Motor Vehicles, insurance requirements

Number: INFORMAL

Date: January 15, 2010

The Honorable Bryan Nelson
Florida House of Representatives
District 38
409 South Park Avenue
Apopka, Florida 32703

Dear Representative Nelson:

You inquire about the interpretation of section 324.0221, Florida Statutes, entitled "Reports by insurers to the department; suspension of driver's license and vehicle registrations; reinstatement," specifically subsection (3) which provides in pertinent part:

"An operator or owner whose driver's license or registration has been suspended under this section or s. 316.646 may effect its reinstatement upon compliance with the requirements of this section and upon payment to the department of a nonrefundable reinstatement fee of $150 for the first reinstatement. . . . *A person reinstating her or his insurance under this subsection must also secure noncancelable coverage as described in ss. 324.021(8), 324.023, and 627.7275(2) and present to the appropriate person proof that the coverage is in force on a form adopted by the department, and such proof shall be maintained for 2 years*. . . ." (e.s.)

You specifically ask what is noncancelable coverage and what is the proof that is required to be maintained for a period of two years. In light of the responsibilities of the Department of Highway Safety and Motor Vehicles regarding this matter, this office has contacted the department on this issue and been advised that the department has interpreted the statute as referring to a prepaid policy, which cannot be canceled for the specified period stated in the law.[1] As stated by the department:

"In cases where there is no mechanism for ensuring that an owner maintains required coverage, a non-cancellable policy ensures that the owner will pay in advance for the duration of the non-cancellable period required by law, and the carrier cannot cancel it. Where the mechanism exists to ensure continuous coverage for the required duration . . ., a non-cancelable policy simply ensures that insurance companies get paid in advance for the specified period."[2]

In addition, this office has been advised that the department uses the SR-22 form, established by the American Association of Motor Vehicle Administrators (AAMVA), to provide proof of such insurance and that it is this form that it maintained in accordance with section 324.0221(3), Florida Statutes. According to the department, the SR-22 serves as a tracking mechanism. Once an SR-22 is filed by the carrier, upon cancellation of that policy by either the carrier or the customer, an SR-26 is filed by the carrier with the department to indicate that the policy is no longer in effect. As stated by the department: "Upon receiving the SR-26, the person's driver license, tags, and registrations are immediately suspended. This provides for the required safety

valve to ensure that enforcement action is taken expeditiously."[3]

I would generally note that section 324.0221, Florida Statutes, was created in 2007 to "enforce mandatory PD [property damage] liability and PIP [personal injury protection], as required for PIP in ss. 627.733(6)-(7) and 627.736(9), F.S. (repealed on October 1, 2007)."[4] The statute requires insurers to report to the Department of Highway Safety and Motor Vehicles policy cancellations, non-renewals, and new policies written, and requires the department to suspend the driver's license of persons who do not obtain the required coverage.[5]

Section 324.0221(3), Florida Statutes, refers to "noncancelable coverage *as described in ss. 324.021(8), 324.023, and 627.7275(2)*." (e.s.) Section 324.021(8), Florida Statutes, refers to "[a]ny owner's or operator's policy of liability insurance furnished as *proof of financial responsibility pursuant to s. 324.031*, insuring such owner or operator against loss from liability for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of a motor vehicle in not less than the limits described in subsection (7) *and conforming to the requirements of s. 324.151*, issued by any insurance company authorized to do business in this state." (e.s.) Section 324.031, Florida Statutes, provides that "[t]he owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in section 324.021(8) or s. 324.151, which policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association. The operator or owner of any other vehicle may prove his or her financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) and 324.151;
(2) Posting with the department a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in s. 324.021(7);
(3) Furnishing a certificate of the department showing a deposit of cash or securities in accordance with s. 324.161; or
(4) Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

Any person, including any firm, partnership, association, corporation, or other person, other than a natural person, electing to use the method of proof specified in subsection (2) or subsection (3) shall post a bond or deposit equal to the number of vehicles owned times $30,000, to a maximum of $120,000; in addition, any such person, other than a natural person, shall maintain insurance providing coverage in excess of limits of $10,000/20,000/10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of $125,000/250,000/50,000 or $300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1)."

Section 324.151, Florida Statutes, provides that a motor vehicle liability policy to be proof of financial responsibility under section 324.031(1), Florida Statutes, shall be issued to owners or operators under the following provisions:

"(a) An owner's liability insurance policy shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted and shall insure

the owner named therein and any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed $500. In the event of a property damage loss covered by a policy containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.
(b) An operator's motor vehicle liability policy of insurance shall insure the person named therein against loss from the liability imposed upon him or her by law for damages arising out of the use by the person of any motor vehicle not owned by him or her, with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance.
(c) All such motor vehicle liability policies shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, the limits of liability, and shall contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage or both and is subject to all provisions of this chapter. Said policies shall also contain a provision that the satisfaction by an insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and shall also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the insurance carrier of any of its obligations under said policy.
(2) The provisions of this section shall not be applicable to any automobile liability policy unless and until it is furnished as proof of financial responsibility for the future pursuant to s. 324.031, and then only from and after the date said policy is so furnished."

