

By the Committee on Banking and Insurance; and Senator
Alexander

597-1950-05

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

1 entity only when transacted outside the state;
2 amending s. 626.918, F.S.; providing that
3 certain letters of credit issued or confirmed
4 by a qualified United States financial
5 institution may be used to fund a trust
6 established and maintained by an alien insurer
7 for the protection of policyholders in the
8 United States; defining the term "qualified
9 United States financial institution"; amending
10 s. 626.938, F.S.; providing that independently
11 procured coverage must be accomplished outside
12 the state, must be procured through an
13 unauthorized insurer licensed in some other
14 state or country, and is not available for
15 life, health, or workers' compensation
16 insurance; amending s. 626.989, F.S.; allowing
17 insurers, agents, and other licensees, their
18 employees, and self-insured entities
19 contracting or associated with the National
20 Insurance Crime Bureau to report fraudulent
21 insurance acts; authorizing adoption of rules
22 for reporting suspected fraudulent activity;
23 amending s. 817.234, F.S.; providing that it is
24 insurance fraud for a service provider to agree
25 or intend to waive deductibles; providing
26 criminal penalties for scheming to create
27 documentation of a nonexistent motor vehicle
28 accident; amending s. 817.2361, F.S.; providing
29 criminal penalties for creating, marketing, or
30 presenting any false or fraudulent proof of
31 motor vehicle insurance; amending s. 817.50,

1 F.S.; providing that giving false or fictitious
2 information to a health care provider is not
3 prima facie evidence of intent to defraud when
4 done by a law enforcement officer during an
5 investigation; amending s. 817.505, F.S.;
6 providing criminal penalties for soliciting or
7 receiving compensation or receiving a split-fee
8 arrangement for acceptance or acknowledgement
9 of treatment from a health care provider or
10 health care facility; redefining the term
11 "health care provider or health care facility";
12 amending s. 843.08, F.S.; providing criminal
13 penalties for falsely personating an officer of
14 the Department of Financial Services; providing
15 severability; providing an effective date.

16

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

18

19 Section 1. Paragraph (h) is added to subsection (1) of
20 section 400.9935, Florida Statutes, and subsection (13) is
21 added to that section, to read:

22

400.9935 Clinic responsibilities.--

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(1) Each clinic shall appoint a medical director or
24 clinic director who shall agree in writing to accept legal
25 responsibility for the following activities on behalf of the
26 clinic. The medical director or the clinic director shall:

27

(h) Not engage in the referral of patients to the
28 clinic if the clinic performs magnetic resonance imaging,
29 static radiographs, computed tomography, or positron emission
30 tomography. Referral of patients means the referral of one or
31 more patients of the medical or clinic director or a member of

1 the medical or clinic director's group practice to the clinic
2 for magnetic resonance imaging, static radiographs, computed
3 tomography, or positron emission tomography. A medical or
4 clinic director who is found to violate this part commits a
5 felony of the third degree, punishable as provided in s.
6 775.082, s. 775.083, or s. 775.084.

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

22 Section 2. Subsections (2) and (4) of section 440.105,
23 Florida Statutes, are amended to read:

24 440.105 Prohibited activities; reports; penalties;
25 limitations.--

26 (2) Whoever violates any provision of this subsection
27 commits a misdemeanor of the first degree, punishable as
28 provided in s. 775.082 or s. 775.083.

29 (a) It shall be unlawful for any employer to
30 knowingly:

31

1 1. Coerce or attempt to coerce, as a precondition to
2 employment or otherwise, an employee to obtain a certificate
3 of election of exemption pursuant to s. 440.05.

4 2. Discharge or refuse to hire an employee or job
5 applicant because the employee or applicant has filed a claim
6 for benefits under this chapter.

7 3. Discharge, discipline, or take any other adverse
8 personnel action against any employee for disclosing
9 information to the department or any law enforcement agency
10 relating to any violation or suspected violation of any of the
11 provisions of this chapter or rules promulgated hereunder.

12 ~~4. Violate a stop work order issued by the department~~
13 ~~pursuant to s. 440.107.~~

14 (b) It shall be unlawful for any insurance entity to
15 revoke or cancel a workers' compensation insurance policy or
16 membership because an employer has returned an employee to
17 work or hired an employee who has filed a workers'
18 compensation claim.

