat belt it shall not be considered in mitigation of damages but rather'may be used for consideration as comparative negligence in a civil action. See "Comments," below for information regarding a study of seat belt usage.

Section 25. Presently if the. estimated costs of repairing the physical and mechanical damage to a vehicle is equal to 80 percent or more of the current retail cost of the vehicle, as established in the Official Used Car Guide of the National Automobile Dealers Association, the DHSMV declares the vehicle unrebuildable and prints a notice on the salvage certificate that the vehicle is unrebuildable and refuses to issue a certificate of title for the vehicle.

This section amends paragraph (b) of subsection (2) of section 319.30, F.S., to exempt those vehicles that are worth less than $1,500 retail in.undamaged condition from the act.

Section 26. This section amends s. 320.02(5)(a) to expand the requirements of the contents on the proof-of-purchase insurance cards. The bill requires the name of the insured's insurance company, the insured's policy number, the make, year and vehicle identification number of the vehicle insured.

Section 27 amends s. 322.0261, F.S., to require drivers who are convicted or plead nolo contendere to traffic offenses to take a driver safety education course administered by the DHSMV if the driver has: (1) been involved in accidents causing bodily injuries or death, (2) had two accidents within a two year period with property damage in an apparent amount of at least $500.

Section 28. Presently, the financial responsibility law in chapter 324 requires drivers to obtain bodily injury liability insurance or another approved form of proof of financial responsibility only after they have been involved in an accident of a certain magnitude or after they have been convicted of certain serious traffic offenses. In general, this law does not require an individual to obtain bodily injury liability insurance if the driver was not at fault in the accident.

This section amends s.324.051(2)(a), F.S., the FR law, to provide that all drivers involved in certain accidents are subject to the FR law, regardless of fault.

Section 29 creates s. 324.121(2)(b), F.S., in the FR law, to provide that suspension of the license and registration for an

unsatisfied judgment would not apply if the DHSMV determines that an insurer was obligated to pay the judgment upon which the suspension was based, but failed to do so.

Section 30 amends s. 624.155, F.S., which presently entitles persons to bring a civil remedy action against an insurer when such person is damaged by a violation of an insurer of one or more specifically cited violations of the Insurance Code. The bill clarifies that the remedies provided by this statute do not preempt any other remedy or cause of action provided by other statutes or common law. However, the bill also specifies that a person may obtain a common law bad faith judgment against an insurer or a judgment under this statute, but shall not be entitled to a judgement under both remedies. Damages recovered under the section would be those damages which are a reasonably foreseeable result of the violation, including an amount that exceeds policy limits. Since all of the above is intended to be clarifying existing law, the amendments are specifically given retroactive effect.

Section 31 is the reenactment of sections and subdivisions of the Statutes that update cross-references to insure those references are to the law as amended by the bill rather than to the law as it existed prior to the changes in this bill.

Section 32 creates s. 624.3151(1), F.S., to require the DO1 to publish complaint ratios of motor vehicle insurers.

Section 33. Presently! it is deemed to be an unfair insurance trade practice for an Insurer to refuse to insure an applicant due to his failure to agree to place collateral (other) business with that or any other insurer. Despite this law, it is apparently not uncommon for insurers writing excess (umbrella) liability policies to require the insured to maintain underlying liability coverage with that insurer or another insurer. The bill amends s. 626.9541(1)(x) to specifically allow this practice.

Section 626.9541(1)(o)4., F.S., presently allows an insurer to impose a surcharge or refuse to renew a motor vehicle insurance policy if the insured commits two or more noncriminal traffic infractions within an 18-month period. The bill amends this section to also allow an insurer to impose a surcharge or refuse to renew a policy for three or more noncriminal traffic infractions committed within a 36-month period.

Section 34. Presently, private passenger automobile rates are subject to a "use and file" procedure. This procedure allows the insurer to implement a rate change before filing the rate change with the DOI.

For other lines of property and casualty insurance (e.g., homeowners insurance and commercial property and casualty coverage), the insurer has two options: "file and use," by which the insurer gives the DO1 at least 60 days advance notice of a rate change; or "use and file," by which the insurer may

implement a rate change and then give the DO1 notice within 30 days thereafter. If an insurer chooses the "use and file" method and the DOI finds the rate to be excessive, the DOI may order the insurer to refund the excess portion of the rate.

This is not the case under the private passenger automobile rating law. For private passenger auto lines, an insurer can implement a rate filing prior to giving notice to the DOI, and the DO1 has no authority to order a refund even if the rate is later found to be excessive. Refunds may be provided years later under the excess profits law. But excessive rates do not necessarily result in excess profits. The excess profits law compares a company's actual underwriting profit to its anticipated underwriting profit over a 3 year period. Excess profit is realized if there is an actual underwriting profit greater than the anticipated -underwriting profit, plus 5 percent earned premium.

Section 627.0651(1) is amended to conform automobile rating laws to those used for other types of property and casualty coverage, which will give insurers two options, "use and file" or "file and use" (as explained above).

