

1 A bill to be entitled
2 An act relating to insurance; amending s. 400.9935, F.S.;
3 requiring health care clinics to display signs displaying
4 certain information relating to insurance fraud;
5 authorizing compliance inspections by the Division of
6 Insurance Fraud; requiring clinics to allow inspection
7 access; amending s. 440.105, F.S.; providing criminal
8 penalties for employers who fail to provide required
9 workers' compensation coverage for employees under certain
10 circumstances; amending s. 624.15, F.S.; specifying
11 violations of department rule as misdemeanors; specifying
12 a violation of department emergency rules or orders as a
13 felony of the third degree; providing penalties; amending
14 s. 624.155, F.S.; providing that civil actions may be
15 brought against any person acting as an insurer without a
16 certificate of authority if damaged by such acting;
17 amending s. 626.112, F.S.; providing a criminal penalty
18 for transacting insurance without a license; amending s.
19 626.901, F.S.; clarifying nonapplication to certain
20 independently procured coverage of a prohibition against
21 representing or aiding an unauthorized insurer; amending
22 s. 626.938, F.S.; revising provisions requiring a report
23 and taxation of independently procured coverages;
24 specifying nonauthorization of independent procurement of
25 workers' compensation, life, or health insurance; amending
26 s. 626.989, F.S.; including self-insured entities
27 associated with the National Insurance Crime Bureau within
28 a list of entities required to report insurance fraud;

29 | authorizing the division to adopt rules for standardized
 30 | reporting of fraudulent activity; amending s. 817.234,
 31 | F.S.; clarifying provisions specifying material omission
 32 | and insurance fraud; prohibiting scheming to create
 33 | documentation of a motor vehicle crash that did not occur;
 34 | providing a criminal penalty; amending s. 817.2361, F.S.;
 35 | providing that creating, presenting, or marketing
 36 | fraudulent proof of motor vehicle insurance is a felony of
 37 | the third degree; amending s. 817.50, F.S.; specifying
 38 | nonapplication of provisions specifying evidence of intent
 39 | to defraud to certain investigative actions taken by law
 40 | enforcement officers; amending s. 817.505, F.S.; providing
 41 | an additional patient brokering prohibition; revising a
 42 | definition; amending s. 843.08, F.S.; providing a criminal
 43 | penalty for falsely assuming or pretending to be an
 44 | officer of the Department of Financial Services; providing
 45 | severability; providing an effective date.

46 |

47 | Be It Enacted by the Legislature of the State of Florida:

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49 | Section 1. Subsection (13) is added to section 400.9935,
 50 | Florida Statutes, to read:

51 | 400.9935 Clinic responsibilities.--

52 | (13) The clinic shall display a sign in a conspicuous
 53 | location within the clinic readily visible to all patients
 54 | indicating that pursuant to s. 626.9892, the Department of
 55 | Financial Services may pay rewards of up to \$25,000 to persons
 56 | providing information leading to the arrest and conviction of

57 persons committing crimes investigated by the Division of
 58 Insurance Fraud arising from violations of s. 440.105, s.
 59 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized
 60 employee of the Division of Insurance Fraud may make unannounced
 61 inspections of clinics licensed pursuant to this part as
 62 necessary to determine that the clinic is in compliance with
 63 this subsection. A licensed clinic shall allow full and complete
 64 access to the premises to such authorized employee of the
 65 division who makes an inspection to determine compliance with
 66 this subsection.

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

69 440.105 Prohibited activities; reports; penalties;
 70 limitations.--

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

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

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

78 2. Make a deduction from the pay of any employee entitled
 79 to the benefits of this chapter for the purpose of requiring the
 80 employee to pay any portion of premium paid by the employer to a
 81 carrier or to contribute to a benefit fund or department
 82 maintained by such employer for the purpose of providing
 83 compensation or medical services and supplies as required by
 84 this chapter.

85 3. Fail to secure workers' ~~payment~~ of compensation
 86 coverage if required to do so by this chapter.

