

1 A bill to be entitled

2 An act relating to offenses involving insurance; amending
3 s. 322.21, F.S.; providing an additional fee for certain
4 offenses relating to insurance crimes; providing for
5 deposit of the fee into the Highway Safety Operating Trust
6 Fund; amending s. 322.26, F.S.; providing an additional
7 circumstance relating to insurance crimes for mandatory
8 revocation of a person's driver's license; amending s.
9 400.9935, F.S.; requiring health care clinics to display
10 signs containing certain information relating to insurance
11 fraud; authorizing compliance inspections by the Division
12 of Insurance Fraud; requiring clinics to allow inspection
13 access; amending s. 440.105, F.S.; deleting the provision
14 that a violation of a stop-work order is a misdemeanor of
15 the first degree; amending s. 456.054, F.S.; revising the
16 definition of the term "kickback" for criminal prosecution
17 purposes; amending s. 624.15, F.S.; specifying violations
18 of rules of the Department of Financial Services, Office
19 of Insurance Regulation, or Financial Services Commission
20 as misdemeanors; specifying a violation of emergency rules
21 or orders as a felony of the third degree; providing
22 penalties; providing for nonapplication to certain
23 persons; amending s. 626.112, F.S.; providing a criminal
24 penalty for knowingly transacting insurance without a
25 license; amending s. 626.938, F.S.; revising provisions
26 requiring a report and taxation of independently procured
27 coverages; specifying nonauthorization of independent
28 procurement of workers' compensation, life, or health

29 insurance; amending s. 626.9891, F.S.; expanding
30 authorization to impose administrative fines on insurers
31 for failure to comply with certain anti-fraud plan or
32 anti-fraud investigative unit description requirements;
33 creating s. 626.9893, F.S.; authorizing the division to
34 deposit certain revenues into the Insurance Regulatory
35 Trust Fund; specifying accounting and uses of such
36 revenues; providing for appropriation and use of such
37 revenues; amending s. 627.736, F.S.; requiring insurers to
38 provide certain persons with notice of the department's
39 Anti-Fraud Reward Program and the criminal violations that
40 may be reported in pursuit of a reward; amending s.
41 817.234, F.S.; revising provisions specifying material
42 omission and insurance fraud; prohibiting scheming to
43 create documentation of a motor vehicle crash that did not
44 occur; providing a criminal penalty; amending s. 817.2361,
45 F.S.; providing that creating, marketing, or presenting
46 fraudulent proof of motor vehicle insurance is a felony of
47 the third degree; amending s. 817.50, F.S.; specifying
48 nonapplication of provisions specifying evidence of intent
49 to defraud to certain investigative actions taken by law
50 enforcement officers; amending s. 817.505, F.S.; providing
51 an additional patient brokering prohibition, to which
52 penalties apply; revising a definition; amending s.
53 843.08, F.S.; providing a criminal penalty for falsely
54 assuming or pretending to be an officer of the Department
55 of Financial Services; amending s. 932.7055, F.S.;

56 requiring certain proceeds seized by the division under

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57 | the Florida Contraband Forfeiture Act to be deposited into
 58 | certain trust funds; providing severability; providing an
 59 | effective date.

60 |
 61 | Be It Enacted by the Legislature of the State of Florida:

62 |
 63 | Section 1. Subsection (8) of section 322.21, Florida
 64 | Statutes, is amended to read:

65 | 322.21 License fees; procedure for handling and collecting
 66 | fees.--

67 | (8) Any person who applies for reinstatement following the
 68 | suspension or revocation of the person's driver's license shall
 69 | pay a service fee of \$35 following a suspension, and \$60
 70 | following a revocation, which is in addition to the fee for a
 71 | license. Any person who applies for reinstatement of a
 72 | commercial driver's license following the disqualification of
 73 | the person's privilege to operate a commercial motor vehicle
 74 | shall pay a service fee of \$60, which is in addition to the fee
 75 | for a license. The department shall collect all of these fees at
 76 | the time of reinstatement. The department shall issue proper
 77 | receipts for such fees and shall promptly transmit all funds
 78 | received by it as follows:

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

83 | (b) Of the \$60 fee received from a licensee for
 84 | reinstatement following a revocation or disqualification, the

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85 department shall deposit \$35 in the General Revenue Fund and \$25
 86 in the Highway Safety Operating Trust Fund.

