

By Senator Alexander

17-1054-05

1 A bill to be entitled
2 An act relating to offenses involving
3 insurance; amending s. 400.9935, F.S.;
4 providing for health care clinics to post signs
5 with information about a reward program for
6 information leading to conviction of certain
7 offenses; providing for inspections of such
8 clinics by employees of the Division of
9 Insurance Fraud; amending s. 440.105, F.S.;
10 increasing penalties for employers unlawfully
11 failing to secure workers' compensation
12 insurance when an employee is injured by or
13 dies from a work-related injury; amending s.
14 624.15, F.S.; providing criminal penalties for
15 violations of emergency rules or orders of the
16 Department of Financial Services; amending s.
17 624.155, F.S.; revising provisions that
18 authorize a civil cause of action for
19 violations of the requirement for a certificate
20 of authority to act as an insurer; amending s.
21 626.112, F.S.; providing criminal penalties for
22 transacting insurance or engaging in insurance
23 activities without a license; amending s.
24 626.901, F.S.; stating that independently
25 procured coverage constitutes an exception to
26 the prohibition on representing an unauthorized
27 entity only when transacted outside the state;
28 amending s. 626.938, F.S.; providing that
29 independently procured coverage must be
30 accomplished outside the state, must be
31 procured through an unauthorized insurer

1 licensed in some other state or country, and is
2 not available for life, health, or workers'
3 compensation insurance; amending s. 626.989,
4 F.S.; allowing insurers, agents, and other
5 licensees, their employees, and self-insured
6 entities contracting or associated with the
7 National Insurance Crime Bureau to report
8 fraudulent insurance acts; authorizing adoption
9 of rules for reporting suspected fraudulent
10 activity; amending s. 817.234, F.S.; providing
11 that it is insurance fraud for a service
12 provider to agree or intend to waive
13 deductibles; providing criminal penalties for
14 scheming to create documentation of a
15 nonexistent motor vehicle accident; amending s.
16 817.2361, F.S.; providing criminal penalties
17 for creating, marketing, or presenting any
18 false or fraudulent proof of motor vehicle
19 insurance; amending s. 817.50, F.S.; providing
20 that giving false or fictitious information to
21 a health care provider is not prima facie
22 evidence of intent to defraud when done by a
23 law enforcement officer during an
24 investigation; amending s. 817.505, F.S.;
25 providing criminal penalties for soliciting or
26 receiving compensation or receiving a split-fee
27 arrangement for acceptance or acknowledgement
28 of treatment from a health care provider or
29 health care facility; redefining the term
30 "health care provider or health care facility";
31 amending s. 843.08, F.S.; providing criminal

1 penalties for falsely personating an officer of
2 the Department of Financial Services; providing
3 severability; providing an effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

7 Section 1. Subsection (13) is added to section
8 400.9935, Florida Statutes, to read:

9 400.9935 Clinic responsibilities.--

10 (13) The clinic shall display a sign in a conspicuous
11 location within the clinic readily visible to all patients
12 indicating that, pursuant to s. 626.9892, the Department of
13 Financial Services may pay rewards of up to \$25,000 to persons
14 providing information leading to the arrest and conviction of
15 persons committing crimes investigated by the Division of
16 Insurance Fraud arising from violations of s. 440.105, s.
17 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized
18 employee of the Division of Insurance Fraud may make
19 unannounced inspections of a clinic licensed under this part
20 as necessary to determine whether the clinic is in compliance
21 with this subsection. A licensed clinic shall allow full and
22 complete access to the premises to such authorized employee of
23 the division who makes an inspection to determine compliance
24 with this subsection..

25 Section 2. Subsection (4) of section 440.105, Florida
26 Statutes, is amended to read:

27 440.105 Prohibited activities; reports; penalties;
28 limitations.--

29 (4) Unless otherwise specifically provided, whoever
30 violates any provision of this subsection commits insurance
31 fraud, punishable as provided in paragraph (f).

1 (a) It shall be unlawful for any employer to
2 knowingly:

3 1. Present or cause to be presented any false,
4 fraudulent, or misleading oral or written statement to any
5 person as evidence of compliance with s. 440.38.

6 2. Make a deduction from the pay of any employee
7 entitled to the benefits of this chapter for the purpose of
8 requiring the employee to pay any portion of premium paid by
9 the employer to a carrier or to contribute to a benefit fund
10 or department maintained by such employer for the purpose of
11 providing compensation or medical services and supplies as
12 required by this chapter.