87 a. However, if an employer knowingly fails to secure
 88 workers' compensation coverage for an employee as required by
 89 this chapter, and such employee subsequently suffers a work-
 90 related injury requiring hospitalization, the employer commits a
 91 felony of the second degree, punishable as provided in s.
 92 775.082, s. 775.083, or s. 775.084.

93 b. However, if an employer knowingly fails to secure
 94 workers' compensation coverage for an employee as required by
 95 this chapter, and such employee subsequently suffers a work
 96 related death, the employer commits a felony of the first
 97 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 98 775.084.

99 (b) It shall be unlawful for any person:

100 1. To knowingly make, or cause to be made, any false,
 101 fraudulent, or misleading oral or written statement for the
 102 purpose of obtaining or denying any benefit or payment under
 103 this chapter.

104 2. To present or cause to be presented any written or oral
 105 statement as part of, or in support of, a claim for payment or
 106 other benefit pursuant to any provision of this chapter, knowing
 107 that such statement contains any false, incomplete, or
 108 misleading information concerning any fact or thing material to
 109 such claim.

110 3. To prepare or cause to be prepared any written or oral
 111 statement that is intended to be presented to any employer,
 112 insurance company, or self-insured program in connection with,

113 or in support of, any claim for payment or other benefit
114 pursuant to any provision of this chapter, knowing that such
115 statement contains any false, incomplete, or misleading
116 information concerning any fact or thing material to such claim.

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

119 5. To knowingly make any false, fraudulent, or misleading
120 oral or written statement, or to knowingly omit or conceal
121 material information, required by s. 440.185 or s. 440.381, for
122 the purpose of obtaining workers' compensation coverage or for
123 the purpose of avoiding, delaying, or diminishing the amount of
124 payment of any workers' compensation premiums.

125 6. To knowingly misrepresent or conceal payroll,
126 classification of workers, or information regarding an
127 employer's loss history which would be material to the
128 computation and application of an experience rating modification
129 factor for the purpose of avoiding or diminishing the amount of
130 payment of any workers' compensation premiums.

131 7. To knowingly present or cause to be presented any
132 false, fraudulent, or misleading oral or written statement to
133 any person as evidence of compliance with s. 440.38, as evidence
134 of eligibility for a certificate of exemption under s. 440.05.

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

137 9. To knowingly present or cause to be presented any
138 false, fraudulent, or misleading oral or written statement to
139 any person as evidence of identity for the purpose of obtaining

140 employment or filing or supporting a claim for workers'
141 compensation benefits.

142 (c) It shall be unlawful for any physician licensed under
143 chapter 458, osteopathic physician licensed under chapter 459,
144 chiropractic physician licensed under chapter 460, podiatric
145 physician licensed under chapter 461, optometric physician
146 licensed under chapter 463, or any other practitioner licensed
147 under the laws of this state to knowingly and willfully assist,
148 conspire with, or urge any person to fraudulently violate any of
149 the provisions of this chapter.

150 (d) It shall be unlawful for any person or governmental
151 entity licensed under chapter 395 to maintain or operate a
152 hospital in such a manner so that such person or governmental
153 entity knowingly and willfully allows the use of the facilities
154 of such hospital by any person, in a scheme or conspiracy to
155 fraudulently violate any of the provisions of this chapter.

156 (e) It shall be unlawful for any attorney or other person,
157 in his or her individual capacity or in his or her capacity as a
158 public or private employee, or any firm, corporation,
159 partnership, or association, to knowingly assist, conspire with,
160 or urge any person to fraudulently violate any of the provisions
161 of this chapter.

162 (f) If the monetary value of any violation of this
163 subsection:

164 1. Is less than \$20,000, the offender commits a felony of
165 the third degree, punishable as provided in s. 775.082, s.
166 775.083, or s. 775.084.

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

170 3. Is \$100,000 or more, the offender commits a felony of
 171 the first degree, punishable as provided in s. 775.082, s.
 172 775.083, or s. 775.084.