87
 88 If the revocation or suspension of the driver's license was for
 89 a violation of s. 316.193, or for refusal to submit to a lawful
 90 breath, blood, or urine test, an additional fee of \$115 must be
 91 charged. However, only one \$115 fee may be collected from one
 92 person convicted of violations arising out of the same incident.
 93 The department shall collect the \$115 fee and deposit the fee
 94 into the Highway Safety Operating Trust Fund at the time of
 95 reinstatement of the person's driver's license, but the fee may
 96 not be collected if the suspension or revocation is overturned.

97 If the revocation or suspension of the driver's license was for
 98 a conviction for a violation of s. 817.234(8) or (9) or s.
 99 817.505, an additional fee of \$180 is imposed for each offense.
 100 The department shall collect and deposit the additional fee into
 101 the Highway Safety Operating Trust Fund at the time of
 102 reinstatement of the person's driver's license.

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

105 322.26 Mandatory revocation of license by department.--The
 106 department shall forthwith revoke the license or driving
 107 privilege of any person upon receiving a record of such person's
 108 conviction of any of the following offenses:

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

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

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113 400.9935 Clinic responsibilities.--

114 (13) The clinic shall display a sign in a conspicuous
115 location within the clinic readily visible to all patients
116 indicating that, pursuant to s. 626.9892, the Department of
117 Financial Services may pay rewards of up to \$25,000 to persons
118 providing information leading to the arrest and conviction of
119 persons committing crimes investigated by the Division of
120 Insurance Fraud arising from violations of s. 440.105, s.
121 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized
122 employee of the Division of Insurance Fraud may make unannounced
123 inspections of a clinic licensed under this part as necessary to
124 determine whether the clinic is in compliance with this
125 subsection. A licensed clinic shall allow full and complete
126 access to the premises to such authorized employee of the
127 division who makes an inspection to determine compliance with
128 this subsection.

129 Section 4. Paragraph (a) of subsection (2) of section
130 440.105, Florida Statutes, is amended to read:

131 440.105 Prohibited activities; reports; penalties;
132 limitations.--

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

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

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

140 2. Discharge or refuse to hire an employee or job

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141 applicant because the employee or applicant has filed a claim
 142 for benefits under this chapter.

143 3. Discharge, discipline, or take any other adverse
 144 personnel action against any employee for disclosing information
 145 to the department or any law enforcement agency relating to any
 146 violation or suspected violation of any of the provisions of
 147 this chapter or rules promulgated hereunder.

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

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

152 456.054 Kickbacks prohibited.--

153 (1) As used in this section, the term "kickback" means a
 154 remuneration or payment ~~back pursuant to an investment interest,~~
 155 ~~compensation arrangement, or otherwise, by or on behalf of a~~
 156 provider of health care services or items, ~~of a portion of the~~
 157 ~~charges for services rendered to any person a referring health~~
 158 ~~care provider~~ as an incentive or inducement to refer patients
 159 for past or future services or items, when the payment is not
 160 tax deductible as an ordinary and necessary expense.

161 Section 6. Section 624.15, Florida Statutes, is amended to
 162 read:

163 624.15 General penalty.--

164 (1) Each willful violation of this code or rule of the
 165 department, office, or commission as to which a greater penalty
 166 is not provided by another provision of this code or rule of the
 167 department, office, or commission or by other applicable laws of
 168 this state is a misdemeanor of the second degree and is, in

169 addition to any prescribed applicable denial, suspension, or
 170 revocation of certificate of authority, license, or permit,
 171 punishable as provided in s. 775.082 or s. 775.083. Each
 172 instance of such violation shall be considered a separate
 173 offense.