The DO1 will also order, for any "use and file" filing that premiums charged each policyholder constituting the portion of the rate above that which was actuarially justified, be returned to the-policyholder as a credit or refund. When the DO1 finds that a rate filing is inadequate, the new rate will be applicable only to new or-renewal business written after the effective date of the filing.

Language is added specifying that the DOI shall issue an order of disapproval when a rate filing is excessive, inadequate, or unfairly discriminatory, and require a new rate which responds to the findings of the DOI.

Presently, each insurance company uses their own method for dividing the state into different territories for rating purposes. These territories usually fall into 20 to 30 different definitions. Most companies use geographical boundaries, such as county lines, or highways, not zip codes in establishing their territory definitions. The definition of each of these territories is based on many factors, such as traffic -densities, accident and theft frequency! road design and maintenance, law enforcement and socio-economic factors (medical and legal fees). The rates are based on the company's experience under the territory definition they have identified.

The section also amends s. 627.0651(8), F.S., to prohibit single zip code rating by the insurance companies.

This section further amends s. 627.0651(12), F.S., to remove costs due to bad faith, punitive damages and other taxable costs associated with judgments which award punitive damages against insurers from the allowable rate base. Currently, those costs are included in the rate base.

Section 35. The bill repeals subsection (4) of Section 627.331, F.S., relating to filing of underwriting guidelines because these provisions are transferred to the rating section of the statutes in s. 627.0651(13).

Section 36. This section authorizes a pilot study in a South Florida county that will designate the entire county as a single rating territory for PIP policies. The DO1 will report to the' Legislature in January of 1992 regarding the effect of implementing the program on a statewide basis. If it is the decision by the Legislature to not implement the program, the rating division of the county would return to the status as before the pilot study was conducted.

Section 37. This section creates s. 627.0653(1), F.S to mandate a discount on bodily (BI), property damage (PD) and collision rates of motor vehicles equipped with anti-lock brakes.

This section also creates s. 627.0653(2), F-S., to require insurance companies to provide comprehensive coverage discounts for motor vehicles equipped with approved anti-theft devices.

This section creates s. 627.0653(3), F.S., to mandate a discount on personal injury protection coverage and medical payments coverage for motor vehicles equipped with one or more air bags.

The bill specifies that the removal of any of the discounts or credits provided pursuant to this section does not constitute the imposition of a surcharge if the basis for. the discount for credit no longer exists.

Section 38 amends s. 627.7262, F.S., to allow an insurer to be joined in a suit after a settlement or verdict and prior to the judgment in a law suit. This section also spedifies that an insurer shall be considered a party for the purpose of recovering taxable costs or attorney's fees recoverable by the insured.

Section 39. This section amends section 627.727(1), F.S., the uninsured motorist (UM) coverage statute, to clarify that a named insured is authorized to reject UM coverage or to select limits for UM coverage on behalf of all insureds.

Section 40. The section amends s. 627.736(5), F.S., to require insurers to include provisions in PIP policies for binding arbitration of PIP medical payment disputes between insurance companies and health care providers if the health care provider has agreed to accept assignments of PIP benefits. The arbitrator may award reasonable fees and expenses, including attorney's fees to the prevailing party.

Section 41. Currently insurance agents are not required to make a visual inspection of the motor vehicle in which the policy is being written. Nor are they required to take photos of the vehicle being insured. However, some companies are currently taking photos of the vehicle to be insured on their own accord.

This bill creates s. 627.744, F.S., to require insurers to inspect a private passenger motor vehicle prior to the issuance or renewal of physical damage coverage, including collision or comprehensive coverage. The inspection shall be at no cost to the applicant. The inspection must be recorded on a form prescribed by the DOI and must include taking the physical imprint of the vehicle identification number (VIN), and listing accessories and any existing damages.

Exempted from the law are: (a) a new policy for a policyholder who has been insured continuously for 3 years or longer and has physical damage coverage issued by the same insurer; (b) any motor vehicle purchased from an auto dealer if the insurer is provided with a description, with all options and a copy of a bill of sale or buyer's order which contains a full description of the vehicle, including accessories; or a copy of the title establishing transfer of ownership and a copy of the window sticker showing the accessories and retail price; (c) a temporary substitute motor vehicle; (d) a leased motor vehicle for less than 6 months, if the insurer receives the lease agreement with a description including the condition; (e) vehicles 10 years old *or* older; (f) any renewal policy; (g) any policy issued in a county with a 1988 population or less than 500,000; and (h) other exemptions-established by rule of the DOI.

The insurer may defer the inspection for 7 calendar days for new coverage if the time of the requestedinspection 'creates a serious inconvenience to the insured. If the inspection does not take place-within the specified time period the insurance coverage is immediately suspended. This information must be conveyed to the applicant on forms prescribed by the DOI.

The DO1 is given rule making authority to establish such procedures and notice requirements'as may be necessary to implement this law.