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

22 (a) It shall be unlawful for any employer to
23 knowingly:

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

27 2. Make a deduction from the pay of any employee
28 entitled to the benefits of this chapter for the purpose of
29 requiring the employee to pay any portion of premium paid by
30 the employer to a carrier or to contribute to a benefit fund
31 or department maintained by such employer for the purpose of

1 providing compensation or medical services and supplies as
2 required by this chapter.

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

5 a. However, if an employer knowingly fails to secure
6 workers' compensation coverage for an employee when required
7 by this chapter and such employee subsequently suffers a
8 work-related injury requiring medical treatment, the employer
9 commits a felony of the second degree, punishable as provided
10 in s. 775.082, s. 775.083, or s. 775.084.

11 b. However, if an employer knowingly fails to secure
12 workers' compensation coverage for an employee when required
13 by this chapter and such employee subsequently suffers a
14 work-related death, the employer commits a felony of the first
15 degree, punishable as provided in s. 775.082, s. 775.083, or
16 s.775.084.

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

18 1. To knowingly make, or cause to be made, any false,
19 fraudulent, or misleading oral or written statement for the
20 purpose of obtaining or denying any benefit or payment under
21 this chapter.

22 2. To present or cause to be presented any written or
23 oral statement as part of, or in support of, a claim for
24 payment or other benefit pursuant to any provision of this
25 chapter, knowing that such statement contains any false,
26 incomplete, or misleading information concerning any fact or
27 thing material to such claim.

28 3. To prepare or cause to be prepared any written or
29 oral statement that is intended to be presented to any
30 employer, insurance company, or self-insured program in
31 connection with, or in support of, any claim for payment or

1 other benefit pursuant to any provision of this chapter,
2 knowing that such statement contains any false, incomplete, or
3 misleading information concerning any fact or thing material
4 to such claim.

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

7 5. To knowingly make any false, fraudulent, or
8 misleading oral or written statement, or to knowingly omit or
9 conceal material information, required by s. 440.185 or s.
10 440.381, for the purpose of obtaining workers' compensation
11 coverage or for the purpose of avoiding, delaying, or
12 diminishing the amount of payment of any workers' compensation
13 premiums.

14 6. To knowingly misrepresent or conceal payroll,
15 classification of workers, or information regarding an
16 employer's loss history which would be material to the
17 computation and application of an experience rating
18 modification factor for the purpose of avoiding or diminishing
19 the amount of payment of any workers' compensation premiums.

20 7. To knowingly present or cause to be presented any
21 false, fraudulent, or misleading oral or written statement to
22 any person as evidence of compliance with s. 440.38, as
23 evidence of eligibility for a certificate of exemption under
24 s. 440.05.

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

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

1 (c) It shall be unlawful for any physician licensed
2 under chapter 458, osteopathic physician licensed under
3 chapter 459, chiropractic physician licensed under chapter
4 460, podiatric physician licensed under chapter 461,
5 optometric physician licensed under chapter 463, or any other
6 practitioner licensed under the laws of this state to
7 knowingly and willfully assist, conspire with, or urge any
8 person to fraudulently violate any of the provisions of this
9 chapter.

10 (d) It shall be unlawful for any person or
11 governmental entity licensed under chapter 395 to maintain or
12 operate a hospital in such a manner so that such person or
13 governmental entity knowingly and willfully allows the use of
14 the facilities of such hospital by any person, in a scheme or
15 conspiracy to fraudulently violate any of the provisions of
16 this chapter.

17 (e) It shall be unlawful for any attorney or other
18 person, in his or her individual capacity or in his or her
19 capacity as a public or private employee, or any firm,
20 corporation, partnership, or association, to knowingly assist,
21 conspire with, or urge any person to fraudulently violate any
22 of the provisions of this chapter.

23 (f) If the monetary value of any violation of this
24 subsection:

25 1. Is less than \$20,000, the offender commits a felony
26 of the third degree, punishable as provided in s. 775.082, s.
27 775.083, or s. 775.084.

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

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

4 Section 3. Section 624.15, Florida Statutes, is
5 amended to read:

6 624.15 General penalty.--

7 (1) Each willful violation of this code or rule of the
8 department or office as to which a greater penalty is not
9 provided by another provision of this code or rule of the
10 department or office or by other applicable laws of this state
11 is a misdemeanor of the second degree and is, in addition to
12 any prescribed applicable denial, suspension, or revocation of
13 certificate of authority, license, or permit, punishable as
14 provided in s. 775.082 or s. 775.083. Each instance of such
15 violation shall be considered a separate offense.