174 (2) Each willful violation of an emergency rule or order
 175 of the department, office, or commission by a person who is not
 176 licensed, authorized, or eligible to engage in business in
 177 accordance with the Florida Insurance Code is a felony of the
 178 third degree, punishable as provided in s. 775.082, s. 775.083,
 179 or s. 775.084. Each instance of such violation is a separate
 180 offense. This subsection does not apply to licensees or
 181 affiliated parties of licensees.

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

184 626.112 License and appointment required; agents, customer
 185 representatives, adjusters, insurance agencies, service
 186 representatives, managing general agents.--

187 (9) Any person who knowingly transacts insurance or
 188 otherwise engages in insurance activities in this state without
 189 a license in violation of this section commits a felony of the
 190 third degree, punishable as provided in s. 775.082, s. 775.083,
 191 or s. 775.084.

192 Section 8. Subsections (1), (2), and (9) of section
 193 626.938, Florida Statutes, are amended to read:

194 626.938 Report and tax of independently procured
 195 coverages.--

196 (1) Every insured who in this state procures or causes to
 197 be procured or continues or renews insurance from another state
 198 or country with an unauthorized foreign or alien insurer
 199 legitimately licensed in that jurisdiction, or any self-insurer
 200 who in this state so procures or continues excess loss,
 201 catastrophe, or other insurance, upon a subject of insurance
 202 resident, located, or to be performed within this state, other
 203 than insurance procured through a surplus lines agent pursuant
 204 to the Surplus Lines Law of this state or exempted from tax
 205 under s. 626.932(4), shall, within 30 days after the date such
 206 insurance was so procured, continued, or renewed, file a report
 207 of the same with the Florida Surplus Lines Service Office in
 208 writing and upon forms designated by the Florida Surplus Lines
 209 Service Office and furnished to such an insured upon request, or
 210 in a computer readable format as determined by the Florida
 211 Surplus Lines Service Office. The report shall show the name and
 212 address of the insured or insureds, the name and address of the
 213 insurer, the subject of the insurance, a general description of
 214 the coverage, the amount of premium currently charged therefor,
 215 and such additional pertinent information as is reasonably
 216 requested by the Florida Surplus Lines Service Office.

217 (2) Any insurance on a risk located in this state in an
 218 unauthorized insurer legitimately licensed in another state or
 219 country procured through solicitations, negotiations, or an
 220 application, ~~in whole or in part~~ occurring or made outside
 221 ~~within or from within this state, or for which premiums in whole~~
 222 ~~or in part are remitted directly or indirectly from within this~~

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223 ~~state,~~ shall be deemed to be insurance procured, continued, or
 224 renewed in this state within the intent of subsection (1).

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

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

230 626.9891 Insurer anti-fraud investigative units; reporting
 231 requirements; penalties for noncompliance.--

232 (7) If an insurer fails to timely submit a final
 233 acceptable anti-fraud plan or anti-fraud investigative unit
 234 description ~~otherwise fails to submit a plan,~~ fails to implement
 235 the provisions of a plan or an anti-fraud investigative unit
 236 description, or otherwise refuses to comply with the provisions
 237 of this section, the department, office, or commission may:

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

243 (b) Impose an administrative fine for failure by an ~~upon~~
 244 ~~the insurer to implement or follow the provisions of an anti-~~
 245 fraud plan or anti-fraud investigative unit description ~~a fraud~~
 246 ~~detection and prevention plan that is deemed to be appropriate~~
 247 ~~by the department and that must be implemented by the insurer;~~
 248 or

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

250 Section 10. Section 626.9893, Florida Statutes, is created

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251 to read:

252 626.9893 Disposition of revenues; criminal or forfeiture
 253 proceedings.--

254 (1) The Division of Insurance Fraud of the Department of
 255 Financial Services may deposit revenues received as a result of
 256 criminal proceedings or forfeiture proceedings, other than
 257 revenues deposited into the Department of Financial Services'
 258 Federal Equitable Sharing Trust Fund under s. 17.43, into the
 259 Insurance Regulatory Trust Fund. Moneys deposited pursuant to
 260 this section shall be separately accounted for and shall be used
 261 solely for the division to carry out its duties and
 262 responsibilities.

