

By the Committees on Criminal Justice; Banking and Insurance;
and Senator Alexander

591-2299-05

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 deleting provisions relating to a prohibition
19 against employers participating in creation of
20 employment relationships based on false,
21 fraudulent, or misleading information; deleting
22 provisions relating to presentation of false,
23 fraudulent, or misleading information to obtain
24 employment or workers' compensation benefits;
25 amending s. 448.09, F.S.; prohibiting
26 presentation of certain false, fraudulent, or
27 misleading information for the purpose of
28 obtaining employment; providing penalties;
29 revising penalties for unauthorized employment
30 of aliens; amending s. 624.15, F.S.; providing
31 criminal penalties for violations of emergency

1 rules or orders of the Department of Financial
2 Services, Office of Insurance Regulation, or
3 the Financial Services Commission; amending s.
4 624.155, F.S.; revising provisions that
5 authorize a civil cause of action for
6 violations of the requirement for a certificate
7 of authority to act as an insurer; amending s.
8 626.112, F.S.; providing criminal penalties for
9 transacting insurance or engaging in insurance
10 activities without a license; amending s.
11 626.901, F.S.; stating that independently
12 procured coverage constitutes an exception to
13 the prohibition on representing an unauthorized
14 entity only when transacted outside the state;
15 amending s. 626.918, F.S.; providing that
16 certain letters of credit issued or confirmed
17 by a qualified United States financial
18 institution may be used to fund a trust
19 established and maintained by an alien insurer
20 for the protection of policyholders in the
21 United States; defining the term "qualified
22 United States financial institution"; amending
23 s. 626.938, F.S.; providing that independently
24 procured coverage must be accomplished outside
25 the state, must be procured through an
26 unauthorized insurer licensed in some other
27 state or country, and is not available for
28 life, health, or workers' compensation
29 insurance; amending s. 626.989, F.S.; allowing
30 insurers, agents, and other licensees, their
31 employees, and self-insured entities

1 contracting or associated with the National
2 Insurance Crime Bureau to report fraudulent
3 insurance acts; authorizing adoption of rules
4 for reporting suspected fraudulent activity;
5 amending s. 817.234, F.S.; providing that it is
6 insurance fraud for a service provider to agree
7 or intend to waive deductibles; providing
8 criminal penalties for scheming to create
9 documentation of a nonexistent motor vehicle
10 accident; amending s. 817.2361, F.S.; providing
11 criminal penalties for creating, marketing, or
12 presenting any false or fraudulent proof of
13 motor vehicle insurance; amending s. 817.50,
14 F.S.; providing that giving false or fictitious
15 information to a health care provider is not
16 prima facie evidence of intent to defraud when
17 done by a law enforcement officer during an
18 investigation; amending s. 817.505, F.S.;
19 providing criminal penalties for soliciting or
20 receiving compensation or receiving a split-fee
21 arrangement for acceptance or acknowledgement
22 of treatment from a health care provider or
23 health care facility; redefining the term
24 "health care provider or health care facility";
25 amending s. 843.08, F.S.; providing criminal
26 penalties for falsely personating an officer of
27 the Department of Financial Services; creating
28 s. 626.9893, F.S.; authorizing the Division of
29 Insurance Fraud of the Department of Financial
30 Services to deposit proceeds from dispositions
31 of liens and forfeited property seized by the

1 division into the Insurance Regulatory Trust
2 Fund; providing that balances of moneys
3 deposited by the division into the Insurance
4 Regulatory Trust Fund remain in the fund for
5 use by the division; amending s. 932.7055,
6 F.S.; providing that the unappropriated balance
7 of moneys deposited by the division shall not
8 be transferred to the General Revenue Fund;
9 providing severability; providing an effective
10 date.

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

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14 Section 1. Paragraph (h) is added to subsection (1) of
15 section 400.9935, Florida Statutes, and subsection (13) is
16 added to that section, to read:

17 400.9935 Clinic responsibilities.--

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

22 (h) Not engage in the referral of patients to the
23 clinic if the clinic performs magnetic resonance imaging,
24 static radiographs, computed tomography, or positron emission
25 tomography. Referral of patients means the referral of one or
26 more patients of the medical or clinic director or a member of
27 the medical or clinic director's group practice to the clinic
28 for magnetic resonance imaging, static radiographs, computed
29 tomography, or positron emission tomography. A medical or
30 clinic director who is found to violate this part commits a

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1 felony of the third degree, punishable as provided in s.
2 775.082, s. 775.083, or s. 775.084.

