

By Senator Alexander

17-917-06

See HB 561

1                                   A bill to be entitled

2           An act relating to offenses involving

3           insurance; amending s. 322.21, F.S.; providing

4           an additional fee for certain offenses relating

5           to insurance crimes; providing for deposit of

6           the fee into the Highway Safety Operating Trust

7           Fund; amending s. 322.26, F.S.; providing an

8           additional circumstance relating to insurance

9           crimes for mandatory revocation of a person's

10          driver's license; amending s. 400.9935, F.S.;

11          requiring health care clinics to display signs

12          containing certain information relating to

13          insurance fraud; authorizing compliance

14          inspections by the Division of Insurance Fraud;

15          requiring clinics to allow inspection access;

16          amending s. 440.105, F.S.; deleting the

17          provision that a violation of a stop-work order

18          is a misdemeanor of the first degree; amending

19          s. 456.054, F.S.; revising the definition of

20          the term "kickback" for criminal prosecution

21          purposes; amending s. 624.15, F.S.; specifying

22          violations of rules of the Department of

23          Financial Services, Office of Insurance

24          Regulation, or Financial Services Commission as

25          misdemeanors; specifying a violation of

26          emergency rules or orders as a felony of the

27          third degree; providing penalties; providing

28          for nonapplication to certain persons; amending

29          s. 626.112, F.S.; providing a criminal penalty

30          for knowingly transacting insurance without a

31          license; amending s. 626.938, F.S.; revising

1 provisions requiring a report and taxation of  
2 independently procured coverages; specifying  
3 nonauthorization of independent procurement of  
4 workers' compensation, life, or health  
5 insurance; amending s. 626.9891, F.S.;  
6 expanding authorization to impose  
7 administrative fines on insurers for failure to  
8 comply with certain anti-fraud plan or  
9 anti-fraud investigative unit description  
10 requirements; creating s. 626.9893, F.S.;  
11 authorizing the division to deposit certain  
12 revenues into the Insurance Regulatory Trust  
13 Fund; specifying accounting and uses of such  
14 revenues; providing for appropriation and use  
15 of such revenues; amending s. 627.736, F.S.;  
16 requiring insurers to provide certain persons  
17 with notice of the department's Anti-Fraud  
18 Reward Program and the criminal violations that  
19 may be reported in pursuit of a reward;  
20 amending s. 817.234, F.S.; revising provisions  
21 specifying material omission and insurance  
22 fraud; prohibiting scheming to create  
23 documentation of a motor vehicle crash that did  
24 not occur; providing a criminal penalty;  
25 amending s. 817.2361, F.S.; providing that  
26 creating, marketing, or presenting fraudulent  
27 proof of motor vehicle insurance is a felony of  
28 the third degree; amending s. 817.50, F.S.;  
29 specifying nonapplication of provisions  
30 specifying evidence of intent to defraud to  
31 certain investigative actions taken by law

1 enforcement officers; amending s. 817.505,  
2 F.S.; providing an additional patient brokering  
3 prohibition, to which penalties apply; revising  
4 a definition; amending s. 843.08, F.S.;  
5 providing a criminal penalty for falsely  
6 assuming or pretending to be an officer of the  
7 Department of Financial Services; amending s.  
8 932.7055, F.S.; requiring certain proceeds  
9 seized by the division under the Florida  
10 Contraband Forfeiture Act to be deposited into  
11 certain trust funds; providing severability;  
12 providing an effective date.

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

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16 Section 1. Subsection (8) of section 322.21, Florida  
17 Statutes, is amended to read:

18 322.21 License fees; procedure for handling and  
19 collecting fees.--

20 (8) Any person who applies for reinstatement following  
21 the suspension or revocation of the person's driver's license  
22 shall pay a service fee of \$35 following a suspension, and \$60  
23 following a revocation, which is in addition to the fee for a  
24 license. Any person who applies for reinstatement of a  
25 commercial driver's license following the disqualification of  
26 the person's privilege to operate a commercial motor vehicle  
27 shall pay a service fee of \$60, which is in addition to the  
28 fee for a license. The department shall collect all of these  
29 fees at the time of reinstatement. The department shall issue  
30 proper receipts for such fees and shall promptly transmit all  
31 funds received by it as follows:

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

5 (b) Of the \$60 fee received from a licensee for  
6 reinstatement following a revocation or disqualification, the  
7 department shall deposit \$35 in the General Revenue Fund and  
8 \$25 in the Highway Safety Operating Trust Fund.