13 3. Fail to secure ~~worker's payment of~~ compensation
14 coverage if required to do so by this chapter.

15 a. However, if an employer knowingly fails to secure
16 workers' compensation coverage for an employee when required
17 by this chapter and such employee subsequently suffers a
18 work-related injury requiring hospitalization, the employer
19 commits a felony of the second degree, punishable as provided
20 in s. 775.082, s. 775.083, or s. 775.084.

21 b. However, if an employer knowingly fails to secure
22 workers' compensation coverage for an employee when required
23 by this chapter and such employee subsequently suffers a
24 work-related death, the employer commits a felony of the first
25 degree, punishable as provided in s. 775.082, s. 775.083, or
26 s.775.084.

27 (b) It ~~is shall be~~ unlawful for any person:

28 1. To knowingly make, or cause to be made, any false,
29 fraudulent, or misleading oral or written statement for the
30 purpose of obtaining or denying any benefit or payment under
31 this chapter.

1 2. To present or cause to be presented any written or
2 oral statement as part of, or in support of, a claim for
3 payment or other benefit pursuant to any provision of this
4 chapter, knowing that such statement contains any false,
5 incomplete, or misleading information concerning any fact or
6 thing material to such claim.

7 3. To prepare or cause to be prepared any written or
8 oral statement that is intended to be presented to any
9 employer, insurance company, or self-insured program in
10 connection with, or in support of, any claim for payment or
11 other benefit pursuant to any provision of this chapter,
12 knowing that such statement contains any false, incomplete, or
13 misleading information concerning any fact or thing material
14 to such claim.

15 4. To knowingly assist, conspire with, or urge any
16 person to engage in activity prohibited by this section.

17 5. To knowingly make any false, fraudulent, or
18 misleading oral or written statement, or to knowingly omit or
19 conceal material information, required by s. 440.185 or s.
20 440.381, for the purpose of obtaining workers' compensation
21 coverage or for the purpose of avoiding, delaying, or
22 diminishing the amount of payment of any workers' compensation
23 premiums.

24 6. To knowingly misrepresent or conceal payroll,
25 classification of workers, or information regarding an
26 employer's loss history which would be material to the
27 computation and application of an experience rating
28 modification factor for the purpose of avoiding or diminishing
29 the amount of payment of any workers' compensation premiums.

30 7. To knowingly present or cause to be presented any
31 false, fraudulent, or misleading oral or written statement to

1 any person as evidence of compliance with s. 440.38, as
2 evidence of eligibility for a certificate of exemption under
3 s. 440.05.

4 8. To knowingly violate a stop-work order issued by
5 the department pursuant to s. 440.107.

6 9. To knowingly present or cause to be presented any
7 false, fraudulent, or misleading oral or written statement to
8 any person as evidence of identity for the purpose of
9 obtaining employment or filing or supporting a claim for
10 workers' compensation benefits.

11 (c) It shall be unlawful for any physician licensed
12 under chapter 458, osteopathic physician licensed under
13 chapter 459, chiropractic physician licensed under chapter
14 460, podiatric physician licensed under chapter 461,
15 optometric physician licensed under chapter 463, or any other
16 practitioner licensed under the laws of this state to
17 knowingly and willfully assist, conspire with, or urge any
18 person to fraudulently violate any of the provisions of this
19 chapter.

20 (d) It shall be unlawful for any person or
21 governmental entity licensed under chapter 395 to maintain or
22 operate a hospital in such a manner so that such person or
23 governmental entity knowingly and willfully allows the use of
24 the facilities of such hospital by any person, in a scheme or
25 conspiracy to fraudulently violate any of the provisions of
26 this chapter.

27 (e) It shall be unlawful for any attorney or other
28 person, in his or her individual capacity or in his or her
29 capacity as a public or private employee, or any firm,
30 corporation, partnership, or association, to knowingly assist,
31

1 | conspire with, or urge any person to fraudulently violate any
2 | of the provisions of this chapter.

3 | (f) If the monetary value of any violation of this
4 | subsection:

5 | 1. Is less than \$20,000, the offender commits a felony
6 | of the third degree, punishable as provided in s. 775.082, s.
7 | 775.083, or s. 775.084.

8 | 2. Is \$20,000 or more, but less than \$100,000, the
9 | offender commits a felony of the second degree, punishable as
10 | provided in s. 775.082, s. 775.083, or s. 775.084.

