

By Representatives Goode and Crist

1 A bill to be entitled
2 An act relating to insurance fraud; amending s.
3 626.989, F.S.; granting to specified
4 investigators of the Division of Insurance
5 Fraud of the Department of Insurance felony and
6 misdemeanor arrest powers and the powers of
7 deputy sheriffs; amending s. 626.9891, F.S.;
8 requiring the submission of an anti-fraud plan
9 or the creation of an anti-fraud special
10 investigation unit by health maintenance
11 organizations; amending s. 641.30, F.S.;
12 requiring health maintenance organizations to
13 comply with s. 626.9891, F.S.; amending s.
14 817.234, F.S.; establishing penalty levels,
15 defining terms, and prescribing time
16 limitations for prosecution of these offenses;
17 providing an effective date.

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

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21 Section 1. Subsection (7) of section 626.989, Florida
22 Statutes, 1996 Supplement, is amended to read:

23 626.989 Division of Insurance Fraud; definition;
24 investigative, subpoena powers; protection from civil
25 liability; reports to division; division investigator's power
26 to execute warrants and make arrests.--

27 (7)(a) All division investigators certified under
28 chapter 943 as law enforcement officers have felony arrest
29 powers under s. 901.15(11), misdemeanor arrest powers, and all
30 the powers of deputy sheriffs, including, but not limited to,
31 peace-keeping and police powers to:

1 1. Investigate, enforce, prosecute, and arrest,
2 throughout the state, violations and violators of the Florida
3 Insurance Code and the rules adopted under the code and other
4 state laws that the division is specifically authorized to
5 enforce.

6 2. Investigate, enforce, prosecute, and arrest a
7 person ~~Division investigators shall have the power to make~~
8 ~~arrests~~ for criminal violations established as a result of
9 investigations only.

10 3. Enforce all other state laws only if the violation
11 is against an officer, employee, or agent of the department or
12 could result in an administrative proceeding against a license
13 or permit issued by the department.

14 4. Enforce all laws of the state within specified
15 jurisdictions when the division is requested to aid a federal,
16 state, county, or municipal law enforcement agency, or is a
17 party to a written mutual aid agreement with a state agency,
18 sheriff, or municipal police department, or when the division
19 participates in the Florida Mutual Aid Plan.

20 (b) The general laws applicable to arrests by law
21 enforcement officers of this state shall also be applicable to
22 such investigators. Such investigators shall have the power
23 to execute arrest warrants and search warrants for ~~the same~~
24 criminal violations; to serve subpoenas issued for the
25 examination, investigation, and trial of all offenses
26 determined by their investigations; and to arrest upon
27 probable cause without warrant any person found in the act of
28 violating any of the provisions of applicable laws.
29 Investigators empowered to make arrests under this section
30 shall be empowered to bear arms in the performance of their
31 duties. In such a situation, the investigator must be

1 certified in compliance with the provisions of s. 943.1395 or
2 must meet the temporary employment or appointment exemption
3 requirements of s. 943.131 until certified.

4 Section 2. Section 626.9891, Florida Statutes, is
5 amended to read:

6 626.9891 Insurer and health maintenance organization
7 anti-fraud investigative units.--

8 (1) Every insurer admitted to do business in this
9 state and every health maintenance organization authorized to
10 do business in this state that ~~who~~ in the previous calendar
11 year, at any time during that year, had \$10 million or more in
12 direct premiums written shall:

13 (a) Establish and maintain a unit or division within
14 the company to investigate possible fraudulent claims by
15 insureds, subscribers, or ~~by~~ persons making claims for
16 services or repairs against policies held by insureds or
17 subscribers; or

18 (b) Contract with others to investigate possible
19 fraudulent claims for services or repairs against policies
20 held by insureds or subscribers.

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22 An insurer subject to this subsection shall file with the
23 Division of Insurance Fraud of the department on or before
24 July 1, 1996, a detailed description of the unit or division
25 established pursuant to paragraph (a) or a copy of the
26 contract and related documents required by paragraph (b). A
27 health maintenance organization subject to this subsection
28 shall file with the Division of Insurance Fraud of the
29 department on or before July 1, 1998, a detailed description
30 of the unit or division established under paragraph (a) or a
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1 copy of the contract and related documents required by
2 paragraph (b).

3 (2)(a) Each ~~Every~~ insurer admitted to do business in
4 this state, which in the previous calendar year, at any time
5 during that year, had less than \$10 million in direct premiums
6 written, must adopt an anti-fraud plan and file it with the
7 Division of Insurance Fraud of the department on or before
8 July 1, 1996. An insurer may, in lieu of adopting and filing
9 an anti-fraud plan, comply with the provisions of subsection
10 (1).