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

18 Section 2. Subsections (2), (3), and (4) of section
19 440.105, Florida Statutes, are amended to read:

20 440.105 Prohibited activities; reports; penalties;
21 limitations.--

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

25 (a) It shall be unlawful for any employer to
26 knowingly:

27 1. Coerce or attempt to coerce, as a precondition to
28 employment or otherwise, an employee to obtain a certificate
29 of election of exemption pursuant to s. 440.05.
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1 2. Discharge or refuse to hire an employee or job
2 applicant because the employee or applicant has filed a claim
3 for benefits under this chapter.

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

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

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

16 (3) Whoever violates any provision of this subsection
17 commits a misdemeanor of the first degree, punishable as
18 provided in s. 775.082 or s. 775.083.

19 (a) It shall be unlawful for any employer to knowingly
20 fail to update applications for coverage as required by s.
21 440.381(1) and department rules within 7 days after the
22 reporting date for any change in the required information, or
23 to post notice of coverage pursuant to s. 440.40.

24 ~~(b) It shall be unlawful for any employer to knowingly~~
25 ~~participate in the creation of the employment relationship in~~
26 ~~which the employee has used any false, fraudulent, or~~
27 ~~misleading oral or written statement as evidence of identity.~~

28 **(b)(c)** It is unlawful for any attorney or other
29 person, in his or her individual capacity or in his or her
30 capacity as a public or private employee, or for any firm,
31 corporation, partnership, or association to receive any fee or

1 other consideration or any gratuity from a person on account
2 of services rendered for a person in connection with any
3 proceedings arising under this chapter, unless such fee,
4 consideration, or gratuity is approved by a judge of
5 compensation claims or by the Deputy Chief Judge of
6 Compensation Claims.

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

10 (a) It shall be unlawful for any employer to
11 knowingly:

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

15 2. Make a deduction from the pay of any employee
16 entitled to the benefits of this chapter for the purpose of
17 requiring the employee to pay any portion of premium paid by
18 the employer to a carrier or to contribute to a benefit fund
19 or department maintained by such employer for the purpose of
20 providing compensation or medical services and supplies as
21 required by this chapter.

22 3. Fail to secure workers' ~~payment~~ of compensation if
23 required to do so by this chapter.

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

30 b. However, if an employer knowingly fails to secure
31 workers' compensation coverage for an employee when required

1 by this chapter and such employee subsequently suffers a
2 work-related death, the employer commits a felony of the first
3 degree, punishable as provided in s. 775.082, s. 775.083, or
4 s. 775.084.

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

6 1. To knowingly make, or cause to be made, any false,
7 fraudulent, or misleading oral or written statement for the
8 purpose of obtaining or denying any benefit or payment under
9 this chapter.

10 2. To present or cause to be presented any written or
11 oral statement as part of, or in support of, a claim for
12 payment or other benefit pursuant to any provision of this
13 chapter, knowing that such statement contains any false,
14 incomplete, or misleading information concerning any fact or
15 thing material to such claim.

16 3. To prepare or cause to be prepared any written or
17 oral statement that is intended to be presented to any
18 employer, insurance company, or self-insured program in
19 connection with, or in support of, any claim for payment or
20 other benefit pursuant to any provision of this chapter,
21 knowing that such statement contains any false, incomplete, or
22 misleading information concerning any fact or thing material
23 to such claim.

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

26 5. To knowingly make any false, fraudulent, or
27 misleading oral or written statement, or to knowingly omit or
28 conceal material information, required by s. 440.185 or s.
29 440.381, for the purpose of obtaining workers' compensation
30 coverage or for the purpose of avoiding, delaying, or
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1 diminishing the amount of payment of any workers' compensation
2 premiums.

3 6. To knowingly misrepresent or conceal payroll,
4 classification of workers, or information regarding an
5 employer's loss history which would be material to the
6 computation and application of an experience rating
7 modification factor for the purpose of avoiding or diminishing
8 the amount of payment of any workers' compensation premiums.

9 7. To knowingly present or cause to be presented any
10 false, fraudulent, or misleading oral or written statement to
11 any person as evidence of compliance with s. 440.38, as
12 evidence of eligibility for a certificate of exemption under
13 s. 440.05.

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

16 ~~9. To knowingly present or cause to be presented any~~
17 ~~false, fraudulent, or misleading oral or written statement to~~
18 ~~any person as evidence of identity for the purpose of~~
19 ~~obtaining employment or filing or supporting a claim for~~
20 ~~workers' compensation benefits.~~

21 (c) It shall be unlawful for any physician licensed
22 under chapter 458, osteopathic physician licensed under
23 chapter 459, chiropractic physician licensed under chapter
24 460, podiatric physician licensed under chapter 461,
25 optometric physician licensed under chapter 463, or any other
26 practitioner licensed under the laws of this state to
27 knowingly and willfully assist, conspire with, or urge any
28 person to fraudulently violate any of the provisions of this
29 chapter.