11 | 3. Is \$100,000 or more, the offender commits a felony
12 | of the first degree, punishable as provided in s. 775.082, s.
13 | 775.083, or s. 775.084.

14 | Section 3. Section 624.15, Florida Statutes, is
15 | amended to read:

16 | 624.15 General penalty.--

17 | (1) Each willful violation of this code or department
18 | rule as to which a greater penalty is not provided by another
19 | provision of this code or department rule or by other
20 | applicable laws of this state is a misdemeanor of the second
21 | degree and is, in addition to any prescribed applicable
22 | denial, suspension, or revocation of certificate of authority,
23 | license, or permit, punishable as provided in s. 775.082 or s.
24 | 775.083. Each instance of such violation shall be considered
25 | a separate offense.

26 | (2) Each willful violation of an emergency rule or
27 | order set forth by the department is a felony of the third
28 | degree, punishable as provided in s. 775.082, s. 775.083, or
29 | s. 775.084, in addition to any prescribed applicable denial,
30 | suspension, or revocation of a certificate of authority,
31 |

1 license, or permit. Each instance of such violation is a
2 separate offense.

3 Section 4. Subsection (2) of section 624.155, Florida
4 Statutes, is amended to read:

5 624.155 Civil remedy.--

6 (2) Any party may bring a civil action against any
7 person acting as an ~~unauthorized~~ insurer without a certificate
8 of authority if such party is damaged by a violation of s.
9 624.401 by that person ~~the unauthorized insurer~~.

10 Section 5. Subsection (9) is added to section 626.112,
11 Florida Statutes, to read:

12 626.112 License and appointment required; agents,
13 customer representatives, adjusters, insurance agencies,
14 service representatives, managing general agents.--

15 (9) Any person who transacts insurance or otherwise
16 engages in insurance activities in this state without a
17 license in violation of this section commits a felony of the
18 third degree, punishable as provided in s. 775.082, s.
19 775.083, or s. 775.084.

20 Section 6. Paragraph (d) of subsection (4) of section
21 626.901, Florida Statutes, is amended to read:

22 626.901 Representing or aiding unauthorized insurer
23 prohibited.--

24 (4) This section does not apply to:

25 (d) Independently procured coverage written pursuant
26 to s. 626.938 which is not solicited, marketed, negotiated, or
27 sold within this state.

28 Section 7. Subsections (1), (2), and (9) of section
29 626.938, Florida Statutes, are amended to read:

30 626.938 Report and tax of independently procured
31 coverages.--

1 (1) Every insured who resides in this state and
2 procures or causes to be procured or continues or renews
3 insurance from another state or country with an unauthorized
4 foreign or alien insurer legitimately licensed in that other
5 jurisdiction, or any self-insurer who resides in this state
6 and so procures or continues excess loss, catastrophe, or
7 other insurance, upon a subject of insurance resident,
8 located, or to be performed within this state, other than
9 insurance procured through a surplus lines agent pursuant to
10 the Surplus Lines Law of this state or exempted from tax under
11 s. 626.932(4), shall, within 30 days after the date such
12 insurance was so procured, continued, or renewed, file a
13 report of the same with the Florida Surplus Lines Service
14 Office in writing and upon forms designated by the Florida
15 Surplus Lines Service Office and furnished to such an insured
16 upon request, or in a computer readable format as determined
17 by the Florida Surplus Lines Service Office. The report shall
18 show the name and address of the insured or insureds, the name
19 and address of the insurer, the subject of the insurance, a
20 general description of the coverage, the amount of premium
21 currently charged therefor, and such additional pertinent
22 information as is reasonably requested by the Florida Surplus
23 Lines Service Office.

24 (2) Any insurance in an unauthorized insurer
25 legitimately licensed in another state or country procured
26 through solicitations, negotiations, or an application, ~~in~~
27 ~~whole or in part~~ occurring or made outside ~~within or from~~
28 ~~within this state, or for which premiums in whole or in part~~
29 ~~are remitted directly or indirectly from within this state,~~
30 shall be deemed to be insurance procured, continued, or
31 renewed ~~in this state~~ within the intent of subsection (1).

1 (9) This section does not authorize independent
2 procurement of workers' compensation insurance, apply as to
3 life insurance, or health insurance.