11 (b) Each health maintenance organization authorized to
12 do business in this state which in the previous calendar year,
13 at any time during that year, had less than \$10 million in
14 direct premiums written must adopt an anti-fraud plan and file
15 it with the Division of Insurance Fraud on or before July 1,
16 1998. A health maintenance organization may, in lieu of
17 adopting and filing an anti-fraud plan, comply with the
18 provisions of subsection (1).

19 (3) The ~~Each insurers~~ anti-fraud plans of each insurer
20 and each health maintenance organization must ~~shall~~ include:

21 (a) A description of the insurer's or health
22 maintenance organization's procedures for detecting and
23 investigating possible fraudulent insurance acts;

24 (b) A description of the insurer's or health
25 maintenance organization's procedures for the mandatory
26 reporting of possible fraudulent insurance acts to the
27 Division of Insurance Fraud of the department;

28 (c) A description of the insurer's or health
29 maintenance organization's plan for anti-fraud education and
30 training of its claims adjusters or other personnel; and
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1 (d) A written description or chart outlining the
2 organizational arrangement of the insurer's or health
3 maintenance organization's anti-fraud personnel who are
4 responsible for the investigation and reporting of possible
5 fraudulent insurance acts.

6 (4) Any insurer who obtains a certificate of authority
7 after July 1, 1995, and any health maintenance organization
8 that obtains a certificate of authority on or after July 1,
9 1997, shall have 18 months in which to comply with the
10 requirements of this section at the time the initial
11 application for issuance of a certificate of authority is
12 filed. Any health maintenance organization authorized to do
13 business in this state before July 1, 1997, has 12 months to
14 comply with the requirements of this section.

15 (5) For purposes of this section, the term "unit or
16 division" includes the assignment of fraud investigation to
17 employees whose principal responsibilities are the
18 investigation and disposition of claims. If an insurer or
19 health maintenance organization creates a distinct unit or
20 division, hires additional employees, or contracts with
21 another entity to fulfill the requirements of this section,
22 the additional cost incurred must be included as an
23 administrative expense for ratemaking purposes.

24 Section 3. Subsection (5) is added to section 641.30,
25 Florida Statutes, to read:

26 641.30 Construction and relationship to other laws.--

27 (5) Each health maintenance organization shall assist
28 in the prevention of fraud and comply with s. 626.9891.

29 Section 4. Section 817.234, Florida Statutes, is
30 amended to read:

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1 817.234 False and fraudulent insurance claims and
2 applications; prohibited insurance-related solicitations;
3 limitations on criminal actions.--

4 (1)(a) Any person who, with the intent to injure,
5 defraud, or deceive any insurer:

6 1. Presents or causes to be presented any written or
7 oral statement as part of, or in support of, a claim for
8 payment or other benefit pursuant to an insurance policy,
9 knowing that such statement contains any false, incomplete, or
10 misleading information concerning any fact or thing material
11 to such claim;

12 2. Prepares or makes any written or oral statement
13 that is intended to be presented to any insurer in connection
14 with, or in support of, any claim for payment or other benefit
15 pursuant to an insurance policy, knowing that such statement
16 contains any false, incomplete, or misleading information
17 concerning any fact or thing material to such claim; or

18 3. Knowingly presents, causes to be presented, or
19 prepares or makes with knowledge or belief that it will be
20 presented to any insurer, purported insurer, servicing
21 corporation, insurance broker, or insurance agent, or any
22 employee or agent thereof, any false, incomplete, or
23 misleading information or written or oral statement as part
24 of, or in support of, an application for the issuance of, or
25 the rating of, any insurance policy, or who conceals
26 information concerning any fact material to such application,
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28 is guilty of insurance fraud ~~commits a felony of the third~~
29 ~~degree,~~ punishable as provided in subsection (11)~~s. 775.082,~~
30 ~~s. 775.083, or s. 775.084.~~

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1 (b) All claims and application forms shall contain a
2 statement that is approved by the Department of Insurance that
3 clearly states in substance the following: "Any person who
4 knowingly and with intent to injure, defraud, or deceive any
5 insurer files a statement of claim or an application
6 containing any false, incomplete, or misleading information is
7 guilty of a felony of the third degree." The changes in this
8 paragraph relating to applications shall take effect on March
9 1, 1996.