Section 42. The bill allows either party to demand mediation of a motor vehicle insurance claim filed with an insurer for personal injury in an amount of $10,000 or less or a claim for property damage in any amount. Requests for mediation are to be filed with the **DO1** and act to toll the applicable statute of limitations for filing a claim for sixty days following the conclusion of the mediation process. This process is intended to apply to first party claims, such as a PIP claim, in which case the terms and conditions for mediation must be specified in the policy, and to third party claims, such as a liability claim. The DO1 would randomly select mediators, subject to the right of either party to make one rejection. Mediators must complete a 40-hour training program approved by DO1 (which requirement does' not take effect until 180 days after the effective date of the act) and have a masters or doctorate degree in psychology, counseling, business, or economics, or be a member of the Florida Bar or have been actively engaged as a qualified mediator for at least four years prior to July 1, 1990. Costs are to be borne equally by both parties. Unless otherwise agreed, only one

mediation proceeding would take place which must be held within 45 days of the request for mediation. The DO1 must Promulgate rules of procedure for claims. Disclosures and information divulged in the mediation process shall not be admissible in any subsequent action or proceeding relating to the claim.

Sections 43-47 provide exemptions from or revisions in application requirements, acquisition filings, annual filings and dissolution or liquidation proceedings relating to a service warranty association for manufactures of products who wish to sell warranties on those products which they manufacture. To qualify as a manufacturer for the purposes of the exemptions or revisions, an entity or affiliate thereof must: derive a majority of its revenue from the sale of a product which it manufactures; issue service warranties only for those products; be listed and traded on a recognized stock exchange; be listed in the National Association of Security Dealers Automated Quotation system, be publicly traded in the over-the-counter securities markets and be required to file specified forms with the States Securities and Exchange Commission; if it maintains outstanding debt obligations they must be in the top four rating categories by a recognized rating service; have and maintain a minimum net worth of $10 million; and be authorized to do business in Florida.

Section. 48 rewrites section 768.79, dealing with offers and demands for judgment, combining and revising provisions of existing sections 45.061 and 768.69, to be applicable to all civil actions for damages. (Section22 of the bill provides that s. 45.061 does not apply to causes of action that accrue after the effective date of the act.) The *bill specifies that if a defendant files an offer of judgment which is not accepted by the plaintiff, the defendant is entitled to recover costs and attorney's fees if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than the offer. Similarly, if the plaintiff files a demand for judgment which is not accepted by the defendant, the plaintiff is entitled to costs and attorney's fees if he recovers a judgment at least 25 percent greater than the offer. The bill requires that the offer be in writing and state that it is being made pursuant to this section and that it include certain specified information. The offer must be served upon the party to whom it is made, but it does not need to be filed with the court unless it is accepted or unless necessary to enforce this section. In determining the "judgment obtained" by a plaintiff when an offer served by the defendant is not accepted by the plaintiff, this amount is the net judgment entered plus any Post-offer collateral source payments received or due as of the date of the judgment,, plus any post-offer settlement amounts by which 'the verdict was reduced. However, for purposes of determining the "judgment obtained" when a plaintiff serves an offer which is not accepted by the defendant, the amount is the net judgment entered, plus any post-offer settlement amounts by which the verdict was reduced. A court may determine that an offer was not made in good faith and disallow an award of costs and attorney's fees. When determining the reasonableness of an award, the court must

consider a list of specified factors.

Section 49 creates s. 817.236, F.S., to increase the penalty for falsifying an application for motor vehicle insurance *from* a second degree misdemeanor to a misdemeanor of the first degree.

Section 50 requires the insurers in the state to submit to the DOI a report showing the rate impact of this legislation. The report is to be submitted two years after the effective date.

Section 51 repeals each section that is added to chapter 624, effective October 1, 1993.

Section 52 provides for repeal of those sections of chapter 627 created by this act, as of October 1, 1992.

Section 53 provides the authority for the Department to study the feasibility of tax collectors selling PIP, PD and combined forms of motor vehicle insurance. Presently, only those persons authorized by the Department are permitted to sell insurance. At the present time, tax collectors are required to verify motor vehicle insurance prior to the renewal of an auto license tag, they do not sell insurance.

Section 54 provides for the funding and positions necessary for the Department to implement this act.

Section 55 sets October 1, 1990 as the effective date and specifies that the act shall apply to all policies issued or renewed on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring *or* Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

Section 36. The Department of Insurance estimated the cost to be approximately $75,000 to conduct the single county rating study, however, there is no specific appropriation amount listed.

Section 53. The Department of Insurance estimated the cost to be approximately $75,000 to conduct the tax collector

study, however, there is no specific appropriation amount listed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

'None

3. Long Run Effects Other Than Normal Growth:

None

c. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Section 23. A $32 fine is imposed on persons who fail to make a timely accident report when required by s. 316.066(6).

Section 27. Drivers involved in certain -accidents are required to take a driver safety education course which typically costs $20.00 for defensive driving courses and $135.00 for first offense alcohol related *offenders.