30 (d) It shall be unlawful for any person or
31 governmental entity licensed under chapter 395 to maintain or

1 operate a hospital in such a manner so that such person or
2 governmental entity knowingly and willfully allows the use of
3 the facilities of such hospital by any person, in a scheme or
4 conspiracy to fraudulently violate any of the provisions of
5 this chapter.

6 (e) It shall be unlawful for any attorney or other
7 person, in his or her individual capacity or in his or her
8 capacity as a public or private employee, or any firm,
9 corporation, partnership, or association, to knowingly assist,
10 conspire with, or urge any person to fraudulently violate any
11 of the provisions of this chapter.

12 (f) If the monetary value of any violation of this
13 subsection:

14 1. Is less than \$20,000, the offender commits a felony
15 of the third degree, punishable as provided in s. 775.082, s.
16 775.083, or s. 775.084.

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

20 3. Is \$100,000 or more, the offender commits a felony
21 of the first degree, punishable as provided in s. 775.082, s.
22 775.083, or s. 775.084.

23 Section 3. Section 448.09, Florida Statutes, is
24 amended to read:

25 448.09 Unauthorized aliens; employment prohibited.--

26 (1) It ~~is shall be~~ unlawful for any person knowingly
27 to employ, hire, recruit, or refer, either for herself or
28 himself or on behalf of another, for private or public
29 employment within the state, an alien who is not duly
30 authorized to work by the immigration laws or the Attorney
31 General of the United States.

1 (2) It is unlawful to knowingly present or cause to be
2 presented any false, fraudulent, or misleading oral or written
3 statements to any person as evidence of identity for the
4 purpose of obtaining employment. The first violation of
5 subsection (1) shall be a noncriminal violation as defined in
6 s. 775.08(3) and, upon conviction, shall be punishable as
7 provided in s. 775.082(5) by a civil fine of not more than
8 \$500, regardless of the number of aliens with respect to whom
9 the violation occurred.

10 (3) Any person who violates ~~has been previously~~
11 ~~convicted for a violation of subsection (1) or subsection (2)~~
12 is ~~and who thereafter violates subsection (1), shall be guilty~~
13 of a misdemeanor of the first ~~second~~ degree, punishable as
14 provided in s. 775.082 or s. 775.083. ~~Any such subsequent~~
15 ~~violation of this section shall constitute a separate offense~~
16 ~~with respect to each unauthorized alien.~~

17 Section 4. Section 624.15, Florida Statutes, is
18 amended to read:

19 624.15 General penalty.--

20 (1) Each willful violation of this code or rule of the
21 department, office, or commission as to which a greater
22 penalty is not provided by another provision of this code or
23 rule of the department, office, or commission or by other
24 applicable laws of this state is a misdemeanor of the second
25 degree and is, in addition to any prescribed applicable
26 denial, suspension, or revocation of certificate of authority,
27 license, or permit, punishable as provided in s. 775.082 or s.
28 775.083. Each instance of such violation shall be considered a
29 separate offense.

30 (2) Each willful violation of an emergency rule or
31 order set forth by the department, office, or commission is a

1 felony of the third degree, punishable as provided in s.
2 775.082, s. 775.083, or s, 775.084. Each instance of such
3 violation is a separate offense. This subsection does not
4 apply to licensees or affiliated parties of licensees.

5 Section 5. Subsection (2) of section 624.155, Florida
6 Statutes, is amended to read:

7 624.155 Civil remedy.--

8 (2) Any party may bring a civil action against any
9 person acting as an ~~unauthorized~~ insurer without a certificate
10 of authority if such party is damaged by a violation of s.
11 624.401 by that person ~~the unauthorized insurer~~.

12 Section 6. Subsection (9) is added to section 626.112,
13 Florida Statutes, to read:

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

17 (9) Any person who transacts insurance or otherwise
18 engages in insurance activities in this state without a
19 license in violation of this section commits a felony of the
20 third degree, punishable as provided in s. 775.082, s.
21 775.083, or s. 775.084.