4 Section 8. Subsection (6) of section 626.989, Florida
5 Statutes, is amended to read:

6 626.989 Investigation by department or Division of
7 Insurance Fraud; compliance; immunity; confidential
8 information; reports to division; division investigator's
9 power of arrest.--

10 (6) Any person, ~~other than an insurer, agent, or other~~
11 ~~person licensed under the code, or an employee thereof,~~ having
12 knowledge or who believes that a fraudulent insurance act or
13 any other act or practice which, upon conviction, constitutes
14 a felony or a misdemeanor under the code, or under s. 817.234,
15 is being or has been committed may send to the Division of
16 Insurance Fraud a report or information pertinent to such
17 knowledge or belief and such additional information relative
18 thereto as the department may request. However, any
19 professional practitioner licensed or regulated by the
20 Department of Business and Professional Regulation, except as
21 otherwise provided by law, any medical review committee as
22 defined in s. 766.101, any private medical review committee,
23 any self-insured entity contracting or associated with the
24 National Insurance Crime Bureau, and any insurer, agent, or
25 other person licensed under the code, or an employee thereof,
26 having knowledge or who believes that a fraudulent insurance
27 act or any other act or practice which, upon conviction,
28 constitutes a felony or a misdemeanor under the code, or under
29 s. 817.234, is being or has been committed shall send to the
30 Division of Insurance Fraud a report or information pertinent
31 to such knowledge or belief and such additional information

1 relative thereto as the department may require. The Division
2 of Insurance Fraud shall review such information or reports
3 and select such information or reports as, in its judgment,
4 may require further investigation. It shall then cause an
5 independent examination of the facts surrounding such
6 information or report to be made to determine the extent, if
7 any, to which a fraudulent insurance act or any other act or
8 practice which, upon conviction, constitutes a felony or a
9 misdemeanor under the code, or under s. 817.234, is being
10 committed. The Division of Insurance Fraud shall report any
11 alleged violations of law which its investigations disclose to
12 the appropriate licensing agency and state attorney or other
13 prosecuting agency having jurisdiction with respect to any
14 such violation, as provided in s. 624.310. If prosecution by
15 the state attorney or other prosecuting agency having
16 jurisdiction with respect to such violation is not begun
17 within 60 days of the division's report, the state attorney or
18 other prosecuting agency having jurisdiction with respect to
19 such violation shall inform the division of the reasons for
20 the lack of prosecution. The division may adopt rules that set
21 forth requirements for the manner in which suspected
22 fraudulent activity shall be reported to the division through
23 the use of a standard referral form.

24 Section 9. Paragraph (a) of subsection (7) and
25 subsection (9) of section 817.234, Florida Statutes, are
26 amended to read:

27 817.234 False and fraudulent insurance claims.--

28 (7)(a) It shall constitute a material omission and
29 insurance fraud punishable as provided in subsection (11) for
30 any service ~~physician or other~~ provider, other than a
31 hospital, to engage in a general business practice of billing

1 amounts as its usual and customary charge, if such provider
2 has agreed with the insured patient or intends to waive
3 deductibles or copayments, or does not for any other reason
4 intend to collect the total amount of such charge. With
5 respect to a determination as to whether a service physician
6 ~~or other~~ provider has engaged in such general business
7 practice, consideration shall be given to evidence of whether
8 the ~~physician or other~~ provider made a good faith attempt to
9 collect such deductible or copayment. This paragraph does not
10 apply to physicians or other providers who waive deductibles
11 or copayments or reduce their bills as part of a bodily injury
12 settlement or verdict.

13 (9) A person may not organize, plan, or knowingly
14 participate in an intentional motor vehicle crash or a scheme
15 to create documentation of a motor vehicle crash that did not
16 occur for the purpose of making motor vehicle tort claims or
17 claims for personal injury protection benefits as required by
18 s. 627.736. Any person who violates this subsection commits a
19 felony of the second degree, punishable as provided in s.
20 775.082, s. 775.083, or s. 775.084. A person who is convicted
21 of a violation of this subsection shall be sentenced to a
22 minimum term of imprisonment of 2 years.

23 Section 10. Section 817.2361, Florida Statutes, is
24 amended to read:

25 817.2361 False or fraudulent proof of motor vehicle
26 insurance ~~card~~.--Any person who, with intent to deceive any
27 other person, creates, markets, or presents a false or
28 fraudulent proof of motor vehicle insurance ~~card~~ commits a
29 felony of the third degree, punishable as provided in s.
30 775.082, s. 775.083, or s. 775.084.