Section 28. Drivers involved in certain accidents will be required to obtain bodily injury liability insurance or some other form of financial responsibility, even if the driver is not at fault in the accident.

Section 49. Persons falsifying an application for motor vehicle insurance would be subject to the penalties of a first degree misdemeanor; currently the crime is classified as a second degree misdemeanor.

2. Direct Private Sector Benefits:

Sections 14. Persons 65 and under will be able to purchase credit disability insurance without age being a requirement for qualification.

Section 25. Persons with vehicles valued at $1,500 or less would no longer have their vehicles declared a total loss when the estimated cost of repair is 80 percent or more of the current retail cost.

Section 34. Insurers are required to return excessive premiums charged to policyholders in the form of a credit or refund. Insureds should benefit to the extent of these refunds and to the extent that rates are more reasonably determined' to begin with.

Section 37. DOI: To the extent auto insurers and/or auto owners who install this equipment are more readily able to recover a stolen vehicle, there may be some reduction in insurer losses from theft. And, those auto owners who install this equipment will have some savings in premium cost although this savings may not equate with the cost of' purchase and installation of the equipment.

Section 41. The requirement that vehicles be inspected prior to being insured is intended to reduce fraudulent physical damage claims and thereby reduce collision and comprehensive motor vehicle insurance rates. This will result only if the reduction in claims costs exceeds the additional cost of the inspection itself. New York has a similar law, but it requires three color photographs of the- vehicle, The Florida law does not require any photographs. Therefore the cost of the inspection in Florida should be significant& less than the $12 to $14 cost experienced in New York. However, even at this cost, New York reports significant overall savings in physical damage premiums.

Sections 43-47. Exemptions from certain requirements under the laws for service warranty associations for qualified manufacturers should benefit such manufacturers and make it 'more likely that they will form a -service warranty --association for the 'products they manufacture. Consumers will benefit to the extent that large, financially solvent manufacturers are more likely to provide a warranty on their products.

3. Effects on Competition, Private Enterprise, and Employment Markets:

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS:

Section 24. The University of Kentucky conducted a study and found that the average cost per patient involved in an accident not wearing seat belts was $6,496, while costs for those using seat belts was $1,458. The study further found that 98 percent of the belted victims were treated and released and 21 percent of the unbelted victims were admitted to the hospital and their stay was 5.2 times longer. .

Section 37. According to a publication by State Farm Insurance Company, auto thefts in the United States reached 1.43 million in 1988. According to the Federal Bureau of Investigation's Uniform Crime Reports the value of the stolen vehicles for 1988 was $7.3 million.

A-31

The National Automobile Theft Bureau (NATB) reported that in 1988, about 66 percent of the vehicles stolen were recovered, compared to about 90 percent in-1960. Since the parts of a vehicle are more valuable than the whole, many of the vehicles that were not recovered were most likely sold as parts.

According the Justice Department auto theft threatens people's safety. Over 100 lives were lost and 1,500 injuries caused during auto thefts in 1988.

Section 38. This section amends the non-joinder statute, s. 627.7262, to allow insurers to be joined as parties after a verdict is reached but before a settlement is entered. This raises a question of constitutionality in light of previous decisions of the Florida Supreme Court regarding this section. An earlier version of this statute was held unconstitutional by the Court in Markert v. Johnston, 367 So.2d 1003 (Fla. 1978), because the statute involved procedural aspects of trials rather than substantive rights and, therefore, invaded the state Supreme Court's exclusive rule-making authority in violation of the State Constitution (Fla. Const., Art. 2, sec. 3; Art. 5, sec. 2). The statute was amended in 1982 in such a way as to deal with substantive rights of parties rather than procedural aspects of trials, and the Florida Supreme Court upheld the statute's constitutionality in VanBibber v. Hartford Accident & Indemnity Insurance Company, 439 So.2d 880 (Fla. 1983). The amendment made by this bill may raise the constitutional issue again by arguably dealing with the procedural aspect of a trial. However, it appears that the basic provisions of the statute which deal with substantive rights of parties is unaffected--by the amendment.

Section 41. The State of New York passed mandatory pre-insurance auto inspection in 1977 and has credited the law with a drop in auto thefts and a drop in fraud claims within the New York Department of Insurance. After the passage of the photo inspection law, New York's theft rate dropped by 10.8 percent and other states around New York experienced from 16 to 36 percent increases in auto thefts. It should be noted that staff is unable to determine what other, if any, factors attributed to New York's reduction in their theft rate. However, John Riersen of the New York Department of Insurance is of the opinion that the passage of the photo inspection law was the only reason for the drop. He said that no other legislation was passed at that time which would have affected the theft drop. He estimates the savings for New York to be about $14-$17 million based on 900,000 inspections.

Massachusetts also has a similar law. They estimate that 25 to 30 percent of all auto thefts are fraudulent. Massachusetts experienced a 3.4 percent drop in the auto theft rate following the passage of the 1988 law requiring pre-inspection. Other statistical information from Massachusetts is unavailable.