22 Section 7. Paragraph (d) of subsection (4) of section
23 626.901, Florida Statutes, is amended to read:

24 626.901 Representing or aiding unauthorized insurer
25 prohibited.--

26 (4) This section does not apply to:

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

30 Section 8. Section 626.918, Florida Statutes, is
31 amended to read:

1 626.918 Eligible surplus lines insurers.--

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

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

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

11 (b) The insurer must be currently an authorized
12 insurer in the state or country of its domicile as to the kind
13 or kinds of insurance proposed to be so placed and must have
14 been such an insurer for not less than the 3 years next
15 preceding or must be the wholly owned subsidiary of such
16 authorized insurer or must be the wholly owned subsidiary of
17 an already eligible surplus lines insurer as to the kind or
18 kinds of insurance proposed for a period of not less than the
19 3 years next preceding. However, the office may waive the
20 3-year requirement if the insurer provides a product or
21 service not readily available to the consumers of this state
22 or has operated successfully for a period of at least 1 year
23 next preceding and has capital and surplus of not less than
24 \$25 million;

25 (c) Before granting eligibility, the requesting
26 surplus lines agent or the insurer shall furnish the office
27 with a duly authenticated copy of its current annual financial
28 statement in the English language and with all monetary values
29 therein expressed in United States dollars, at an exchange
30 rate (in the case of statements originally made in the
31 currencies of other countries) then-current and shown in the

1 statement, and with such additional information relative to
2 the insurer as the office may request;

3 (d)1. The insurer must have and maintain surplus as to
4 policyholders of not less than \$15 million; in addition, an
5 alien insurer must also have and maintain in the United States
6 a trust fund for the protection of all its policyholders in
7 the United States under terms deemed by the office to be
8 reasonably adequate, in an amount not less than \$5.4 million.
9 Any such surplus as to policyholders or trust fund shall be
10 represented by investments consisting of eligible investments
11 for like funds of like domestic insurers under part II of
12 chapter 625 provided, however, that in the case of an alien
13 insurance company, any such surplus as to policyholders may be
14 represented by investments permitted by the domestic regulator
15 of such alien insurance company if such investments are
16 substantially similar in terms of quality, liquidity, and
17 security to eligible investments for like funds of like
18 domestic insurers under part II of chapter 625. Clean,
19 irrevocable, unconditional, and evergreen letters of credit
20 issued or confirmed by a qualified United States financial
21 institution, as defined in subsection (3), may be used to fund
22 the trust;

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

26 a. On December 31, 1994, and until December 30, 1995,
27 \$2.5 million.

28 b. On December 31, 1995, and until December 30, 1996,
29 \$3.5 million.

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

1 d. On December 31, 1997, and until December 30, 1998,
2 \$5.5 million.

3 e. On December 31, 1998, and until December 30, 1999,
4 \$6.5 million.

5 f. On December 31, 1999, and until December 30, 2000,
6 \$8 million.

7 g. On December 31, 2000, and until December 30, 2001,
8 \$9.5 million.

9 h. On December 31, 2001, and until December 30, 2002,
10 \$11 million.

11 i. On December 31, 2002, and until December 30, 2003,
12 \$13 million.

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

14 3. The capital and surplus requirements as set forth
15 in subparagraph 2. do not apply in the case of an insurance
16 exchange created by the laws of individual states, where the
17 exchange maintains capital and surplus pursuant to the
18 requirements of that state, or maintains capital and surplus
19 in an amount not less than \$50 million in the aggregate. For
20 an insurance exchange which maintains funds in the amount of
21 at least \$12 million for the protection of all insurance
22 exchange policyholders, each individual syndicate shall
23 maintain minimum capital and surplus in an amount not less
24 than \$3 million. If the insurance exchange does not maintain
25 funds in the amount of at least \$12 million for the protection
26 of all insurance exchange policyholders, each individual
27 syndicate shall meet the minimum capital and surplus
28 requirements set forth in subparagraph 2.;

29 4. A surplus lines insurer which is a member of an
30 insurance holding company that includes a member which is a
31 Florida domestic insurer as set forth in its holding company

1 registration statement, as set forth in s. 628.801 and rules
2 adopted thereunder, may elect to maintain surplus as to
3 policyholders in an amount equal to the requirements of s.
4 624.408, subject to the requirement that the surplus lines
5 insurer shall at all times be in compliance with the
6 requirements of chapter 625.

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8 The election shall be submitted to the office and shall be
9 effective upon the office's being satisfied that the
10 requirements of subparagraph 4. have been met. The initial
11 date of election shall be the date of office approval. The
12 election approval application shall be on a form adopted by
13 commission rule. The office may approve an election form
14 submitted pursuant to subparagraph 4. only if it was on file
15 with the former Department of Insurance before February 28,
16 1998;

17 (e) The insurer must be of good reputation as to the
18 providing of service to its policyholders and the payment of
19 losses and claims;

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

22 (g) This subsection does not apply as to unauthorized
23 insurers made eligible under s. 626.917 as to wet marine and
24 aviation risks.