10 (2) Any physician licensed under chapter 458,
11 osteopath licensed under chapter 459, chiropractor licensed
12 under chapter 460, or other practitioner licensed under the
13 laws of this state who knowingly and willfully assists,
14 conspires with, or urges any insured party to fraudulently
15 violate any of the provisions of this section or part XI of
16 chapter 627, or any person who, due to such assistance,
17 conspiracy, or urging by said physician, osteopath,
18 chiropractor, or practitioner, knowingly and willfully
19 benefits from the proceeds derived from the use of such fraud,
20 is guilty of insurance fraud ~~a felony of the third degree,~~
21 punishable as provided in subsection (11) ~~s. 775.082, s.~~
22 ~~775.083, or s. 775.084.~~ In the event that a physician,
23 osteopath, chiropractor, or practitioner is adjudicated guilty
24 of a violation of this section, the Board of Medicine as set
25 forth in chapter 458, the Board of Osteopathic Medicine as set
26 forth in chapter 459, the Board of Chiropractic as set forth
27 in chapter 460, or other appropriate licensing authority shall
28 hold an administrative hearing to consider the imposition of
29 administrative sanctions as provided by law against said
30 physician, osteopath, chiropractor, or practitioner.

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1 (3) Any attorney who knowingly and willfully assists,
2 conspires with, or urges any claimant to fraudulently violate
3 any of the provisions of this section or part XI of chapter
4 627, or any person who, due to such assistance, conspiracy, or
5 urging on such attorney's part, knowingly and willfully
6 benefits from the proceeds derived from the use of such fraud,
7 is guilty of insurance fraud ~~commits a felony of the third~~
8 ~~degree, punishable as provided in subsection (11)s. 775.082,~~
9 ~~s. 775.083, or s. 775.084.~~

10 (4) Any ~~No~~ person or governmental unit licensed under
11 chapter 395 to maintain or operate a hospital, and any no
12 administrator or employee of any such hospital, who shall
13 knowingly and willfully allow the use of the facilities of
14 said hospital by an insured party in a scheme or conspiracy to
15 fraudulently violate any of the provisions of this section or
16 part XI of chapter 627 is guilty of insurance fraud,
17 punishable as provided in subsection (11). ~~Any hospital~~
18 ~~administrator or employee who violates this subsection commits~~
19 ~~a felony of the third degree, punishable as provided in s.~~
20 ~~775.082, s. 775.083, or s. 775.084.~~ Any adjudication of guilt
21 for a violation of this subsection, or the use of business
22 practices demonstrating a pattern indicating that the spirit
23 of the law set forth in this section or part XI of chapter 627
24 is not being followed, shall be grounds for suspension or
25 revocation of the license to operate the hospital or the
26 imposition of an administrative penalty of up to \$5,000 by the
27 licensing agency, as set forth in chapter 395.

28 (5) Any insurer damaged as a result of a violation of
29 any provision of this section when there has been a criminal
30 adjudication of guilt shall have a cause of action to recover
31 compensatory damages, plus all reasonable investigation and

1 litigation expenses, including attorneys' fees, at the trial
2 and appellate courts.

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

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

15 (8) It is unlawful for any person, in his individual
16 capacity or in his capacity as a public or private employee,
17 or for any firm, corporation, partnership, or association, to
18 solicit any business in or about city receiving hospitals,
19 city and county receiving hospitals, county hospitals, justice
20 courts, or municipal courts; in any public institution; in any
21 public place; upon any public street or highway; in or about
22 private hospitals, sanitariums, or any private institution; or
23 upon private property of any character whatsoever for the
24 purpose of making motor vehicle tort claims or claims for
25 personal injury protection benefits required by s. 627.736.
26 Any person who violates the provisions of this subsection is
27 guilty of insurance solicitation, punishable as provided in
28 subsection (11)~~commits a felony of the third degree,~~
29 ~~punishable as provided in s. 775.082, s. 775.083, or s.~~
30 ~~775.084.~~

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1 (9) It is unlawful for any attorney to solicit any
2 business relating to the representation of persons injured in
3 a motor vehicle accident for the purpose of filing a motor
4 vehicle tort claim or a claim for personal injury protection
5 benefits required by s. 627.736. The solicitation by
6 advertising of any business by an attorney relating to the
7 representation of a person injured in a specific motor vehicle
8 accident is prohibited by this section. Any attorney who
9 violates the provisions of this subsection is guilty of
10 insurance solicitation, punishable as provided in subsection
11 ~~(11) commits a felony of the third degree, punishable as~~
12 ~~provided in s. 775.082, s. 775.083, or s. 775.084.~~ Whenever
13 any circuit or special grievance committee acting under the
14 jurisdiction of the Supreme Court finds probable cause to
15 believe that an attorney is guilty of a violation of this
16 section, such committee shall forward to the appropriate state
17 attorney a copy of the finding of probable cause and the
18 report being filed in the matter. This section shall not be
19 interpreted to prohibit advertising by attorneys which does
20 not entail a solicitation as described in this subsection and
21 which is permitted by the rules regulating The Florida Bar as
22 promulgated by the Florida Supreme Court.

