

Records, release of insurance provider name

Number: INFORMAL

Date: June 22, 2000

The Honorable Ronald A. Silver
Senator, District 38
12000 Biscayne Boulevard, Suite 411
North Miami, Florida 33181

RE: MOTOR VEHICLES--INSURANCE--RECORDS--release of name of insurance provider. ss.
627.736, 713.78, 715.05, Fla. Stat.

Dear Senator Silver:

You have requested my assistance in determining whether legislation repealing portions of section 715.05(1), Florida Statutes, may be appropriate.

Section 627.736, Florida Statutes, requires that Florida automobile insurance contracts provide certain personal injury protection benefits. Each insurer issuing a policy providing personal injury protection benefits is required to report the renewal, cancellation, or nonrenewal of an insurance policy to the Department of Highway Safety and Motor Vehicles.[1] Subsection (9)(a), of this statute states, in part, that:

Reports of cancellations and policy renewals and reports of the issuance of new policies received by the Department of Highway Safety and Motor Vehicles are confidential and exempt from the provisions of s. 119.07(1). These records are to be used for enforcement and regulatory purposes only, including the generation by the department of data regarding compliance by owners of motor vehicles with financial responsibility coverage requirements. The form upon which insurance companies make the report required by section 627.736(9)(a), Florida Statutes, requires that information including the name of the insurance company, the insurance company code, the name of the insured and his or her driver license number, the VIN number of the vehicle and the vehicle make, model, and year must be provided.[2]

Section 715.05, Florida Statutes, was amended in 1999 to require the Department of Highway Safety and Motor Vehicles to provide certain insurance information to law enforcement agencies, which must then make that insurance information available to certain businesses that are in possession of unclaimed motor vehicles.[3] Among these businesses are towing services, garages, repair shops or automotive service, storage, or parking facilities. The statute, as amended, reads:

"Upon the receipt of the full description of the vehicle, the department shall search its files to determine the owner's name, *the name of the insurance company insuring the vehicle*, and whether any person has filed a lien upon the vehicle as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage or parking place shall obtain

such information from the applicable law enforcement agency within 5 days from the date of storage and shall, by certified mail, return receipt requested, notify the owner, *the insurer* and all lienholders of the location of the vehicle and of the fact that it is unclaimed. Such notice shall be given within 7 days, excluding Saturday and Sunday, from the date of storage and shall be complete upon mailing; however, if the state of registration is unknown, the person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall make a good faith best effort in so notifying the owner, *the insurer*, and any lienholders" (e.s.)

The amendments, as emphasized above, require the Department of Highway Safety and Motor Vehicles and subsequently, the appropriate law enforcement agency, to provide this insurance information to the public, that is, to specified businesses in order for the businesses to determine the existence of lienholders who may have claims to this property.

This office must presume the validity of statutory enactments and cannot advise any officer to disregard a legislative direction or mandate.[4] On the contrary, a statute must be given effect until a court declares it invalid.[5] However, in an effort to assist you in determining the necessity for amendatory legislation, I offer the following informal comments.

It is a general rule of statutory construction that when two statutes relate to common things or have a common or related purpose, they are said to be *pari materia*, and where possible, the construction should be adopted that best harmonizes and reconciles the statutory provisions so as to preserve the force and effect of each.[6] To read these statutes together and give effect to both it is necessary to distinguish between the name of an insurance company that must be provided under section 715.05(1), Florida Statutes, and the more extensive information required to be supplied in a report of insurance coverage, which is confidential under section 627.736(9)(a), Florida Statutes. Finally, I would note that if a claim of conflict arises, the amended version of section 715.05(1), Florida Statutes, as the later enacted statute, would control over contrary provisions adopted at an earlier date.[7]

This office has contacted the General Counsel's Office at the Department of Highway Safety and Motor Vehicles to discuss this matter and has been advised that the department is prepared to comply with the provisions of section 715.05(1), Florida Statutes. Based upon conversations with that office it appears that the amendment to section 715.05, Florida Statutes, was adopted in an effort to facilitate the recovery of lien proceeds by insurance companies that may have a claim to unclaimed property. However, in light of the questions that have arisen regarding the implementation of section 715.05(1), Florida Statutes, as amended, it may be advisable for the Legislature to reexamine these changes in light of the confidentiality provisions of section 627.736(9)(a), Florida Statutes.

I trust that these informal comments will assist you in determining whether amendatory legislation is necessary at this time.

Sincerely,

Robert A. Butterworth
Attorney General

[1] Section 627.736(9)(a), Fla. Stat.

[2] See Department of Highway Safety and Motor Vehicles, Bureau of Financial Responsibility, Manual Filing Form contained in the Procedures Manual for Implementation of the Florida Motor Vehicle No-Fault Law, available electronically at www.hsmv.state.fl.us/FRManual.

[3] See s. 318, Ch. 99-248, Laws of Florida, effective July 1, 2000.

[4] See s. 16.01, Fla. Stat.

[5] *Cf. State ex rel. Watson v. Caldwell*, 23 So. 2d 855 (1945); *Department of Revenue of Florida v. Young American Builders*, 330 So. 2d 864 (Fla. 1st DCA 1976); *Adams Packing Association, Inc. v. Florida Department of Citrus*, 352 So. 2d 569 (Fla. 2d DCA 1977); Ops. Att'y Gen. Fla. 78-64 (1978) and 77-99 (1977).

[6] *Ideal Farms Drainage Dist. v. Certain Lands*, 19 So. 2d 234 (Fla. 1944); *State ex rel. Ashby v. Haddock*, 140 So. 2d 631 (Fla. 1st DCA 1962).

[7] See, e.g., *McKendry v. State*, 641 So. 2d 45 (Fla. 1994); *Askew v. Schuster*, 331 So. 2d 297 (Fla. 1976); *State v. Dunmann*, 427 So. 2d 166 (Fla. 1983). And see s. 7, Ch. 93-289, Laws of Florida, which rewrote and reenacted subsection (9)(a) of s. 627.736, Fla. Stat.