16 (2) Each willful violation of an emergency rule or
17 order set forth by the department is a felony of the third
18 degree, punishable as provided in s. 775.082, s. 775.083, or
19 s. 775.084, in addition to any prescribed applicable denial,
20 suspension, or revocation of a certificate of authority,
21 license, or permit. Each instance of such violation is a
22 separate offense.

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

25 624.155 Civil remedy.--

26 (2) Any party may bring a civil action against any
27 person acting as an ~~unauthorized~~ insurer without a certificate
28 of authority if such party is damaged by a violation of s.
29 624.401 by that person ~~the unauthorized insurer~~.

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

1 626.112 License and appointment required; agents,
2 customer representatives, adjusters, insurance agencies,
3 service representatives, managing general agents.--

4 (9) Any person who transacts insurance or otherwise
5 engages in insurance activities in this state without a
6 license in violation of this section commits a felony of the
7 third degree, punishable as provided in s. 775.082, s.
8 775.083, or s. 775.084.

9 Section 6. Paragraph (d) of subsection (4) of section
10 626.901, Florida Statutes, is amended to read:

11 626.901 Representing or aiding unauthorized insurer
12 prohibited.--

13 (4) This section does not apply to:

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

17 Section 7. Section 626.918, Florida Statutes, is
18 amended to read:

19 626.918 Eligible surplus lines insurers.--

20 (1) A ~~No~~ surplus lines agent may not shall place any
21 coverage with any unauthorized insurer which is not then an
22 eligible surplus lines insurer, except as permitted under
23 subsections ~~(6)(5)~~ and ~~(7)(6)~~.

24 (2) An ~~No~~ unauthorized insurer may not shall be or
25 become an eligible surplus lines insurer unless made eligible
26 by the office in accordance with the following conditions:

27 (a) Eligibility of the insurer must be requested in
28 writing by the Florida Surplus Lines Service Office;

29 (b) The insurer must be currently an authorized
30 insurer in the state or country of its domicile as to the kind
31 or kinds of insurance proposed to be so placed and must have

1 | been such an insurer for not less than the 3 years next
2 | preceding or must be the wholly owned subsidiary of such
3 | authorized insurer or must be the wholly owned subsidiary of
4 | an already eligible surplus lines insurer as to the kind or
5 | kinds of insurance proposed for a period of not less than the
6 | 3 years next preceding. However, the office may waive the
7 | 3-year requirement if the insurer provides a product or
8 | service not readily available to the consumers of this state
9 | or has operated successfully for a period of at least 1 year
10 | next preceding and has capital and surplus of not less than
11 | \$25 million;

12 | (c) Before granting eligibility, the requesting
13 | surplus lines agent or the insurer shall furnish the office
14 | with a duly authenticated copy of its current annual financial
15 | statement in the English language and with all monetary values
16 | therein expressed in United States dollars, at an exchange
17 | rate (in the case of statements originally made in the
18 | currencies of other countries) then-current and shown in the
19 | statement, and with such additional information relative to
20 | the insurer as the office may request;

21 | (d)1. The insurer must have and maintain surplus as to
22 | policyholders of not less than \$15 million; in addition, an
23 | alien insurer must also have and maintain in the United States
24 | a trust fund for the protection of all its policyholders in
25 | the United States under terms deemed by the office to be
26 | reasonably adequate, in an amount not less than \$5.4 million.
27 | Any such surplus as to policyholders or trust fund shall be
28 | represented by investments consisting of eligible investments
29 | for like funds of like domestic insurers under part II of
30 | chapter 625 provided, however, that in the case of an alien
31 | insurance company, any such surplus as to policyholders may be

1 represented by investments permitted by the domestic regulator
2 of such alien insurance company if such investments are
3 substantially similar in terms of quality, liquidity, and
4 security to eligible investments for like funds of like
5 domestic insurers under part II of chapter 625. Clean,
6 irrevocable, unconditional, and evergreen letters of credit
7 issued or confirmed by a qualified United States financial
8 institution, as defined in subsection (3), may be used to fund
9 the trust;

10 2. For those surplus lines insurers that were eligible
11 on January 1, 1994, and that maintained their eligibility
12 thereafter, the required surplus as to policyholders shall be:

13 a. On December 31, 1994, and until December 30, 1995,
14 \$2.5 million.