23 (10) As used in this section, the term "insurer" means
24 any insurer, self-insurer, self-insurance fund, or other
25 similar entity or person regulated under chapter 440 or by the
26 Department of Insurance under the Florida Insurance Code.

27 (11)(a) If the property involved in a violation of
28 this section is valued at \$20,000 or less, the violation is a
29 felony of the third degree, punishable as provided in s.
30 775.082, s. 775.083, or s. 775.084.

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1 **(b) If the property involved in a violation of this**
2 **section is valued at more than \$20,000 but less than \$100,000,**
3 **the violation is a felony of the second degree, punishable as**
4 **provided in s. 775.082, s. 775.083, or s. 775.084.**

5 **(c) If the property involved in a violation of this**
6 **section is valued at \$100,000 or more, the violation is a**
7 **felony of the first degree, punishable as provided in s.**
8 **775.082, s. 775.083, or s. 775.084.**

9 **(12) As used in this section, the term:**

10 **(a) "Property" means anything of value, and includes:**

11 **1. Real property, including things growing on, affixed**
12 **to, and found in land;**

13 **2. Tangible or intangible personal property, including**
14 **currency, money, rights, privileges, interests, and claims;**
15 **and**

16 **3. Services.**

17 **(b) "Value" means:**

18 **1. The market value of the property at the time and**
19 **place of an offense or, if such cannot be satisfactorily**
20 **ascertained, the cost of replacement of the property within a**
21 **reasonable time after an offense;**

22 **2. In the case of a written instrument that does not**
23 **have a readily ascertainable market value, such as a check,**
24 **draft, or promissory note, the amount due or collectible;**

25 **3. In the case of any other instrument that creates,**
26 **releases, discharges, or otherwise affects any valuable legal**
27 **right, privilege, or obligation, the greatest amount of**
28 **economic loss that the owner of the instrument might**
29 **reasonably suffer by virtue of the loss of the instrument; and**

30 **4. In the case of a trade secret that does not have a**
31 **readily ascertainable market value, any reasonable value**

1 representing the damage to the owner, suffered by reason of
2 losing an advantage over those who do not know of or use the
3 trade secret.

4 (13)(a) If the value of property cannot be
5 ascertained, the trier of fact may find the value to be not
6 less than a certain amount; if no such minimum value can be
7 ascertained, the value is an amount less than \$100.

8 (b) Amounts of value of separate properties involved
9 in offenses committed pursuant to one scheme or course of
10 conduct, whether the offenses are from the same person or from
11 several persons, may be aggregated in determining the grade of
12 the offense.

13 (14) Notwithstanding any other provision of law, a
14 criminal proceeding under s. 817.234 may be commenced at any
15 time within 5 years after the cause of action accrues;
16 however, in a criminal proceeding under s. 817.234, the period
17 of limitation does not run during any time when the defendant
18 is continuously absent from the state or is without a
19 reasonable ascertainable place of abode or work within the
20 state, but in no case shall this extend the period of
21 limitation otherwise applicable by more than 1 year. If a
22 criminal prosecution or other proceeding is brought, or
23 intervened in, to punish, prevent, or restrain any violation
24 of the provisions of s. 817.234, the running of the period of
25 limitations prescribed by this section which is based in whole
26 or in part upon any matter complained of in any such
27 prosecution, action, or proceeding must be suspended during
28 the pendency of such prosecution, action, or proceeding and
29 for 2 years following its termination.

30 Section 5. This act shall take effect upon becoming a
31 law.

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SENATE SUMMARY

Provides certain investigators of the Division of Insurance Fraud of the Department of Insurance with misdemeanor and felony arrest powers and with the powers of deputy sheriffs. Requires health maintenance organizations to submit an anti-fraud plan to the division or create an anti-fraud special investigative unit. Requires health maintenance organizations to comply with s. 626.9891, F.S., relating to insurer anti-fraud investigative units. Establishes penalty levels, provides definitions, and prescribes time limitations for prosecution of prohibited insurance fraud and solicitations.