

By Senator Posey

24-546-06

1 A bill to be entitled
2 An act relating to insurance fraud; amending s.
3 322.21, F.S.; requiring an additional fee for
4 reinstatement of a suspended or revoked
5 driver's license when the revocation or
6 suspension was for an offense relating to a
7 fraudulent insurance claim; amending s. 322.26,
8 F.S.; requiring mandatory driver's license
9 revocation for a conviction of one of such
10 offense relating to a fraudulent insurance
11 claim; amending s. 456.072, F.S.; providing
12 that certain offenses involving fraudulent
13 insurance practices constitute grounds for
14 discipline of professional licensees; amending
15 s. 626.989, F.S.; authorizing rules for
16 reporting suspected fraudulent activity to the
17 Division of Insurance Fraud; authorizing
18 creation of a worldwide web page to identify
19 persons convicted of offenses relating to
20 fraudulent motor vehicle crashes and
21 documentation; amending s. 627.736, F.S.;
22 requiring personal injury protection insurers
23 to provide certain notice with respect to fraud
24 to insureds and persons for whom a claim has
25 been filed; amending s. 817.234, F.S.;
26 redefining the elements of the offense of
27 insurance fraud; prohibiting participation in a
28 scheme to create documentation of a nonexistent
29 motor vehicle crash; providing a penalty;
30 amending s. 817.2361, F.S.; prohibiting
31 creating, marketing, or presenting any false or

1 fraudulent proof of motor vehicle insurance;
2 providing a penalty; amending s. 817.50, F.S.;
3 excepting investigative actions by law
4 enforcement officers from the prohibition
5 against giving false information with respect
6 to a health maintenance contract or insurance
7 contract; amending s. 817.505, F.S.; redefining
8 the elements of the offense of patient
9 brokering; providing penalties; amending s.
10 843.08, F.S.; prohibiting falsely personating
11 an officer of the Department of Financial
12 Services; providing a penalty; creating s.
13 626.9893, F.S., and amending s. 932.7055, F.S.;
14 providing for disposition of certain revenues
15 from criminal proceedings or forfeiture
16 proceedings by the Division of Insurance Fraud;
17 providing for severability; providing
18 appropriations and authorizing positions;
19 repealing s. 19, chapter 2003-411, Laws of
20 Florida, which repealed the Florida Motor
21 Vehicle No-Fault Law, unless reenacted by the
22 Legislature; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. This act may be cited as the "Personal
27 Injury Protection Anti-Fraud Act."

28 Section 2. Subsection (8) of section 322.21, Florida
29 Statutes, is amended to read:

30 322.21 License fees; procedure for handling and
31 collecting fees.--

1 (8) Any person who applies for reinstatement following
2 the suspension or revocation of the person's driver's license
3 shall pay a service fee of \$35 following a suspension, and \$60
4 following a revocation, which is in addition to the fee for a
5 license. Any person who applies for reinstatement of a
6 commercial driver's license following the disqualification of
7 the person's privilege to operate a commercial motor vehicle
8 shall pay a service fee of \$60, which is in addition to the
9 fee for a license. The department shall collect all of these
10 fees at the time of reinstatement. The department shall issue
11 proper receipts for such fees and shall promptly transmit all
12 funds received by it as follows:

13 (a) Of the \$35 fee received from a licensee for
14 reinstatement following a suspension, the department shall
15 deposit \$15 in the General Revenue Fund and \$20 in the Highway
16 Safety Operating Trust Fund.

17 (b) Of the \$60 fee received from a licensee for
18 reinstatement following a revocation or disqualification, the
19 department shall deposit \$35 in the General Revenue Fund and
20 \$25 in the Highway Safety Operating Trust Fund.