263 (2) Moneys deposited into the Insurance Regulatory Trust
 264 Fund pursuant to this section shall be appropriated by the
 265 Legislature, pursuant to the provisions of chapter 216, for the
 266 sole purpose of enabling the division to carry out its duties
 267 and responsibilities.

268 (3) Notwithstanding the provisions of s. 216.301 and
 269 pursuant to s. 216.351, any balance of moneys deposited into the
 270 Insurance Regulatory Trust Fund pursuant to this section
 271 remaining at the end of any fiscal year shall remain in the
 272 trust fund at the end of that year and shall be available for
 273 carrying out the duties and responsibilities of the division.

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

276 627.736 Required personal injury protection benefits;
 277 exclusions; priority; claims.--

278 (14) FRAUD ADVISORY NOTICE.--Upon receiving notice of a
 279 claim under this section, an insurer shall provide a notice to
 280 the insured or to a person for whom a claim for reimbursement
 281 for diagnosis or treatment of injuries has been filed, advising
 282 that:

283 (a) Pursuant to s. 626.9892, the Department of Financial
 284 Services may pay rewards of up to \$25,000 to persons providing
 285 information leading to the arrest and conviction of persons
 286 committing crimes investigated by the Division of Insurance
 287 Fraud arising from violations of s. 440.105, s. 624.15, s.
 288 626.9541, s. 626.989, or s. 817.234.

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

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

297 817.234 False and fraudulent insurance claims.--

298 (7) (a) It shall constitute a material omission and
 299 insurance fraud, punishable as provided in subsection (11), for
 300 any service ~~physician or other~~ provider, other than a hospital,
 301 to engage in a general business practice of billing amounts as
 302 its usual and customary charge, if such provider has agreed with
 303 the insured ~~patient~~ or intends to waive deductibles or
 304 copayments, or does not for any other reason intend to collect
 305 the total amount of such charge. With respect to a determination

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306 as to whether a service ~~physician or other~~ provider has engaged
 307 in such general business practice, consideration shall be given
 308 to evidence of whether the physician or other provider made a
 309 good faith attempt to collect such deductible or copayment. This
 310 paragraph does not apply to physicians or other providers who
 311 waive deductibles or copayments or reduce their bills as part of
 312 a bodily injury settlement or verdict.

313 (9) A person may not organize, plan, or knowingly
 314 participate in an intentional motor vehicle crash or a scheme to
 315 create documentation of a motor vehicle crash that did not occur
 316 for the purpose of making motor vehicle tort claims or claims
 317 for personal injury protection benefits as required by s.
 318 627.736. Any person who violates this subsection commits a
 319 felony of the second degree, punishable as provided in s.
 320 775.082, s. 775.083, or s. 775.084. A person who is convicted of
 321 a violation of this subsection shall be sentenced to a minimum
 322 term of imprisonment of 2 years.

323 Section 13. Section 817.2361, Florida Statutes, is amended
 324 to read:

325 817.2361 False or fraudulent proof of motor vehicle
 326 insurance ~~card~~.--Any person who, with intent to deceive any
 327 other person, creates, markets, or presents a false or
 328 fraudulent proof of motor vehicle insurance ~~card~~ commits a
 329 felony of the third degree, punishable as provided in s.
 330 775.082, s. 775.083, or s. 775.084.