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10 If the revocation or suspension of the driver's license was  
11 for a violation of s. 316.193, or for refusal to submit to a  
12 lawful breath, blood, or urine test, an additional fee of \$115  
13 must be charged. However, only one \$115 fee may be collected  
14 from one person convicted of violations arising out of the  
15 same incident. The department shall collect the \$115 fee and  
16 deposit the fee into the Highway Safety Operating Trust Fund  
17 at the time of reinstatement of the person's driver's license,  
18 but the fee may not be collected if the suspension or  
19 revocation is overturned. If the revocation or suspension of  
20 the driver's license was for a conviction for a violation of  
21 s. 817.234(8) or (9) or s. 817.505, an additional fee of \$180  
22 is imposed for each offense. The department shall collect and  
23 deposit the additional fee into the Highway Safety Operating  
24 Trust Fund at the time of reinstatement of the person's  
25 driver's license.

26 Section 2. Subsection (9) is added to section 322.26,  
27 Florida Statutes, to read:

28 322.26 Mandatory revocation of license by  
29 department.--The department shall forthwith revoke the license  
30 or driving privilege of any person upon receiving a record of  
31 such person's conviction of any of the following offenses:

1           (9) Conviction in any court having jurisdiction over  
2 offenses committed under s. 817.234(8) or (9) or s. 817.505.

3           Section 3. Subsection (13) is added to section  
4 400.9935, Florida Statutes, to read:

5           400.9935 Clinic responsibilities.--

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

21           Section 4. Paragraph (a) of subsection (2) of section  
22 440.105, Florida Statutes, is amended to read:

23           440.105 Prohibited activities; reports; penalties;  
24 limitations.--

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

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

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

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

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

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

14           Section 5. Subsection (1) of section 456.054, Florida  
15 Statutes, is amended to read:

16           456.054 Kickbacks prohibited.--

17           (1) As used in this section, the term "kickback" means  
18 a remuneration or payment ~~back pursuant to an investment~~  
19 ~~interest, compensation arrangement, or otherwise, by or on~~  
20 behalf of a provider of health care services or items, ~~of a~~  
21 ~~portion of the charges for services rendered to any person a~~  
22 ~~referring health care provider~~ as an incentive or inducement  
23 to refer patients for past or future services or items, when  
24 the payment is not tax deductible as an ordinary and necessary  
25 expense.

26           Section 6. Section 624.15, Florida Statutes, is  
27 amended to read:

28           624.15 General penalty.--

29           (1) Each willful violation of this code or rule of the  
30 department, office, or commission as to which a greater  
31 penalty is not provided by another provision of this code or

1 rule of the department, office, or commission or by other  
2 applicable laws of this state is a misdemeanor of the second  
3 degree and is, in addition to any prescribed applicable  
4 denial, suspension, or revocation of certificate of authority,  
5 license, or permit, punishable as provided in s. 775.082 or s.  
6 775.083. Each instance of such violation shall be considered a  
7 separate offense.

8 (2) Each willful violation of an emergency rule or  
9 order of the department, office, or commission by a person who  
10 is not licensed, authorized, or eligible to engage in business  
11 in accordance with the Florida Insurance Code is a felony of  
12 the third degree, punishable as provided in s. 775.082, s.  
13 775.083, or s. 775.084. Each instance of such violation is a  
14 separate offense. This subsection does not apply to licensees  
15 or affiliated parties of licensees.

16 Section 7. Subsection (9) is added to section 626.112,  
17 Florida Statutes, to read:

18 626.112 License and appointment required; agents,  
19 customer representatives, adjusters, insurance agencies,  
20 service representatives, managing general agents.--

21 (9) Any person who knowingly transacts insurance or  
22 otherwise engages in insurance activities in this state  
23 without a license in violation of this section 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 8. Subsections (1), (2), and (9) of section  
27 626.938, Florida Statutes, are amended to read:

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

30 (1) Every insured who in this state procures or causes  
31 to be procured or continues or renews insurance from another

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

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

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

4           Section 9. Subsection (7) of section 626.9891, Florida  
5 Statutes, is amended to read:

6           626.9891 Insurer anti-fraud investigative units;  
7 reporting requirements; penalties for noncompliance.--