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22 If the revocation or suspension of the driver's license was
23 for a violation of s. 316.193, or for refusal to submit to a
24 lawful breath, blood, or urine test, an additional fee of \$115
25 must be charged. However, only one \$115 fee may be collected
26 from one person convicted of violations arising out of the
27 same incident. The department shall collect the \$115 fee and
28 deposit the fee into the Highway Safety Operating Trust Fund
29 at the time of reinstatement of the person's driver's license,
30 but the fee may not be collected if the suspension or
31 revocation is overturned. If the revocation or suspension of

1 the driver's license was for a conviction for violating s.
2 817.234(8)(b) or (c) or (9) or s. 817.505(1)(c) or (d), an
3 additional fee of \$180 must be charged for each offense. The
4 department shall collect the \$180 fee and deposit it into the
5 Highway Safety Operating Trust Fund at the time of reinstating
6 the person's driver's license.

7 Section 3. Subsection (9) is added to section 322.26,
8 Florida Statutes, to read:

9 322.26 Mandatory revocation of license by
10 department.--The department shall forthwith revoke the license
11 or driving privilege of any person upon receiving a record of
12 such person's conviction of any of the following offenses:

13 (9) A violation of s. 817.234(8)(b) or (c) or (9) or
14 s. 817.505(1)(c) or (d).

15 Section 4. Paragraphs (hh) and (ii) are added to
16 subsection (1) of section 456.072, Florida Statutes, to read:

17 456.072 Grounds for discipline; penalties;
18 enforcement.--

19 (1) The following acts shall constitute grounds for
20 which the disciplinary actions specified in subsection (2) may
21 be taken:

22 (hh) Paying or receiving any commission, bonus,
23 kickback, or rebate, or engaging in any split-fee arrangement
24 in any form whatsoever with a physician, organization, agency,
25 or person, directly or indirectly, for patients referred to a
26 provider of health care goods and services, including, but not
27 limited to, a hospital, nursing home, clinical laboratory,
28 ambulatory surgical center, or pharmacy. This paragraph may
29 not be construed to prevent a health care provider from
30 receiving a fee for professional consultation services.

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1 (ii) Submitting a claim for payment of diagnostic or
2 treatment services of a person injured in a motor vehicle
3 crash when the licensee knows that the crash was staged or did
4 not occur.

5 Section 5. Subsection (6) of section 626.989, Florida
6 Statutes, is amended, and subsection (10) is added to that
7 section, to read:

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

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

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

24 (10) The Division of Insurance Fraud may develop and
25 maintain a page on the worldwide web for the purpose of
26 posting the identities and photographs of persons convicted of
27 violating s. 817.234(9).

28 Section 6. Subsection (14) is added to section
29 627.736, Florida Statutes, to read:

30 627.736 Required personal injury protection benefits;
31 exclusions; priority; claims.--

1 (14) NOTICE WITH RESPECT TO FRAUD.--Upon receiving
2 notice of a claim under this section, an insurer shall provide
3 to the insured or to a person for whom a claim for
4 reimbursement for diagnosis or treatment of injuries has been
5 filed a notice, which shall advise that:

6 (a) Pursuant to s. 626.9892, the Department of
7 Financial Services may pay rewards up to \$25,000 to persons
8 providing information leading to the arrest and conviction of
9 persons committing crimes investigated by the Division of
10 Insurance Fraud which arise from violations of s. 440.105, s.
11 624.15, s. 626.9541, s. 626.989, or s. 817.234, and

12 (b) Solicitation of a person injured in a motor
13 vehicle crash to be treated by a particular health care
14 provider or represented by a particular attorney could be a
15 violation of s. 817.234 or s. 817.505 or the rules regulating
16 The Florida Bar and should be immediately reported to the
17 department if unlawful or unethical conduct is suspected.

18 Section 7. Paragraph (a) of subsection (7) and
19 subsection (9) of section 817.234, Florida Statutes, are
20 amended to read:

21 817.234 False and fraudulent insurance claims.--

22 (7)(a) It constitutes ~~shall constitute~~ a material
23 omission and insurance fraud punishable as provided in
24 subsection (11) for any service ~~physician or other~~ provider,
25 other than a hospital, to engage in a general business
26 practice of billing amounts as its usual and customary charge,
27 if such provider has agreed with the insured patient or
28 intends to waive deductibles or copayments, or does not for
29 any other reason intend to collect the total amount of such
30 charge. With respect to a determination as to whether a
31 service ~~physician or other~~ provider has engaged in such

1 | general business practice, consideration shall be given to
2 | evidence of whether the service ~~physician or other~~ provider
3 | made a good faith attempt to collect such deductible or
4 | copayment. This paragraph does not apply to service ~~physicians~~
5 | ~~or other~~ providers who waive deductibles or copayments or
6 | reduce their bills as part of a bodily injury settlement or
7 | verdict.