According to the National Auto Theft Bureau (NATB) estimates, about 15 percent of all reported thefts are attempts to defraud an insurer. The percentage ranges from 25 to 30 percent in urban areas. The'

Florida Department of Law Enforcement (FDLE) reported 62,976 cases of theft, which represented $234,863,146 of value during 1988. (These figures represent approximately 70%-75% of the total figures, FDLE's data was incomplete at the time of this report.)

The DOI provided staff with several cases which could have been avoided had insurers been required to inspect the vehicle prior to issuing a policy.

Section 42. This section entitles either party to demand mediation of a claim prior to the institution of litigation for certain personal injury actions. (See Section 42, above.) This raises a question of constitutionality under the access to courts and due process provisions of the Florida Constitution. It may be argued that an injured party is denied access to courts for redress of injuries by being required to first proceed through mediation if demanded by the defendant. (Fla. Const., Art 1, Sec. 21) Depending upon how the mediation process works in practice, arguments may also be-made that the mediation process may deprive parties of due process of law. (U.S Const., Amend. 14; Fla. Const., Art. 1, sec. 9) The mediation process for medical malpractice actions was determined to be unconstitutional based on such arguments in the case of Aldana v. Holub, 381 So.2d 231, (Fla. 1980).

V. SIGNATURES:

COMMITTEE ON INSURANCE:
Prepared by: H. Fred Varn

Staff Director: Brian Deffenbaush

FINAL ANALYSIS PREPARED BY COMMITTEE ON INSURANCE:
Prepared by: H. Fred Varn

Staff Director: Brian Deffenbaugh

A-33

* LANGUAGE FROM THIS DEAD BILL WAS INCORPORATED INTO THE FINAC BILL AS PASSED.

CS/SB 1770 DEALS WITH F.S. 316.613 AND 316.614

THIS WAS ADDED TO SB 2670 ON THE SENATE FLOOR ON 05/31/90

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Smawley	JCI	Fav/CS
2.				
3.				
4.				

SUBJECT:

Safety Belts/Children

BILL NO. AND SPONSOR:

CS/SB 1770 by Judiciary Civil and Senator Johnson

I. SUMMARY:

A. Present Situation:

Section 316.613, F.S., provides requirements for the use of child restraint devices in motor vehicles. The statute provides, in part, that the, failure to provide and use a child passenger restraint device cannot be considered as comparative negligence or admitted as evidence in the trial of any civil action with regard to negligence.

Section 316.614, F.S., provides requirements for safety belt usage. The section provides, in part, that state or local law enforcement agencies may enforce the statute only as a secondary action when a driver has been detained for a suspected violation of another section of chapter 316, chapter 320, or chapter 322, Florida Statutes. The section also provides that a violation of its provisions does not constitute negligence per se and cannot be used as prima facie evidence of negligence in any civil action.

The provision in s. 316.613, F.S., that failure to provide and use a child passenger restraint cannot be considered comparative negligence has been interpreted to also preclude evidence pertaining to such failure as bearing on mitigation of damages. Parker v. Montgomery, 529 So.2d 1145 (Fla. 1st DCA 1988), rev. den., 531 So.2d 1354.

The Florida Supreme Court has held that the "seat belt defense" may be used in Florida, saying that "if there is competent evidence to prove that the failure to use an available and operational seat belt produced or contributed substantially to producing at least a portion of plaintiff's damages, then the jury should be permitted to consider this factor, along with all other facts in evidence, in deciding whether the damages for which'defendant may otherwise be liable should be reduced."' Insurance Company of North America v. Pasakarnis, 451 So.2d 447 (Fla. 1984). This rule apparently survived the enactmint of s. 316.614, F.S., in 1986, and operates in conjunction with that statute. American Automobile-Association, Inc. v. Tehrani, 508 So.2d 365 (Fla 1st DCA 1987), Parker, supra.

B. Effect of Proposed Changes:

The bill would provide that the failure to use a child passenger restraint could not be considered in mitigation of damages in the trial of any civil action with regard to negligence.

The bill would provide that a violation of the Florida Safety Belt Law, or a failure to use a seat belt, could not be considered in mitigation of damages in any civil action.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The bill could increase recoveries and the cost of automobile insurance by denying defendants and their insurance companies the use of the seat belt defense to mitigate damages.

B. Government:

None.

III. d o - s :

None.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1770

The committee substitute deletes the proposed amendment to s. 316.614(9), P.S., which would have deleted the provision restricting enforcement of the seat belt law to secondary actions.