8           (7) If an insurer fails to timely submit a final  
9 acceptable anti-fraud plan or anti-fraud investigative unit  
10 description ~~otherwise fails to submit a plan~~, fails to  
11 implement the provisions of a plan or an anti-fraud  
12 investigative unit description, or otherwise refuses to comply  
13 with the provisions of this section, the department, office,  
14 or commission may:

15           (a) Impose an administrative fine of not more than  
16 \$2,000 per day for such failure by an insurer to submit an  
17 acceptable anti-fraud plan or anti-fraud investigative unit  
18 description, until the department, office, or commission deems  
19 the insurer to be in compliance;

20           (b) Impose an administrative fine for failure by an  
21 upon the insurer to implement or follow the provisions of an  
22 anti-fraud plan or anti-fraud investigative unit description a  
23 fraud detection and prevention plan that is deemed to be  
24 appropriate by the department and that must be implemented by  
25 the insurer; or

26           (c) Impose the provisions of both paragraphs (a) and  
27 (b).

28           Section 10. 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 of Financial Services may deposit revenues received as a  
3 result of criminal proceedings or forfeiture proceedings,  
4 other than revenues deposited into the Department of Financial  
5 Services' Federal Equitable Sharing Trust Fund under s. 17.43,  
6 into the Insurance Regulatory Trust Fund. Moneys deposited  
7 pursuant to this section shall be separately accounted for and  
8 shall be used solely for the division to carry out its duties  
9 and responsibilities.

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

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

21           Section 11. Subsection (14) is added to section  
22 627.736, Florida Statutes, to read:

23           627.736 Required personal injury protection benefits;  
24 exclusions; priority; claims.--

25           (14) FRAUD ADVISORY NOTICE.--Upon receiving notice of  
26 a claim under this section, an insurer shall provide a notice  
27 to the insured or to a person for whom a claim for  
28 reimbursement for diagnosis or treatment of injuries has been  
29 filed, advising that:

30           (a) Pursuant to s. 626.9892, the Department of  
31 Financial Services may pay rewards of up to \$25,000 to persons

1 providing information leading to the arrest and conviction of  
2 persons committing crimes investigated by the Division of  
3 Insurance Fraud arising from violations of s. 440.105, s.  
4 624.15, s. 626.9541, s. 626.989, or s. 817.234.

5 (b) Solicitation of a person injured in a motor  
6 vehicle crash for purposes of filing personal injury  
7 protection or tort claims could be a violation of s. 817.234,  
8 s. 817.505, or the rules regulating The Florida Bar and should  
9 be immediately reported to the Division of Insurance Fraud if  
10 such conduct has taken place.

11 Section 12. Paragraph (a) of subsection (7) and  
12 subsection (9) of section 817.234, Florida Statutes, are  
13 amended to read:

14 817.234 False and fraudulent insurance claims.--

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

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

11           Section 13. Section 817.2361, Florida Statutes, is  
12 amended to read:

13           817.2361 False or fraudulent proof of motor vehicle  
14 insurance ~~card~~.--Any person who, with intent to deceive any  
15 other person, creates, markets, or presents a false or  
16 fraudulent proof of motor vehicle insurance ~~card~~ commits a  
17 felony of the third degree, punishable as provided in s.  
18 775.082, s. 775.083, or s. 775.084.

19           Section 14. Subsection (2) of section 817.50, Florida  
20 Statutes, is amended to read:

21           817.50 Fraudulently obtaining goods, services, etc.,  
22 from a health care provider.--

23           (2) If any person gives to any health care provider in  
24 this state a false or fictitious name or a false or fictitious  
25 address or assigns to any health care provider the proceeds of  
26 any health maintenance contract or insurance contract, then  
27 knowing that such contract is no longer in force, is invalid,  
28 or is void for any reason, such action shall be prima facie  
29 evidence of the intent of such person to defraud the health  
30 care provider. However, this subsection does not apply to  
31 investigative actions taken by law enforcement officers for

1 law enforcement purposes in the course of their official  
2 duties.