173 Section 3. Section 624.15, Florida Statutes, is amended to
 174 read:

175 624.15 General penalty.--

176 (1) Each willful violation of this code or department rule
 177 as to which a greater penalty is not provided by another
 178 provision of this code, department rule, or ~~by~~ other applicable
 179 laws of this state is a misdemeanor of the second degree and is,
 180 in addition to any prescribed applicable denial, suspension, or
 181 revocation of certificate of authority, license, or permit,
 182 punishable as provided in s. 775.082 or s. 775.083. Each
 183 instance of such violation shall be considered a separate
 184 offense.

185 (2) Each willful violation of an emergency rule or order
 186 adopted or issued by the department is a felony of the third
 187 degree and, in addition to any prescribed applicable denial,
 188 suspension, or revocation of a certificate of authority,
 189 license, or permit, is punishable as provided in s. 775.082, s.
 190 775.083, or s. 775.084. Each instance of such violation shall be
 191 considered a separate offense.

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

194 624.155 Civil remedy.--

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

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

201 626.112 License and appointment required; agents, customer
 202 representatives, adjusters, insurance agencies, service
 203 representatives, managing general agents.--

204 (9) Any person who transacts insurance or otherwise
 205 engages in insurance activities in this state without a license
 206 in violation of this section commits a felony of the third
 207 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 208 775.084.

209 Section 6. Paragraph (d) of subsection (4) of section
 210 626.901, Florida Statutes, is amended to read:

211 626.901 Representing or aiding unauthorized insurer
 212 prohibited.--

213 (4) This section does not apply to:

214 (d) Independently procured coverage written pursuant to s.
 215 626.938, which is not solicited, marketed, negotiated, or sold
 216 within this state.

217 Section 7. Subsections (1), (2), and (9) of section
 218 626.938, Florida Statutes, are amended to read:

219 626.938 Report and tax of independently procured
 220 coverages.--

221 (1) Every insured who resides in this state and procures
 222 or causes to be procured or continues or renews insurance from

223 another state or country with an unauthorized foreign or alien
 224 insurer legitimately licensed in that jurisdiction, or any self-
 225 insurer who resides in this state and so procures or continues
 226 excess loss, catastrophe, or other insurance, upon a subject of
 227 insurance resident, located, or to be performed within this
 228 state, other than insurance procured through a surplus lines
 229 agent pursuant to the Surplus Lines Law of this state or
 230 exempted from tax under s. 626.932(4), shall, within 30 days
 231 after the date such insurance was so procured, continued, or
 232 renewed, file a report of the same with the Florida Surplus
 233 Lines Service Office in writing and upon forms designated by the
 234 Florida Surplus Lines Service Office and furnished to such an
 235 insured upon request, or in a computer readable format as
 236 determined by the Florida Surplus Lines Service Office. The
 237 report shall show the name and address of the insured or
 238 insureds, the name and address of the insurer, the subject of
 239 the insurance, a general description of the coverage, the amount
 240 of premium currently charged therefor, and such additional
 241 pertinent information as is reasonably requested by the Florida
 242 Surplus Lines Service Office.

243 (2) Any insurance in an unauthorized insurer legitimately
 244 licensed in another state or country procured through
 245 solicitations, negotiations, or an application, ~~in whole or in~~
 246 ~~part~~ occurring or made outside ~~within or from within~~ this state,
 247 ~~or for which premiums in whole or in part are remitted directly~~
 248 ~~or indirectly from within this state~~, shall be deemed to be
 249 insurance procured, continued, or renewed ~~in this state~~ within
 250 the intent of subsection (1).

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

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

256 626.989 Investigation by department or Division of
 257 Insurance Fraud; compliance; immunity; confidential information;
 258 reports to division; division investigator's power of arrest.--

259 (6) Any person, ~~other than an insurer, agent, or other~~
 260 ~~person licensed under the code, or an employee thereof,~~ having
 261 knowledge or who believes that a fraudulent insurance act or any
 262 other act or practice which, upon conviction, constitutes a
 263 felony or a misdemeanor under the code, or under s. 817.234, is
 264 being or has been committed may send to the Division of
 265 Insurance Fraud a report or information pertinent to such
 266 knowledge or belief and such additional information relative
 267 thereto as the department may request. However, any professional
 268 practitioner licensed or regulated by the Department of Business
 269 and Professional Regulation, except as otherwise provided by
 270 law, any medical review committee as defined in s. 766.101, any
 271 private medical review committee, any self-insured entity
 272 contracting or associated with the National Insurance Crime
 273 Bureau, and any insurer, agent, or other person licensed under
 274 the code, or an employee thereof, having knowledge or who
 275 believes that a fraudulent insurance act or any other act or
 276 practice which, upon conviction, constitutes a felony or a
 277 misdemeanor under the code, or under s. 817.234, is being or has
 278 been committed shall send to the Division of Insurance Fraud a