15 b. On December 31, 1995, and until December 30, 1996,
16 \$3.5 million.

17 c. On December 31, 1996, and until December 30, 1997,
18 \$4.5 million.

19 d. On December 31, 1997, and until December 30, 1998,
20 \$5.5 million.

21 e. On December 31, 1998, and until December 30, 1999,
22 \$6.5 million.

23 f. On December 31, 1999, and until December 30, 2000,
24 \$8 million.

25 g. On December 31, 2000, and until December 30, 2001,
26 \$9.5 million.

27 h. On December 31, 2001, and until December 30, 2002,
28 \$11 million.

29 i. On December 31, 2002, and until December 30, 2003,
30 \$13 million.

31 j. On December 31, 2003, and thereafter, \$15 million.

1 3. The capital and surplus requirements as set forth
2 in subparagraph 2. do not apply in the case of an insurance
3 exchange created by the laws of individual states, where the
4 exchange maintains capital and surplus pursuant to the
5 requirements of that state, or maintains capital and surplus
6 in an amount not less than \$50 million in the aggregate. For
7 an insurance exchange which maintains funds in the amount of
8 at least \$12 million for the protection of all insurance
9 exchange policyholders, each individual syndicate shall
10 maintain minimum capital and surplus in an amount not less
11 than \$3 million. If the insurance exchange does not maintain
12 funds in the amount of at least \$12 million for the protection
13 of all insurance exchange policyholders, each individual
14 syndicate shall meet the minimum capital and surplus
15 requirements set forth in subparagraph 2.;

16 4. A surplus lines insurer which is a member of an
17 insurance holding company that includes a member which is a
18 Florida domestic insurer as set forth in its holding company
19 registration statement, as set forth in s. 628.801 and rules
20 adopted thereunder, may elect to maintain surplus as to
21 policyholders in an amount equal to the requirements of s.
22 624.408, subject to the requirement that the surplus lines
23 insurer shall at all times be in compliance with the
24 requirements of chapter 625.

25
26 The election shall be submitted to the office and shall be
27 effective upon the office's being satisfied that the
28 requirements of subparagraph 4. have been met. The initial
29 date of election shall be the date of office approval. The
30 election approval application shall be on a form adopted by
31 commission rule. The office may approve an election form

1 submitted pursuant to subparagraph 4. only if it was on file
2 with the former Department of Insurance before February 28,
3 1998;

4 (e) The insurer must be of good reputation as to the
5 providing of service to its policyholders and the payment of
6 losses and claims;

7 (f) The insurer must be eligible, as for authority to
8 transact insurance in this state, under s. 624.404(3); and

9 (g) This subsection does not apply as to unauthorized
10 insurers made eligible under s. 626.917 as to wet marine and
11 aviation risks.

12 (3) For purposes of subsection (2) regarding letters
13 of credit, "qualified United States financial institution"
14 means an institution that:

15 (a) Is organized or, in the case of a United States
16 office of a foreign banking organization, is licensed under
17 the laws of the United States or any state thereof;

18 (b) Is regulated, supervised, and examined by United
19 States or state authorities having regulatory authority over
20 banks and trust companies; and

21 (c) Has been determined by the office or the
22 Securities Valuation Office of the National Association of
23 Insurance Commissioners to meet such standards of financial
24 condition and standing as are considered necessary and
25 appropriate to regulate the quality of financial institutions
26 whose letters of credit are acceptable to the office.

27 ~~(4)(3)~~ The office shall from time to time publish a
28 list of all currently eligible surplus lines insurers and
29 shall mail a copy thereof to each licensed surplus lines agent
30 at his or her office of record with the office.
31

1 ~~(5)~~(4) This section shall not be deemed to cast upon
2 the office any duty or responsibility to determine the actual
3 financial condition or claims practices of any unauthorized
4 insurer; and the status of eligibility, if granted by the
5 office, shall indicate only that the insurer appears to be
6 sound financially and to have satisfactory claims practices
7 and that the office has no credible evidence to the contrary.