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

333 817.50 Fraudulently obtaining goods, services, etc., from
 334 a health care provider.--

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

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

347 817.505 Patient brokering prohibited; exceptions;
 348 penalties.--

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

351 (a) Offer or pay any commission, bonus, rebate, kickback,
 352 or bribe, directly or indirectly, in cash or in kind, or engage
 353 in any split-fee arrangement, in any form whatsoever, to induce
 354 the referral of patients or patronage to or from a health care
 355 provider or health care facility;

356 (b) Solicit or receive any commission, bonus, rebate,
 357 kickback, or bribe, directly or indirectly, in cash or in kind,
 358 or engage in any split-fee arrangement, in any form whatsoever,
 359 in return for referring patients or patronage to or from a
 360 health care provider or health care facility; ~~or~~

361 (c) Solicit or receive any commission, bonus, rebate,
 362 kickback, or bribe, directly or indirectly, in cash or in kind,
 363 or engage in any split-fee arrangement, in any form whatsoever,
 364 in return for the acceptance or acknowledgement of treatment
 365 from a health care provider or health care facility; or

366 (d)(e) Aid, abet, advise, or otherwise participate in the
 367 conduct prohibited under paragraph (a), ~~or~~ paragraph (b), or
 368 paragraph (c).

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

370 (a) "Health care provider or health care facility" means
 371 any person or entity licensed, certified, or registered;
 372 required to be licensed, certified, or registered; or lawfully
 373 exempt from being required to be licensed, certified, or
 374 registered with the Agency for Health Care Administration or the
 375 Department of Health; any person or entity that has contracted
 376 with the Agency for Health Care Administration to provide goods
 377 or services to Medicaid recipients as provided under s. 409.907;
 378 a county health department established under part I of chapter
 379 154; any community service provider contracting with the
 380 Department of Children and Family Services to furnish alcohol,
 381 drug abuse, or mental health services under part IV of chapter
 382 394; any substance abuse service provider licensed under chapter
 383 397; or any federally supported primary care program such as a
 384 migrant or community health center authorized under ss. 329 and
 385 330 of the United States Public Health Services Act.

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

388 843.08 Falsely personating officer, etc.--A person who
 389 falsely assumes or pretends to be a sheriff, officer of the
 390 Florida Highway Patrol, officer of the Fish and Wildlife
 391 Conservation Commission, officer of the Department of
 392 Environmental Protection, officer of the Department of
 393 Transportation, officer of the Department of Financial Services,
 394 officer of the Department of Corrections, correctional probation
 395 officer, deputy sheriff, state attorney or assistant state
 396 attorney, statewide prosecutor or assistant statewide
 397 prosecutor, state attorney investigator, coroner, police
 398 officer, lottery special agent or lottery investigator, beverage
 399 enforcement agent, or watchman, or any member of the Parole
 400 Commission and any administrative aide or supervisor employed by
 401 the commission, or any personnel or representative of the
 402 Department of Law Enforcement, and takes upon himself or herself
 403 to act as such, or to require any other person to aid or assist
 404 him or her in a matter pertaining to the duty of any such
 405 officer, commits a felony of the third degree, punishable as
 406 provided in s. 775.082, s. 775.083, or s. 775.084; however, a
 407 person who falsely personates any such officer during the course
 408 of the commission of a felony commits a felony of the second
 409 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 410 775.084; except that if the commission of the felony results in
 411 the death or personal injury of another human being, the person
 412 commits a felony of the first degree, punishable as provided in
 413 s. 775.082, s. 775.083, or s. 775.084.

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

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416 932.7055 Disposition of liens and forfeited property.--

417 (6) If the seizing agency is a state agency, all remaining
418 proceeds shall be deposited into the General Revenue Fund.

419 However, if the seizing agency is:

420 (n) The Division of Insurance Fraud of the Department of
421 Financial Services, the proceeds accrued pursuant to the
422 provisions of the Florida Contraband Forfeiture Act shall be
423 deposited into the Insurance Regulatory Trust Fund as provided
424 in s. 626.9893 or into the Department of Financial Services'
425 Federal Equitable Sharing Trust Fund as provided in s. 17.43, as
426 applicable.

427 Section 18. If any provision of this act or the
428 application thereof to any person or circumstance is held
429 invalid, the invalidity does not affect other provisions or
430 applications of the act which can be given effect without the
431 invalid provision or application, and, to this end, the
432 provisions of this act are declared severable.

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