Committee on Judiciary-Civil

Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

BILL VOTE SHEET

ivs-88: File with Secretar, of Senate) BILL NO. SB 17

COMMITTEE ON: Judiciary-Civil

DATE: April 25, 1990

TIME: l:oo P

PLACE: Room 1C, Capitol Building

OTHER COMMITTEE REFERENCES: (in order shown)

Calendar

ACTION:

___ Favorably th ___ amendments

_X_ Favorably with Committee Substitute

___ Unfavorably

___ Submitted as a Committee Bill

___ Temporarily Passed

___ Reconsidered

___ Not Considered

___ No Quorum

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	04/25/90 0a Amd by Senator Langley									
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Casas	X									
		Davis	X									
X		Dudley	X									
X		Gi rardeau	X									
X		Grant	X									
X		Johnson	X									
		Margolis										
X		Plummer	X									
X		Stuart		X								
		MAJORITY LEADER Gordon										
X		VICE-CHAIRMAN Langley	X									
X		CHAIRMAN Weinstein	X									
9	0	TOTAL	9	i								
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

Please Complete:

The *Key* sponsor appeared (x)
A Senator appeared (x)
Sponsor ' s a ide appeared ( )
Other appearance (x)

A-58

SENATE **STAFF ANALYSIS-AND** *ECONOMIC* **IMPACT** STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Smawley	JCI	
2.				
3.				
4.				

SUBJECT:

Safety Belts/Children

BILL NO, AND SPONSOR:

SB 1770 by Senator Johnson

I. SUMMARY :

A. Present Situation:

Section 316.613, **F.S.,** provides requirements for the use of child **restraint** devices in motor vehicles. The statute provides, in part, that the **failure** to provide and use a child passenger restraint device cannot be considered as comparative negligence or admitted as evidence in the trial of any civil action with regard to negligence.

Section 316.614, F.S., provides requirements for safety belt usage. The section provides, in part, that state or local law enforcement agencies may enforce the statute-only as **a secondary** action when a driver **has been** detained for a suspected violation of another **section of chapter** 316, chapter 320, or chapter 322, **Florida Statutes. The section also** provides that **a** violation of **its provisions does not** constitute negligence **per se and** cannot be **used as prima facie evidence** of negligence **in** any civil action.

The provision **in s. 316.613, F.S.,** that failure to provide and use a child passenger restraint cannot be considered comparative, negligence has been interpreted to also preclude evidence pertaining to such failure as bearing ***on*** mitigation of damages. Parker v. Montgomery, 529 **So.2d** 1145 **(Fla. 1st DCA 1988),** rev. den., **531 So.2d 1354.**

The Florida Supreme Court has held that the "seat belt defense" may be used in Florida, saying that "if there is competent evidence to prove that **the failure** to use an available and operational seat belt produced or contributed substantially *to* producing at least a portion **of plaintiff's** damages, then the jury should be permitted to consider this factor, along with all other facts in evidence, in deciding whether the damages for which defendant may otherwise be liable should be reduced,."- **Insurance** Company of North America v. Pasakarnis, 451 **So.2d** 447 (Fla. 1984). This rule apparently survived the enactment of s. 316.614, F.S., in 1986, and operates in conjunction with that statute. American Automobile-Association, **Inc. v.** Tehrani, **508 So.2d** 365 (Fla 1st **DCA 1987),** Parker, supra.

B. Effect of Proposed Changes:

The bill would provide that the failure to **use** a child passenger restraint could not be considered in mitigation **of** damages in the trial of any civil action with regard to negligence.

The bill would delete the provision restricting enforcement **of s.** 316.614, F.S., the Florida Safety Belt Law, to secondary actions.

The bill would provide that a violation of the Florida Safety Belt Law, or a failure to use a seat belt, could not be considered in mitigation of damages in any civil action.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The bill could increase recoveries and the cost of automobile insurance by denying defendants and their insurance companies the use of the stat belt defense to mitigate damages.

The bill could increase fines by allowing for primary enforcement of the seat belt requirement.

8. Government:

The bill could increase fine revenues by allowing for primary enforcement of the seat belt requirement.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

1770

MAR 23 1990

25-745-90

A bill to be entitltd

An act relating to motor vehicle safety requirements; amending s. 316.613, F.S.; providing that failure to provide and use a child restraint may not be considered in mitigation of damages in civil actions with regard to negligence; amending s. 316.614, F.S.; deleting provisions requiring enforcement of safety belt requirements only as a secondary action; providing that failure to use safety belts is not negligence per se and prohibiting such failure from being used as prima facie evidence of negligence or being considered in mitigation of damages in any civil actions; providing an effective date.

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

Section 1. Subsection (3) of section 316.613, Florida Statutes, is &ended 'to read:

336.613 Child restraint requirements.--

(3) The failure to provide and use a child passenger estraint shall not be considered comparative negligence, nor hall such failure be admissible as evidence or considered in itigation of damages in the trial of any civil action with regard to negligence.