8 ~~(6)~~(5) When it appears that any particular insurance
9 risk which is eligible for export, but on which insurance
10 coverage, in whole or in part, is not procurable from the
11 eligible surplus lines insurers, after a search of eligible
12 surplus lines insurers, then the surplus lines agent may file
13 a supplemental signed statement setting forth such facts and
14 advising the office that such part of the risk as shall be
15 unprocurable, as aforesaid, is being placed with named
16 unauthorized insurers, in the amounts and percentages set
17 forth in the statement. Such named unauthorized insurer
18 shall, however, before accepting any risk in this state,
19 deposit with the department cash or securities acceptable to
20 the office and department of the market value of \$50,000 for
21 each individual risk, contract, or certificate, which deposit
22 shall be held by the department for the benefit of Florida
23 policyholders only; and the surplus lines agent shall procure
24 from such unauthorized insurer and file with the office a
25 certified copy of its statement of condition as of the close
26 of the last calendar year. If such statement reveals,
27 including both capital and surplus, net assets of at least
28 that amount required for licensure of a domestic insurer, then
29 the surplus lines agent may proceed to consummate such
30 contract of insurance. Whenever any insurance risk, or any
31 part thereof, is placed with an unauthorized insurer, as

1 provided herein, the policy, binder, or cover note shall
2 contain a statement signed by the insured and the agent with
3 the following notation: "The insured is aware that certain
4 insurers participating in this risk have not been approved to
5 transact business in Florida nor have they been declared
6 eligible as surplus lines insurers by the Office of Insurance
7 Regulation of Florida. The placing of such insurance by a duly
8 licensed surplus lines agent in Florida shall not be construed
9 as approval of such insurer by the Office of Insurance
10 Regulation of Florida. Consequently, the insured is aware that
11 the insured has severely limited the assistance available
12 under the insurance laws of Florida. The insured is further
13 aware that he or she may be charged a reasonable per policy
14 fee, as provided in s. 626.916(4), Florida Statutes, for each
15 policy certified for export." All other provisions of this
16 code shall apply to such placement the same as if such risks
17 were placed with an eligible surplus lines insurer.

18 ~~(7)(6)~~ When any particular insurance risk subject to
19 subsection~~(6)(5)~~ is eligible for placement with an
20 unauthorized insurer and not more than 12.5 percent of the
21 risk is so subject, the office may, at its discretion, permit
22 the agent to obtain from the insured a signed statement as
23 indicated in subsection~~(6)(5)~~. All other provisions of this
24 code apply to such placement the same as if such risks were
25 placed with an eligible surplus lines insurer.

26 Section 8. Subsections (1), (2), and (9) of section
27 626.938, Florida Statutes, are amended to read:

28 626.938 Report and tax of independently procured
29 coverages.--

30 (1) Every insured who resides in this state and
31 procures or causes to be procured or continues or renews

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

22 | (2) Any insurance in an unauthorized insurer
23 | legitimately licensed in another state or country procured
24 | through solicitations, negotiations, or an application, ~~in~~
25 | ~~whole or in part~~ occurring or made outside ~~within or from~~
26 | ~~within~~ this state, ~~or for which premiums in whole or in part~~
27 | ~~are remitted directly or indirectly from within this state,~~
28 | shall be deemed to be insurance procured, continued, or
29 | 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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

1 provision or application, and to this end the provisions of
2 this act are declared severable.

3 Section 16. This act shall take effect July 1, 2005.

4
5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 2330

8 Provides that it is a third degree felony for a medical or
9 clinic director to refer patients to a clinic for specified
10 services.

11 Allows alien surplus lines insurers to use irrevocable,
12 unconditional, and evergreen letters of credit issued by a
13 qualified U.S. financial institution to be used to fund the
14 \$5.4 million trust fund which serves to protect all
15 policyholders.

16 Provides that it is a second degree misdemeanor for a person
17 to willfully violate a rule of the Office of Insurance
18 Regulation.

19 Deletes a conflicting criminal penalty under the workers'
20 compensation law that makes a violation of a stop-work order
21 issued by the Department of Financial Services a first-degree
22 misdemeanor because such violation is presently a third-degree
23 felony.

24 Deletes the term "hospitalization" and inserts "medical
25 treatment" to provide that it is a second degree felony for an
26 employer to fail to secure workers' compensation insurance for
27 an employee and such employee subsequently suffers a
28 work-related injury requiring "medical treatment."
29
30
31