31

1 Section 11. Subsection (2) of section 817.50, Florida
2 Statutes, is amended to read:

3 817.50 Fraudulently obtaining goods, services, etc.,
4 from a health care provider.--

5 (2) If any person gives to any health care provider in
6 this state a false or fictitious name or a false or fictitious
7 address or assigns to any health care provider the proceeds of
8 any health maintenance contract or insurance contract, then
9 knowing that such contract is no longer in force, is invalid,
10 or is void for any reason, such action shall be prima facie
11 evidence of the intent of such person to defraud the health
12 care provider. However, this subsection does not apply to
13 investigative actions taken by law enforcement officers for
14 law enforcement purposes in the course of their official
15 duties.

16 Section 12. Subsection (1) and paragraph (a) of
17 subsection (2) of section 817.505, Florida Statutes, are
18 amended to read:

19 817.505 Patient brokering prohibited; exceptions;
20 penalties.--

21 (1) It is unlawful for any person, including any
22 health care provider or health care facility, to:

23 (a) Offer or pay any commission, bonus, rebate,
24 kickback, or bribe, directly or indirectly, in cash or in
25 kind, or engage in any split-fee arrangement, in any form
26 whatsoever, to induce the referral of patients or patronage
27 from a health care provider or health care facility;

28 (b) Solicit or receive any commission, bonus, rebate,
29 kickback, or bribe, directly or indirectly, in cash or in
30 kind, or engage in any split-fee arrangement, in any form
31

1 whatsoever, in return for referring patients or patronage to a
2 health care provider or health care facility; ~~or~~

3 (c) Solicit or receive any commission, bonus, rebate,
4 kickback, or bribe, directly or indirectly, in cash or in
5 kind, or engage in any split-fee arrangement, in any form
6 whatsoever, in return for the acceptance or acknowledgement of
7 treatment from a health care provider or health care facility;
8 or

9 ~~(d)(e)~~ Aid, abet, advise, or otherwise participate in
10 the conduct prohibited under paragraph (a), ~~or~~ paragraph (b),
11 or paragraph (c).

12 (2) For the purposes of this section, the term:

13 (a) "Health care provider or health care facility"
14 means any person or entity licensed, certified, or registered;
15 required to be licensed, certified, or registered; or lawfully
16 exempt from licensure, certification, or registration with the
17 Agency for Health Care Administration; any person or entity
18 that has contracted with the Agency for Health Care
19 Administration to provide goods or services to Medicaid
20 recipients as provided under s. 409.907; a county health
21 department established under part I of chapter 154; any
22 community service provider contracting with the Department of
23 Children and Family Services to furnish alcohol, drug abuse,
24 or mental health services under part IV of chapter 394; any
25 substance abuse service provider licensed under chapter 397;
26 or any federally supported primary care program such as a
27 migrant or community health center authorized under ss. 329
28 and 330 of the United States Public Health Services Act.

29 Section 13. Section 843.08, Florida Statutes, is
30 amended to read:
31

1 843.08 Falsely personating officer, etc.--A person who
2 falsely assumes or pretends to be a sheriff, officer of the
3 Florida Highway Patrol, officer of the Fish and Wildlife
4 Conservation Commission, officer of the Department of
5 Environmental Protection, officer of the Department of
6 Transportation, officer of the Department of Corrections,
7 officer of the Department of Financial Services, correctional
8 probation officer, deputy sheriff, state attorney or assistant
9 state attorney, statewide prosecutor or assistant statewide
10 prosecutor, state attorney investigator, coroner, police
11 officer, lottery special agent or lottery investigator,
12 beverage enforcement agent, or watchman, or any member of the
13 Parole Commission and any administrative aide or supervisor
14 employed by the commission, or any personnel or representative
15 of the Department of Law Enforcement, and takes upon himself
16 or herself to act as such, or to require any other person to
17 aid or assist him or her in a matter pertaining to the duty of
18 any such officer, commits a felony of the third degree,
19 punishable as provided in s. 775.082, s. 775.083, or s.
20 775.084; however, a person who falsely personates any such
21 officer during the course of the commission of a felony
22 commits a felony of the second degree, punishable as provided
23 in s. 775.082, s. 775.083, or s. 775.084; except that if the
24 commission of the felony results in the death or personal
25 injury of another human being, the person commits a felony of
26 the first degree, punishable as provided in s. 775.082, s.
27 775.083, or s. 775.084.

28 Section 14. If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 invalidity does not affect other provisions or applications of
31 the act which can be given effect without the invalid