3 Section 15. Subsection (1) and paragraph (a) of  
4 subsection (2) of section 817.505, Florida Statutes, are  
5 amended to read:

6 817.505 Patient brokering prohibited; exceptions;  
7 penalties.--

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

10 (a) Offer or pay any commission, bonus, rebate,  
11 kickback, or bribe, directly or indirectly, in cash or in  
12 kind, or engage in any split-fee arrangement, in any form  
13 whatsoever, to induce the referral of patients or patronage to  
14 or from a health care provider or health care facility;

15 (b) Solicit or receive any commission, bonus, rebate,  
16 kickback, or bribe, directly or indirectly, in cash or in  
17 kind, or engage in any split-fee arrangement, in any form  
18 whatsoever, in return for referring patients or patronage to  
19 or from a health care provider or health care facility; ~~or~~

20 (c) Solicit or receive any commission, bonus, rebate,  
21 kickback, or bribe, directly or indirectly, in cash or in  
22 kind, or engage in any split-fee arrangement, in any form  
23 whatsoever, in return for the acceptance or acknowledgement of  
24 treatment from a health care provider or health care facility;  
25 or

26 (d)(e) Aid, abet, advise, or otherwise participate in  
27 the conduct prohibited under paragraph (a), ~~or~~ paragraph (b),  
28 or paragraph (c).

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

30 (a) "Health care provider or health care facility"  
31 means any person or entity licensed, certified, or registered;

1 required to be licensed, certified, or registered; or lawfully  
2 exempt from being required to be licensed, certified, or  
3 registered with the Agency for Health Care Administration or  
4 the Department of Health; any person or entity that has  
5 contracted with the Agency for Health Care Administration to  
6 provide goods or services to Medicaid recipients as provided  
7 under s. 409.907; a county health department established under  
8 part I of chapter 154; any community service provider  
9 contracting with the Department of Children and Family  
10 Services to furnish alcohol, drug abuse, or mental health  
11 services under part IV of chapter 394; any substance abuse  
12 service provider licensed under chapter 397; or any federally  
13 supported primary care program such as a migrant or community  
14 health center authorized under ss. 329 and 330 of the United  
15 States Public Health Services Act.

16 Section 16. Section 843.08, Florida Statutes, is  
17 amended to read:

18 843.08 Falsely personating officer, etc.--A person who  
19 falsely assumes or pretends to be a sheriff, officer of the  
20 Florida Highway Patrol, officer of the Fish and Wildlife  
21 Conservation Commission, officer of the Department of  
22 Environmental Protection, officer of the Department of  
23 Transportation, officer of the Department of Financial  
24 Services, officer of the Department of Corrections,  
25 correctional probation officer, deputy sheriff, state attorney  
26 or assistant state attorney, statewide prosecutor or assistant  
27 statewide prosecutor, state attorney investigator, coroner,  
28 police officer, lottery special agent or lottery investigator,  
29 beverage enforcement agent, or watchman, or any member of the  
30 Parole Commission and any administrative aide or supervisor  
31 employed by the commission, or any personnel or representative

1 of the Department of Law Enforcement, and takes upon himself  
2 or herself to act as such, or to require any other person to  
3 aid or assist him or her in a matter pertaining to the duty of  
4 any such officer, commits a felony of the third degree,  
5 punishable as provided in s. 775.082, s. 775.083, or s.  
6 775.084; however, a person who falsely personates any such  
7 officer during the course of the commission of a felony  
8 commits a felony of the second degree, punishable as provided  
9 in s. 775.082, s. 775.083, or s. 775.084; except that if the  
10 commission of the felony results in the death or personal  
11 injury of another human being, the person commits a felony of  
12 the first degree, punishable as provided in s. 775.082, s.  
13 775.083, or s. 775.084.

14 Section 17. Paragraph (n) is added to subsection (6)  
15 of section 932.7055, Florida Statutes, to read:

16 932.7055 Disposition of liens and forfeited  
17 property.--

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

21 (n) The Division of Insurance Fraud of the Department  
22 of Financial Services, the proceeds accrued pursuant to the  
23 provisions of the Florida Contraband Forfeiture Act shall be  
24 deposited into the Insurance Regulatory Trust Fund as provided  
25 in s. 626.9893 or into the Department of Financial Services'  
26 Federal Equitable Sharing Trust Fund as provided in s. 17.43,  
27 as applicable.

28 Section 18. If any provision of this act or the  
29 application thereof to any person or circumstance is held  
30 invalid, the invalidity does not affect other provisions or  
31 applications of the act which can be given effect without the

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

3           Section 19. This act shall take effect July 1, 2006.  
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