Section 324.023, Florida Statutes, also referenced in section 324.0221(3), Florida Statutes, addresses the financial responsibility of owners or operators of motor vehicles who have been found guilty of, pled guilty to, or entered a plea of nolo contendere to driving under the influence. It requires such persons, by one of the methods established in section 324.031(1), (2), or (3), to establish and maintain the ability to respond in damages for liability for accidents arising out of the use of a motor vehicle in the amounts specified in the statute. Section 627.7275(2), Florida Statutes, also referred to in section 324.0221(3), provides:

"(a) Insurers writing motor vehicle insurance in this state shall make available, subject to the insurers' usual underwriting restrictions:
1. Coverage under policies as described in subsection (1) to any applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state when the driving privileges were revoked or suspended pursuant to s. 316.646 or s. 324.0221 due to the failure of the applicant to maintain required security.
2. Coverage under policies as described in subsection (1), which also provides liability coverage for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of the motor vehicle in an amount not less than the limits described in s. 324.021(7) and

conforms to the requirements of s. 324.151, to any applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state after such privileges were revoked or suspended under s. 316.193 or s. 322.26(2) for driving under the influence.
(b) The policies described in paragraph (a) shall be issued for a period of at least 6 months and as to the minimum coverages required under this section shall not be cancelable by the insured for any reason or by the insurer after a period not to exceed 30 days during which the insurer must complete underwriting of the policy. After the insurer has completed underwriting the policy within the 30-day period, the insurer shall notify the Department of Highway Safety and Motor Vehicles that the policy is in full force and effect and the policy shall not be cancelable for the remainder of the policy period. A premium shall be collected and coverage shall be in effect for the 30-day period during which the insurer is completing the underwriting of the policy whether or not the person's driver license, motor vehicle tag, and motor vehicle registration are in effect. Once the noncancelable provisions of the policy become effective, the coverage or risk shall not be changed during the policy period and the premium shall be nonrefundable. If, during the pendency of the 2-year proof of insurance period required under s. 324.0221 or during the 3-year proof of financial responsibility required under s. 324.131, whichever is applicable, the insured obtains additional coverage or coverage for an additional risk or changes territories, the insured must obtain a new 6-month noncancelable policy in accordance with the provisions of this section. However, if the insured must obtain a new 6-month policy and obtains the policy from the same insurer, the policyholder shall receive credit on the new policy for any premium paid on the previously issued policy.
(c) This subsection controls to the extent of any conflict with any other section.
(d) An insurer issuing a policy subject to this section may cancel the policy if, during the policy term, the named insured or any other operator, who resides in the same household or customarily operates an automobile insured under the policy, has his or her driver's license suspended or revoked.
(e) Nothing in this subsection requires an insurer to offer a policy of insurance to an applicant if such offer would be inconsistent with the insurer's underwriting guidelines and procedures."

I trust that the above information may be of some assistance to you in carrying out your legislative duties. In light of the responsibilities of the Department of Highway Safety and Motor Vehicles in this area, you may wish to discuss these matters further with that department.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

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[1] *And see* Webster's Third New International Dictionary, *Noncancelable* p. 1535 (1981), defining the term to mean "not subject to cancellation;" and *Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000) (in absence of a statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of the word can be

ascertained by reference to a dictionary); *Frankenmuth Mutual Insurance Company v. Magaha*, 769 So. 2d 1012 (Fla. 2000); *In re McCollam*, 612 So. 2d 572 (Fla. 1993) (when language of statute is clear and unambiguous and conveys a clear meaning, statute must be given its plain and ordinary meaning); Ops. Att'y Gen. Fla. 93-47 (1993) (in construing statute which is clear and unambiguous, the plain meaning of statute must first be considered) and 93-02 (1993). *See generally Gulf Coast Electric Co-operative, Inc. v. Johnson*, 727 So. 2d 259 (Fla. 1999) (agency's interpretation of statute it is charged with enforcing is entitled to great deference); *Department of Health & Rehabilitative Services v. A.S.*, 648 So. 2d 128 (Fla. 1995) (construction of statute by agency charged with its administration should not be disregarded or overturned by reviewing court except for most cogent reasons and unless clearly erroneous); *Pringle v. Marine Fisheries Commission*, 732 So. 2d 395 (Fla. 1st DCA 1999); *Velez v. Commission on Ethics, State of Florida*, 739 So. 2d 686 (Fla. 5th DCA 1999) (reviewing court must defer to any statutory interpretation by an agency which is within the range of possible and reasonable).

[2] Non-cancelable Policies, prepared by Deborah Todd, Chief, Bureau of Financial Responsibility, Department of Highway Safety and Motor Vehicles, for Judson Chapman, Sr. Asst. Gen. Counsel, Department of Highway Safety and Motor Vehicles, dated December 28, 2009.

[3] *Id.*

[4] *See* s. 324.0221(1) and (2), Fla. Stat.

[5] *Id. And see* Florida House of Representatives Staff Analysis on HB 13C, dated October 4, 2007, p. 4; Storage Name: h0013Cc.JEC.doc. *See generally* Rule 15A-3.007, Fla. Admin. C., regarding verification of insurance policies.