279 | report or information pertinent to such knowledge or belief and
280 | such additional information relative thereto as the department
281 | may require. The Division of Insurance Fraud shall review such
282 | information or reports and select such information or reports
283 | as, in its judgment, may require further investigation. It shall
284 | then cause an independent examination of the facts surrounding
285 | such information or report to be made to determine the extent,
286 | if any, to which a fraudulent insurance act or any other act or
287 | practice which, upon conviction, constitutes a felony or a
288 | misdemeanor under the code, or under s. 817.234, is being
289 | committed. The Division of Insurance Fraud shall report any
290 | alleged violations of law which its investigations disclose to
291 | the appropriate licensing agency and state attorney or other
292 | prosecuting agency having jurisdiction with respect to any such
293 | violation, as provided in s. 624.310. If prosecution by the
294 | state attorney or other prosecuting agency having jurisdiction
295 | with respect to such violation is not begun within 60 days of
296 | the division's report, the state attorney or other prosecuting
297 | agency having jurisdiction with respect to such violation shall
298 | inform the division of the reasons for the lack of prosecution.
299 | The division may adopt rules which set forth requirements for
300 | the manner in which suspected fraudulent activity shall be
301 | reported to the division through the use of a standard referral
302 | form.

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

305 | 817.234 False and fraudulent insurance claims.--

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306 (7)(a) It shall constitute a material omission and
307 insurance fraud, punishable as provided in subsection (11), for
308 any service ~~physician or other~~ provider, other than a hospital,
309 to engage in a general business practice of billing amounts as
310 its usual and customary charge, if such provider has agreed with
311 the insured ~~patient~~ or intends to waive deductibles or
312 copayments, or does not for any other reason intend to collect
313 the total amount of such charge. With respect to a determination
314 as to whether a service ~~physician or other~~ provider has engaged
315 in such general business practice, consideration shall be given
316 to evidence of whether the service ~~physician or other~~ provider
317 made a good faith attempt to collect such deductible or
318 copayment. This paragraph does not apply to physicians or other
319 providers who waive deductibles or copayments or reduce their
320 bills as part of a bodily injury settlement or verdict.

321 (9) A person may not organize, plan, or knowingly
322 participate in an intentional motor vehicle crash or a scheme to
323 create documentation of a motor vehicle crash that did not occur
324 for the purpose of making motor vehicle tort claims or claims
325 for personal injury protection benefits as required by s.
326 627.736. Any person who violates this subsection commits a
327 felony of the second degree, punishable as provided in s.
328 775.082, s. 775.083, or s. 775.084. A person who is convicted of
329 a violation of this subsection shall be sentenced to a minimum
330 term of imprisonment of 2 years.

331 Section 10. Section 817.2361, Florida Statutes, is amended
332 to read:

333 817.2361 False or fraudulent proof of motor vehicle
 334 insurance ~~card~~.--Any person who, with intent to deceive any
 335 other person, creates, markets, or presents a false or
 336 fraudulent proof of motor vehicle insurance ~~card~~ commits a
 337 felony of the third degree, punishable as provided in s.
 338 775.082, s. 775.083, or s. 775.084.

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

341 817.50 Fraudulently obtaining goods, services, etc., from
 342 a health care provider.--

343 (2) If any person gives to any health care provider in
 344 this state a false or fictitious name or a false or fictitious
 345 address or assigns to any health care provider the proceeds of
 346 any health maintenance contract or insurance contract, then
 347 knowing that such contract is no longer in force, is invalid, or
 348 is void for any reason, such action shall be prima facie
 349 evidence of the intent of such person to defraud the health care
 350 provider. However, this subsection does not apply to
 351 investigative actions taken by law enforcement officers for law
 352 enforcement purposes in the course of their official duties.