Section 2. Subsections (9) and (10) of section 316.614, Florida Statutes, are amended to read:

316.614 Safety belt usage.--

~~(9)--Enforcement-of-this-section-by-state-or-local-law enforcement-agencies-shall-be-accomplished-only-as-a-secondary~~

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

A 41

~~action-when-a-driver-of-a-motor-vehicle-has-been-detained-for~~
~~a-suspected-violation-of-another-section-of-this-chapter,~~
~~chapter-320,-or-chapter-322.~~

~~(9)(10)~~ A violation of the provisions of this section or a person's failure to use a &at belt does ~~shall~~ not constitute negligence per se, nor may ~~shall~~ such violation be used as prima facie evidence of negligence or considered in mitigation of damages in any civil action.

Section 3. This act shall take effect upon becoming a law.

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

A-42

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SENATE SUMMARY* .

Provides that the failure to provide and use a child restraint in a motor vehicle may not be considered in mitigation of damages. Provides that the failure to use safety belts is not negligence per se and prohibits such failure from being used as prima facie evidence of negligence or being considered in mitigation of damages. Deletes provisions which require enforcement of safety belt requirements to be secondary and used only when the driver has been detained for another traffic violation.

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

A bill to be entitled

An act relating to motor vehicle safety requirements; amending s. 316.613, F.S.; providing that failure to provide and use a child restraint may not be considered in mitigation of damages in civil actions with regard to negligence; amending s. 316.614, F.S.; providing that failure to use safety belts is not negligence per se and prohibiting such failure from being used as prima facie evidence of negligence or being considered in mitigation of damages in any civil actions; providing an effective date.

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

Section 1. Subsection (3) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.--

(3) The failure to provide and use a child passenger restraint shall not be considered comparative negligence, nor shall such failure be admissible as evidence or considered in mitigation of damages in the trial of any civil action with regard to negligence.

Section 2. Subsection (10) of section 316.614, Florida Statutes, is amended to read:

316.614 Safety belt usage.--

(10) A violation of the provisions of this section or a person's failure to use a seat belt does shall not constitute negligence per se, nor may shall such violation be

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

A-44

used as prima facie evidence of negligence or considered in mitigation of damages in any civil action.

Section 3. This act shall take effect upon becoming a law.

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

A-45

tion immediately prior to the beginning of the in igative interview. If the internal investigation is concluded with the finding that there is no probable cause to proceed with disciplinary action or file charges against the officer, a statement to that effect signed by the agency hcad or his designee and the responsible invcrtigating official shall be attached to the complaint; and the complaint and all such information shall bc open thereafter to inspection punuant to chapter 119. If the internal investigation is concluded with the finding that there is probable cause to procood with disciplinary action or file charges, the complaint and all such information shall bc open thereafter to inspection pursuant to chaptor 119. If the investigation ceases to bc active without a finding relating to probable cause, the complaint and all such information shall be open to inspection thereafter pursuant to chapter 119.

This subsection is subject to the provisions of the Open Government Sunset Review Act in accordance with a. 119.14.

Section 2. Thir act shall take effect upon becoming a law.

Further consideration of SD 1162 with pending Amendment 2 was deferred.