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

18 | Section 8. Section 817.2361, Florida Statutes, is
19 | amended to read:

20 | 817.2361 False or fraudulent proof of motor vehicle
21 | insurance ~~card~~.--Any person who, with intent to deceive any
22 | other person, creates, markets, or presents a false or
23 | fraudulent proof of motor vehicle insurance ~~card~~ commits a
24 | felony of the third degree, punishable as provided in s.
25 | 775.082, s. 775.083, or s. 775.084.

26 | Section 9. Subsection (2) of section 817.50, Florida
27 | Statutes, is amended to read:

28 | 817.50 Fraudulently obtaining goods, services, etc.,
29 | from a health care provider.--

30 | (2) If any person gives to any health care provider in
31 | this state a false or fictitious name or a false or fictitious

1 address or assigns to any health care provider the proceeds of
2 any health maintenance contract or insurance contract, then
3 knowing that such contract is no longer in force, is invalid,
4 or is void for any reason, such action shall be prima facie
5 evidence of the intent of such person to defraud the health
6 care provider. However, this subsection does not apply to
7 investigative actions taken by law enforcement officers for
8 law enforcement purposes in the course of their official
9 duties.

10 Section 10. Subsection (1) and paragraph (a) of
11 subsection (2) of section 817.505, Florida Statutes, are
12 amended to read:

13 817.505 Patient brokering prohibited; exceptions;
14 penalties.--

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

17 (a) Offer or pay any commission, bonus, rebate,
18 kickback, or bribe, directly or indirectly, in cash or in
19 kind, or engage in any split-fee arrangement, in any form
20 whatsoever, to induce the referral of patients or patronage
21 from a health care provider or health care facility;

22 (b) Solicit or receive any commission, bonus, rebate,
23 kickback, or bribe, directly or indirectly, in cash or in
24 kind, or engage in any split-fee arrangement, in any form
25 whatsoever, in return for referring patients or patronage to a
26 health care provider or health care facility; ~~or~~

27 (c) Solicit or receive any commission, bonus, rebate,
28 kickback, or bribe, directly or indirectly, in cash or in
29 kind, or engage in any split-fee arrangement, in any form
30 whatsoever, in return for signing a disclosure and
31 acknowledgement form or a patient log required by subsection

1 627.736(5) when medical treatment described in that subsection
2 is intentionally not provided; or

3 ~~(d)(e)~~ Aid, abet, advise, or otherwise participate in
4 the conduct prohibited under paragraph (a) or paragraph (b).

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

6 (a) "Health care provider or health care facility"
7 means any person required to be licensed, certified, or
8 registered under part I, part II, part III, or part IV of
9 chapter 395, part XIII of chapter 400, chapter 457, chapter
10 458, chapter 459, chapter 460, chapter 461, chapter 462,
11 chapter 463, chapter 464, chapter 465, chapter 466, chapter
12 467, part I, part II, part III, part IV, part X, part XIII, or
13 part XIV of chapter 468, chapter 480, chapter 484, chapter
14 486, chapter 490, or chapter 491 or entity licensed,
15 certified, or registered, required to be licensed, certified,
16 or registered, or lawfully exempt from licensure,
17 certification, or registration with the Agency for Health Care
18 ~~Administration~~; any person or entity that has contracted with
19 the Agency for Health Care Administration to provide goods or
20 services to Medicaid recipients as provided under s. 409.907;
21 a county health department established under part I of chapter
22 154; any community service provider contracting with the
23 Department of Children and Family Services to furnish alcohol,
24 drug abuse, or mental health services under part IV of chapter
25 394; any substance abuse service provider licensed under
26 chapter 397; or any federally supported primary care program
27 such as a migrant or community health center authorized under
28 ss. 329 and 330 of the United States Public Health Services
29 Act.