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

355 817.505 Patient brokering prohibited; exceptions;
 356 penalties.--

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

359 (a) Offer or pay any commission, bonus, rebate, kickback,
 360 or bribe, directly or indirectly, in cash or in kind, or engage

361 in any split-fee arrangement, in any form whatsoever, to induce
 362 the referral of patients or patronage to or from a health care
 363 provider or health care facility;

364 (b) Solicit or receive any commission, bonus, rebate,
 365 kickback, or bribe, directly or indirectly, in cash or in kind,
 366 or engage in any split-fee arrangement, in any form whatsoever,
 367 in return for referring patients or patronage to or from a
 368 health care provider or health care facility; ~~or~~

369 (c) Solicit or receive any commission, bonus, rebate,
 370 kickback, or bribe, directly or indirectly, in cash or in kind,
 371 or engage in any split-fee arrangement, in any form whatsoever,
 372 in return for the acceptance or acknowledgement of treatment
 373 from a health care provider or health care facility; or

374 ~~(d)(e)~~ Aid, abet, advise, or otherwise participate in the
 375 conduct prohibited under paragraph (a), ~~or~~ paragraph (b), or
 376 paragraph (c).

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

378 (a) "Health care provider or health care facility" means
 379 any person or entity licensed, certified, or registered;
 380 required to be licensed, certified, or registered; or lawfully
 381 exempt from being required to be licensed, certified, or
 382 registered with the Agency for Health Care Administration; any
 383 person or entity that has contracted with the Agency for Health
 384 Care Administration to provide goods or services to Medicaid
 385 recipients as provided under s. 409.907; a county health
 386 department established under part I of chapter 154; any
 387 community service provider contracting with the Department of
 388 Children and Family Services to furnish alcohol, drug abuse, or

389 mental health services under part IV of chapter 394; any
 390 substance abuse service provider licensed under chapter 397; or
 391 any federally supported primary care program such as a migrant
 392 or community health center authorized under ss. 329 and 330 of
 393 the United States Public Health Services Act.

394 Section 13. Section 843.08, Florida Statutes, is amended
 395 to read:

396 843.08 Falsely personating officer, etc.--A person who
 397 falsely assumes or pretends to be a sheriff, officer of the
 398 Florida Highway Patrol, officer of the Fish and Wildlife
 399 Conservation Commission, officer of the Department of
 400 Environmental Protection, officer of the Department of
 401 Transportation, officer of the Department of Financial Services,
 402 officer of the Department of Corrections, correctional probation
 403 officer, deputy sheriff, state attorney or assistant state
 404 attorney, statewide prosecutor or assistant statewide
 405 prosecutor, state attorney investigator, coroner, police
 406 officer, lottery special agent or lottery investigator, beverage
 407 enforcement agent, or watchman, or any member of the Parole
 408 Commission and any administrative aide or supervisor employed by
 409 the commission, or any personnel or representative of the
 410 Department of Law Enforcement, and takes upon himself or herself
 411 to act as such, or to require any other person to aid or assist
 412 him or her in a matter pertaining to the duty of any such
 413 officer, commits a felony of the third degree, punishable as
 414 provided in s. 775.082, s. 775.083, or s. 775.084; however, a
 415 person who falsely personates any such officer during the course
 416 of the commission of a felony commits a felony of the second

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417 degree, punishable as provided in s. 775.082, s. 775.083, or s.
418 775.084; except that if the commission of the felony results in
419 the death or personal injury of another human being, the person
420 commits a felony of the first degree, punishable as provided in
421 s. 775.082, s. 775.083, or s. 775.084.

422 Section 14. If any provision of this act or the
423 application thereof to any person or circumstance is held
424 invalid, the invalidity does not affect other provisions or
425 applications of the act which can be given effect without the
426 invalid provision or application, and to this end, the
427 provisions of this act are declared severable.

428 Section 15. This act shall take effect July 1, 2005.