CS for SB 2670—A bill to be entitled An act relating to insurance; amending s. 624.315, F.S.; deleting certain annual report requirements; mending a. 624.418, F.S.: exempting certain insurers from a provision authorizing suspension or revocation of certificate of authority: amending s. 624.424, F.S.; providing authority for requiring audited financial statements baaed on statutory requirementa; providing authority for commercial self-insurance funds to become domestic mutual insurers; amending s. 624.502, F.S.; increasing the service of process fee for service on certain insurers and other persona; amending s. 625.151, F.S.; modifying provision for valuation of certain securities; creating s. 625.181, F.S.; providing for the financial determination of assets roceivcd as capital or surplus contributiona by insurers; amending s. 625.325. F.S.; revising limitations on investments in subsidiaries: amending ss. 625.50, 625.52, F.S.; providing for acceptance by the Department of Insurance of certain agent deposits; amending 3.627.4133, F.S.; exempting mortgage guaranty insurance from certain notice requirements; amending s. 627,476, F.S.; requiring life insurers to grant reduced paid-up nonforfeiture benefits in specified circumstances; amending s. 627.6785, F.S.; providing that credit life and credit disability policies must not make debtors *or lessors* under specified ages ineligible: providing minimum duration of coverage: amending s. 627.7288, F.S.; expanding applicability of the exclusion of motor vehicle windshields from deductibles; amending s. 627.782, F.S.; requiring promulgation *of* risk premiums, rather than risk premium rates, for title insurance; amending s. 627.803, F.S.; requiring variable or indeterminate value contracts to contain certain notice; amending s. 627,915, F.S.; deleting certain insurer experience reporting requirements; amending s. 634.312, F.S.; requiring home warranty policies to be delivered to he insured within a specified time: providing that the application is part f the contract; reenacting as. 624.11(2), 624.316(1)(b), 629.518, 32.638(3), and 635.091. F.S.. relating to risk retention groups. examination. limited reciprocal insurers, fraternal benefit societies, and mortage guaranty insurance, to incorporate the amendments to ss. 624.418 d 627.915, F.S., in references thereto; providing for review and repeal; nending s. 316.066. F.S.; providing penalties for failing to file accident ports; amending a. 316.614. F.S.; providing that the failure to use 4 fety belt may not be considered in mitigation of damages. but may be nsidered as evidence of comparative negligence: amending a, 319.30. .; exempting certain vehicles from prohibitions on dismantling, truction, or change *of* identity *of motor* vehicle or mobile home: ending a. 320.02, F.S.; requiring specific information *on* proof-of-chase cards: creating s. 322.0261. F.S.; requiring driver imptovcment rses in certain cases; amending a. 324.051. F.S.; eliminating exempa to suspension of driver's license; amending s. 324.121, F.S.; providexemptions to license suspension; amending s. 624.155, F.S.; clarifying lative intent with respect *to* the issues of preemption *of* other remeand with respect to the issue of the definition of damages; correcting u-reference; providing legislative intent with respect to civil remereenacting a. 624.48-(1), F.S., relating to commercial self-insurance , to incorporate the amendment to s. 624.155, F.S., in a reference to; creating s. G24.3151. F.S.; requiring publication of insurer cornrations; omcnding s. 626.9541, F.S.; increasing the time period for rges; providing that it is not *an* unfair insurance trade practice to *to insure* a person in certain circumstances: amending s. 627.0651. evising provisions for making and use of rates for motor vchiclo nce designating s. 627.331(4), F.S., as s. 627.0651(13), F.S.; profor a pilot project treating all of a county meeting specified criteria as ono rating territory; creating a. 627.0653. F.S.; requiring discounts for specified items; amending a. 927.7282. F.S.; revising provisions relating to joinder and nonjoinder of insurers; ● *mantM* s. 627.727, F.S.; revising provision for rejection of uninsured motorist coverage; amending s. 1327.730. F.S.; providing for binding arbitration in personal injury protection claims; amending s. 627.745. F.S.; providing for mediation of personal injury claims; amending s. 768.79, FS.; providing certain procedures for offers of judgment; creating s. 817.236, F.S.; providing criminal penalties for submission of fraudulent motor vehicle insurance applications; requiring insurers to report the rate impact of the act to the Department of Insurance; providing for review and repeal; providing for a feasibility study on insurance coverage availability at tax collectors offices; providing an effective date.

—was read the second time by title.

Senator Langley moved the following amendment:

Amendment 1—On page 23, lines 29-31: pager 24-56; and on page 57. lines *1-26.* strike all of said lines and insert:

Section 22. Subsection (6) is added to section 45.061. Florida Statutes. to read:

45.061 Offers *of* settlement.—

(6) This section does not *apply to causes o/action that accrue after the effective date Of this act.*

Section 23. Subsection (6) is added to section 316.066, Florida Statutes, to read:

316.066 Written reports of accidents.—

(6) Any driver failing to file the written report required under subsection (1) or a *supplemental written report when required by the department under subsection (2) shall be subject to the penalty prouided in s. 318.1812).*

Section 24. Subsection (10) of section 316.614, Florida *Statutes,* is amended to rend:

316.614 Safety belt usage.-

(10) A violation of the provisions of this section shall not constitute ncgligcncc *per* se, not shall such violation be used as prima facie evidence of negligence *or be considered in* mitigation *of damages, but such* violation *may be considered as evidence of comparative negligence,* in *any* civil action.

Section 25. Paragraph (b) of subsection (2) of section 319.30, Florida Statutes, is amended to read:

319.30 Dismantling, destruction, change of identity of motor vehicle ot mobile home; salvage.-

(2)

(b) The owner of any motor vehicle or mobile home which is considered to be salvage shall, within 72 hours after the motor vehicle or mobile home becomes salvage, forward the title to the motor vehicle or mobile home to the department for processing. However. an insurance company which pays money as compensation for total loss of 4 motor vehicle or mobile home shall obtain the certificate of title for the motor vehicle *or* mobile home and, within 72 hours after receiving such certificate of title, shall forward such title to the department for processing. The owner or insurance company. as tho case may be. may not dispose of a vehicle or mobile home that is 4 total loss before it has obtained a salvage certificate of title from the department. When applying *for a* salvage *certificate of* title, the owner or insurance company must provide the department with an estimate *of* the costs of repairing the physical and mechanical damage suffered by the vehicle for which a salvage certificate of title is sought If tho estimated coats of repairing the physical and mechanical damage to the vehicle is equal to 80 percent or more of the current rchil cost *of* the vehicle, as established in the Official Used Car Guide of the Notional Automobile Dealers Association, the department shall declare the vehicle unrobuildnble and print notice on the salvage certificate of title that tho vehicle is unrebuildablc; and, thereafter, tho dopartment shall refuse issuance of anv certificate of title for that vehicle. Nothing *in* this subsection shall bc a&&able when *a uehicle is worth less than $1,500 retail in undamaged condition* in *the Official Used* Car *Guide of the* National *Automobile Dealers Association or when* a stolen motor vehicle or mobile

A-46