25 (3) For purposes of subsection (2) regarding letters
26 of credit, "qualified United States financial institution"
27 means an institution that:

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

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1 (b) Is regulated, supervised, and examined by United
2 States or state authorities having regulatory authority over
3 banks and trust companies; and

4 (c) Has been determined by the office or the
5 Securities Valuation Office of the National Association of
6 Insurance Commissioners to meet such standards of financial
7 condition and standing as are considered necessary and
8 appropriate to regulate the quality of financial institutions
9 whose letters of credit are acceptable to the office.

10 ~~(4)(3)~~ The office shall from time to time publish a
11 list of all currently eligible surplus lines insurers and
12 shall mail a copy thereof to each licensed surplus lines agent
13 at his or her office of record with the office.

14 ~~(5)(4)~~ This section shall not be deemed to cast upon
15 the office any duty or responsibility to determine the actual
16 financial condition or claims practices of any unauthorized
17 insurer; and the status of eligibility, if granted by the
18 office, shall indicate only that the insurer appears to be
19 sound financially and to have satisfactory claims practices
20 and that the office has no credible evidence to the contrary.

21 ~~(6)(5)~~ When it appears that any particular insurance
22 risk which is eligible for export, but on which insurance
23 coverage, in whole or in part, is not procurable from the
24 eligible surplus lines insurers, after a search of eligible
25 surplus lines insurers, then the surplus lines agent may file
26 a supplemental signed statement setting forth such facts and
27 advising the office that such part of the risk as shall be
28 unprocurable, as aforesaid, is being placed with named
29 unauthorized insurers, in the amounts and percentages set
30 forth in the statement. Such named unauthorized insurer
31 shall, however, before accepting any risk in this state,

1 deposit with the department cash or securities acceptable to
2 the office and department of the market value of \$50,000 for
3 each individual risk, contract, or certificate, which deposit
4 shall be held by the department for the benefit of Florida
5 policyholders only; and the surplus lines agent shall procure
6 from such unauthorized insurer and file with the office a
7 certified copy of its statement of condition as of the close
8 of the last calendar year. If such statement reveals,
9 including both capital and surplus, net assets of at least
10 that amount required for licensure of a domestic insurer, then
11 the surplus lines agent may proceed to consummate such
12 contract of insurance. Whenever any insurance risk, or any
13 part thereof, is placed with an unauthorized insurer, as
14 provided herein, the policy, binder, or cover note shall
15 contain a statement signed by the insured and the agent with
16 the following notation: "The insured is aware that certain
17 insurers participating in this risk have not been approved to
18 transact business in Florida nor have they been declared
19 eligible as surplus lines insurers by the Office of Insurance
20 Regulation of Florida. The placing of such insurance by a duly
21 licensed surplus lines agent in Florida shall not be construed
22 as approval of such insurer by the Office of Insurance
23 Regulation of Florida. Consequently, the insured is aware that
24 the insured has severely limited the assistance available
25 under the insurance laws of Florida. The insured is further
26 aware that he or she may be charged a reasonable per policy
27 fee, as provided in s. 626.916(4), Florida Statutes, for each
28 policy certified for export." All other provisions of this
29 code shall apply to such placement the same as if such risks
30 were placed with an eligible surplus lines insurer.

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1 ~~(7)(6)~~ When any particular insurance risk subject to
2 subsection~~(6)(5)~~ is eligible for placement with an
3 unauthorized insurer and not more than 12.5 percent of the
4 risk is so subject, the office may, at its discretion, permit
5 the agent to obtain from the insured a signed statement as
6 indicated in subsection~~(6)(5)~~. All other provisions of this
7 code apply to such placement the same as if such risks were
8 placed with an eligible surplus lines insurer.

9 Section 9. Subsections (1), (2), and (9) of section
10 626.938, Florida Statutes, are amended to read:

11 626.938 Report and tax of independently procured
12 coverages.--

13 (1) Every insured who in this state procures or causes
14 to be procured or continues or renews insurance from another
15 state or country with an unauthorized foreign or alien insurer
16 legitimately licensed in that jurisdiction, or any
17 self-insurer who in this state so procures or continues excess
18 loss, catastrophe, or other insurance, upon a subject of
19 insurance resident, located, or to be performed within this
20 state, other than insurance procured through a surplus lines
21 agent pursuant to the Surplus Lines Law of this state or
22 exempted from tax under s. 626.932(4), shall, within 30 days
23 after the date such insurance was so procured, continued, or
24 renewed, file a report of the same with the Florida Surplus
25 Lines Service Office in writing and upon forms designated by
26 the Florida Surplus Lines Service Office and furnished to such
27 an insured upon request, or in a computer readable format as
28 determined by the Florida Surplus Lines Service Office. The
29 report shall show the name and address of the insured or
30 insureds, the name and address of the insurer, the subject of
31 the insurance, a general description of the coverage, the

1 amount of premium currently charged therefor, and such
2 additional pertinent information as is reasonably requested by
3 the Florida Surplus Lines Service Office.