30 Section 11. Section 843.08, Florida Statutes, is
31 amended to read:

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 12. Section 626.9893, Florida Statutes, is
29 created to read:

30 626.9893 Disposition of revenues; criminal or
31 forfeiture proceedings.--

1 (1) The Division of Insurance Fraud of the department
2 may deposit revenues received as a result of criminal
3 proceedings or forfeiture proceedings, other than revenues
4 deposited into the department's Federal Equitable Sharing
5 Trust Fund under s. 17.43, into the Insurance Regulatory Trust
6 Fund. Moneys deposited under this subsection shall be
7 separately accounted for and used solely for the division to
8 carry out its duties and responsibilities.

9 (2) Moneys deposited into the Insurance Regulatory
10 Trust Fund under this section shall be appropriated by the
11 Legislature, pursuant to chapter 216, for the sole purpose of
12 enabling the division to carry out its duties and
13 responsibilities.

14 (3) Notwithstanding s. 216.301 and pursuant to s.
15 216.351, any balance of moneys deposited into the Insurance
16 Regulatory Trust Fund under this section remaining at the end
17 of any fiscal year shall remain in the trust fund and be
18 available for carrying out the duties and responsibilities of
19 the division.

20 Section 13. Paragraph (n) is added to subsection (6)
21 of section 932.7055, Florida Statutes, to read:

22 932.7055 Disposition of liens and forfeited
23 property.--

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

27 (n) The Division of Insurance Fraud of the Department
28 of Financial Services, the proceeds accrued pursuant to the
29 Florida Contraband Forfeiture Act shall be deposited into the
30 Insurance Regulatory Trust Fund as provided in s. 626.9893 or
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1 into the Department of Financial Services' Federal Equitable
2 Sharing Trust Fund as provided in s. 17.43, as applicable.

3 Section 14. If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 invalidity does not affect other provisions or applications of
6 the act which can be given effect without the invalid
7 provision or application, and to this end the provisions of
8 this act are declared severable.

9 Section 15. For the 2006-2007 fiscal year, the sum of
10 \$1,670,000 in recurring funds is appropriated from the
11 Insurance Regulatory Trust Fund to the Division of Insurance
12 Fraud within the Department of Financial Services, and nine
13 new positions are authorized. This appropriation is for the
14 purposes provided in s. 626.989, Florida Statutes, a new fraud
15 unit, and to provide a salary increase of approximately
16 \$10,000 each for 122 existing sworn fraud law enforcement
17 officers within the division to achieve relative parity with
18 investigators who have similar responsibilities at other state
19 law enforcement agencies. The Legislature recognizes and finds
20 that, without such an increase, the division will continue to
21 have difficulty recruiting, training, and retaining qualified
22 and experienced fraud investigators.

23 Section 16. For the 2006-2007 fiscal year, the sum of
24 \$750,000 in recurring funds is appropriated from the Insurance
25 Regulatory Trust Fund in equal amounts to the State Attorneys
26 for the 4th, 6th, 9th, 13th, 15th, and 17th Circuits to
27 establish and fund an additional assistant state attorney
28 position in each circuit for the purpose of prosecuting cases
29 of insurance fraud.

30 Section 17. Effective upon this act becoming a law,
31 section 19 of chapter 2003-411, Laws of Florida, is repealed.

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Section 18. This act shall take effect July 1, 2006.

SENATE SUMMARY

Creates the Personal Injury Protection Anti-Fraud Act, which prohibits specified actions with respect to fraudulently claiming injury and attempting to obtain unjustified insurance benefits. Provides that such offenses can result in revocation or suspension of a driver's license or disciplinary action against a professional licensee. Revives the Florida Motor Vehicle No-Fault Law, scheduled for repeal October 1, 2007. (See bill for details.)