4 (2) Any insurance on a risk located in this state in
5 an unauthorized insurer legitimately licensed in another state
6 or country procured through solicitations, negotiations, or an
7 application, ~~in whole or in part~~ occurring or made outside
8 ~~within or from within~~ this state, or for which premiums in
9 ~~whole or in part are remitted directly or indirectly from~~
10 ~~within this state~~, shall be deemed to be insurance procured,
11 continued, or renewed ~~in this state~~ within the intent of
12 subsection (1).

13 (9) This section does not authorize independent
14 procurement of workers' compensation insurance, ~~apply as to~~
15 life insurance, or health insurance.

16 Section 10. Subsection (6) of section 626.989, Florida
17 Statutes, is amended to read:

18 626.989 Investigation by department or Division of
19 Insurance Fraud; compliance; immunity; confidential
20 information; reports to division; division investigator's
21 power of arrest.--

22 (6) Any person, ~~other than an insurer, agent, or other~~
23 ~~person licensed under the code, or an employee thereof~~, having
24 knowledge or who believes that a fraudulent insurance act or
25 any other act or practice which, upon conviction, constitutes
26 a felony or a misdemeanor under the code, or under s. 817.234,
27 is being or has been committed may send to the Division of
28 Insurance Fraud a report or information pertinent to such
29 knowledge or belief and such additional information relative
30 thereto as the department may request. However, any
31 professional practitioner licensed or regulated by the

1 Department of Business and Professional Regulation, except as
2 otherwise provided by law, any medical review committee as
3 defined in s. 766.101, any private medical review committee,
4 any self-insured entity contracting or associated with the
5 National Insurance Crime Bureau, and any insurer, agent, or
6 other person licensed under the code, or an employee thereof,
7 having knowledge or who believes that a fraudulent insurance
8 act or any other act or practice which, upon conviction,
9 constitutes a felony or a misdemeanor under the code, or under
10 s. 817.234, is being or has been committed shall send to the
11 Division of Insurance Fraud a report or information pertinent
12 to such knowledge or belief and such additional information
13 relative thereto as the department may require. The Division
14 of Insurance Fraud shall review such information or reports
15 and select such information or reports as, in its judgment,
16 may require further investigation. It shall then cause an
17 independent examination of the facts surrounding such
18 information or report to be made to determine the extent, if
19 any, to which a fraudulent insurance act or any other act or
20 practice which, upon conviction, constitutes a felony or a
21 misdemeanor under the code, or under s. 817.234, is being
22 committed. The Division of Insurance Fraud shall report any
23 alleged violations of law which its investigations disclose to
24 the appropriate licensing agency and state attorney or other
25 prosecuting agency having jurisdiction with respect to any
26 such violation, as provided in s. 624.310. If prosecution by
27 the state attorney or other prosecuting agency having
28 jurisdiction with respect to such violation is not begun
29 within 60 days of the division's report, the state attorney or
30 other prosecuting agency having jurisdiction with respect to
31 such violation shall inform the division of the reasons for

1 | the lack of prosecution. The division may adopt rules that set
2 | forth requirements for the manner in which suspected
3 | fraudulent activity shall be reported to the division through
4 | the use of a standard referral form.

5 | Section 11. Paragraph (a) of subsection (7) and
6 | subsection (9) of section 817.234, Florida Statutes, are
7 | amended to read:

8 | 817.234 False and fraudulent insurance claims.--

9 | (7)(a) It shall constitute a material omission and
10 | insurance fraud punishable as provided in subsection (11) for
11 | any service ~~physician or other~~ provider, other than a
12 | hospital, to engage in a general business practice of billing
13 | amounts as its usual and customary charge, if such provider
14 | has agreed with the insured patient or intends to waive
15 | deductibles or copayments, or does not for any other reason
16 | intend to collect the total amount of such charge. With
17 | respect to a determination as to whether a service ~~physician~~
18 | ~~or other~~ provider has engaged in such general business
19 | practice, consideration shall be given to evidence of whether
20 | the ~~physician or other~~ provider made a good faith attempt to
21 | collect such deductible or copayment. This paragraph does not
22 | apply to physicians or other providers who waive deductibles
23 | or copayments or reduce their bills as part of a bodily injury
24 | settlement or verdict.

25 | (9) A person may not organize, plan, or knowingly
26 | participate in an intentional motor vehicle crash or a scheme
27 | to create documentation of a motor vehicle crash that did not
28 | occur for the purpose of making motor vehicle tort claims or
29 | claims for personal injury protection benefits as required by
30 | s. 627.736. Any person who violates this subsection commits a
31 | felony of the second degree, punishable as provided in s.

1 775.082, s. 775.083, or s. 775.084. A person who is convicted
2 of a violation of this subsection shall be sentenced to a
3 minimum term of imprisonment of 2 years.

4 Section 12. Section 817.2361, Florida Statutes, is
5 amended to read:

6 817.2361 False or fraudulent proof of motor vehicle
7 insurance ~~card~~.--Any person who, with intent to deceive any
8 other person, creates, markets, or presents a false or
9 fraudulent proof of motor vehicle insurance ~~card~~ commits a
10 felony of the third degree, punishable as provided in s.
11 775.082, s. 775.083, or s. 775.084.

12 Section 13. Subsection (2) of section 817.50, Florida
13 Statutes, is amended to read:

14 817.50 Fraudulently obtaining goods, services, etc.,
15 from a health care provider.--

16 (2) If any person gives to any health care provider in
17 this state a false or fictitious name or a false or fictitious
18 address or assigns to any health care provider the proceeds of
19 any health maintenance contract or insurance contract, then
20 knowing that such contract is no longer in force, is invalid,
21 or is void for any reason, such action shall be prima facie
22 evidence of the intent of such person to defraud the health
23 care provider. However, this subsection does not apply to
24 investigative actions taken by law enforcement officers for
25 law enforcement purposes in the course of their official
26 duties.

27 Section 14. Subsection (1) and paragraph (a) of
28 subsection (2) of section 817.505, Florida Statutes, are
29 amended to read:

30 817.505 Patient brokering prohibited; exceptions;
31 penalties.--

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

3 (a) Offer or pay 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, to induce the referral of patients or patronage
7 from a health care provider or health care facility;

8 (b) Solicit or receive any commission, bonus, rebate,
9 kickback, or bribe, directly or indirectly, in cash or in
10 kind, or engage in any split-fee arrangement, in any form
11 whatsoever, in return for referring patients or patronage to a
12 health care provider or health care facility; ~~or~~

13 (c) Solicit or receive any commission, bonus, rebate,
14 kickback, or bribe, directly or indirectly, in cash or in
15 kind, or engage in any split-fee arrangement, in any form
16 whatsoever, in return for the acceptance or acknowledgement of
17 treatment from a health care provider or health care facility;
18 or

19 ~~(d)(e)~~ Aid, abet, advise, or otherwise participate in
20 the conduct prohibited under paragraph (a), ~~or~~ paragraph (b),
21 or paragraph (c).

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

23 (a) "Health care provider or health care facility"
24 means any person or entity licensed, certified, or registered;
25 required to be licensed, certified, or registered; or lawfully
26 exempt from licensure, certification, or registration with the
27 Agency for Health Care Administration; any person or entity
28 that has contracted with the Agency for Health Care
29 Administration to provide goods or services to Medicaid
30 recipients as provided under s. 409.907; a county health
31 department established under part I of chapter 154; any

1 | community service provider contracting with the Department of
2 | Children and Family Services to furnish alcohol, drug abuse,
3 | or mental health services under part IV of chapter 394; any
4 | substance abuse service provider licensed under chapter 397;
5 | or any federally supported primary care program such as a
6 | migrant or community health center authorized under ss. 329
7 | and 330 of the United States Public Health Services Act.

8 | Section 15. Section 843.08, Florida Statutes, is
9 | amended to read:

10 | 843.08 Falsely personating officer, etc.--A person who
11 | falsely assumes or pretends to be a sheriff, officer of the
12 | Florida Highway Patrol, officer of the Fish and Wildlife
13 | Conservation Commission, officer of the Department of
14 | Environmental Protection, officer of the Department of
15 | Transportation, officer of the Department of Corrections,
16 | officer of the Department of Financial Services, correctional
17 | probation officer, deputy sheriff, state attorney or assistant
18 | state attorney, statewide prosecutor or assistant statewide
19 | prosecutor, state attorney investigator, coroner, police
20 | officer, lottery special agent or lottery investigator,
21 | beverage enforcement agent, or watchman, or any member of the
22 | Parole Commission and any administrative aide or supervisor
23 | employed by the commission, or any personnel or representative
24 | of the Department of Law Enforcement, and takes upon himself
25 | or herself to act as such, or to require any other person to
26 | aid or assist him or her in a matter pertaining to the duty of
27 | any such officer, commits a felony of the third degree,
28 | punishable as provided in s. 775.082, s. 775.083, or s.
29 | 775.084; however, a person who falsely personates any such
30 | officer during the course of the commission of a felony
31 | commits a felony of the second degree, punishable as provided

1 | in s. 775.082, s. 775.083, or s. 775.084; except that if the
2 | commission of the felony results in the death or personal
3 | injury of another human being, the person commits a felony of
4 | the first degree, punishable as provided in s. 775.082, s.
5 | 775.083, or s. 775.084.

6 | Section 16. Section 626.9893, Florida Statutes, is
7 | created to read:

8 | 626.9893 Disposition of revenues; criminal or
9 | forfeiture proceedings.--

10 | (1) The Division of Insurance Fraud of the Department
11 | of Financial Services may deposit revenues received as a
12 | result of criminal proceedings or forfeiture proceedings,
13 | other than revenues deposited into the Department of Financial
14 | Services' Federal Equitable Sharing Trust Fund under s. 17.43,
15 | into the Insurance Regulatory Trust Fund. Moneys deposited
16 | pursuant to this provision shall be separately accounted for
17 | and shall be used solely for the division to carry out its
18 | duties and responsibilities.

19 | (2) Moneys deposited into the Insurance Regulatory
20 | Trust Fund pursuant to this section shall be appropriated by
21 | the Legislature, pursuant to the provisions of chapter 216,
22 | for the sole purpose of enabling the division to carry out its
23 | duties and responsibilities.

24 | (3) Notwithstanding the provisions of s. 216.301 and
25 | pursuant to s. 216.351, any balance of moneys deposited into
26 | the Insurance Regulatory Trust Fund pursuant to this section
27 | remaining at the end of any fiscal year shall remain in the
28 | trust fund at the end of that year and shall be available for
29 | carrying out the duties and responsibilities of the Division
30 | of Insurance Fraud.

31 |

1 Section 17. Paragraph (m) is added to subsection (6)
2 of section 932.7055, Florida Statutes, to read:

3 932.7055 Disposition of liens and forfeited
4 property.--

5 (6) If the seizing agency is a state agency, all
6 remaining proceeds shall be deposited into the General Revenue
7 Fund. However, if the seizing agency is:

8 (m) The Division of Insurance Fraud of the Department
9 of Financial Services, the proceeds accrued pursuant to the
10 provisions of the Florida Contraband Forfeiture Act shall be
11 deposited into the Insurance Regulatory Trust Fund as provided
12 in s. 626.9893 or into the Department of Financial Services'
13 Federal Equitable Sharing Trust Fund as provided in s. 17.43,
14 as applicable.

15 Section 18. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 invalidity does not affect other provisions or applications of
18 the act which can be given effect without the invalid
19 provision or application, and to this end the provisions of
20 this act are declared severable.

21 Section 19. This act shall take effect July 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 2330

- 4 - Deletes current offenses in s. 440.105, F.S., which
5 prohibit an employer from knowingly participating in the
6 creation of the employment relationship in which the
7 employee has used any false, fraudulent, or misleading
8 oral or written statement as evidence of identity, and
9 which prohibit a person from knowingly presenting or
10 causing to be presented any false, fraudulent, or
11 misleading oral or written statement to any person as
12 evidence of identity for the purpose of obtaining
13 employment or filing or supporting a claim for workers'
14 compensation benefits.
- 15 - Provides that it is a first degree misdemeanor to
16 knowingly present or cause to be presented any false,
17 fraudulent, or misleading oral or written statements to
18 any person as evidence of identity for the purpose of
19 obtaining employment (by including this offense in s.
20 448.09, F.S., relating to prohibited employment of
21 unauthorized aliens), and that hiring unauthorized aliens
22 is also a first degree misdemeanor.
- 23 - Deletes current civil penalty and second degree
24 misdemeanor penalty in s. 448.09, F.S.
- 25 - Clarifies what is meant by independent procurement of
26 coverage to state that independent procurement of
27 coverage is coverage which is not solicited, marketed, or
28 sold in Florida.
- 29 - Clarifies that every insured who in this state procures
30 insurance "from another state or country" with an
31 unauthorized insurer "legitimately licensed in that
jurisdiction," or any self insurer who in this state so
procures insurance, must within 30 days file a report
with the Florida Surplus Lines Service Office.
- Provides that any insurance on a risk in an unauthorized
insurer legitimately licensed in another state or country
procured through solicitations, negotiations, or an
application occurring or made outside this state shall be
deemed to be insurance procured.
- Requires the Division of Insurance Fraud of the
Department of Financial Services to deposit revenues
received from criminal proceedings or forfeiture
proceedings into the Insurance Regulatory Trust Fund.