

## CHAMBER ACTION

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1 The Insurance Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to offenses involving insurance; amending  
7 s. 316.068, F.S.; specifying information to be included in  
8 a crash report; creating a rebuttable presumption relating  
9 to the absence of certain information in such reports;  
10 amending s. 322.21, F.S.; providing an additional fee for  
11 certain offenses relating to insurance crimes; providing  
12 for deposit of the fee into the Highway Safety Operating  
13 Trust Fund; amending s. 322.26, F.S.; providing an  
14 additional circumstance relating to insurance crimes for  
15 mandatory revocation of a person's driver's license;  
16 amending s. 400.9935, F.S.; requiring health care clinics  
17 to display signs containing certain information relating  
18 to insurance fraud; authorizing compliance inspections by  
19 the Division of Insurance Fraud; requiring clinics to  
20 allow inspection access; amending s. 440.105, F.S.;  
21 deleting the provision that a violation of a stop-work  
22 order is a misdemeanor of the first degree; amending s.  
23 456.054, F.S.; revising the definition of the term

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24 "kickback" for criminal prosecution purposes; amending s.  
25 624.15, F.S.; specifying violations of rules of the  
26 Department of Financial Services, Office of Insurance  
27 Regulation, or Financial Services Commission as  
28 misdemeanors; specifying a violation of emergency rules or  
29 orders as a felony of the third degree; providing  
30 penalties; providing for nonapplication to certain  
31 persons; amending s. 626.112, F.S.; providing a criminal  
32 penalty for knowingly transacting insurance without a  
33 license; amending s. 626.938, F.S.; revising provisions  
34 requiring a report and taxation of independently procured  
35 coverages; specifying nonauthorization of independent  
36 procurement of workers' compensation, life, or health  
37 insurance; amending s. 626.9891, F.S.; expanding  
38 authorization to impose administrative fines on insurers  
39 for failure to comply with certain anti-fraud plan or  
40 anti-fraud investigative unit description requirements;  
41 creating s. 626.9893, F.S.; authorizing the division to  
42 deposit certain revenues into the Insurance Regulatory  
43 Trust Fund; specifying accounting and uses of such  
44 revenues; providing for appropriation and use of such  
45 revenues; amending s. 627.736, F.S.; requiring insurers to  
46 provide certain persons with notice of the department's  
47 Anti-Fraud Reward Program and the criminal violations that  
48 may be reported in pursuit of a reward; amending s.  
49 817.234, F.S.; revising provisions specifying material  
50 omission and insurance fraud; prohibiting scheming to  
51 create documentation of a motor vehicle crash that did not

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52 occur; providing a criminal penalty; amending s. 817.2361,  
 53 F.S.; providing that creating, marketing, or presenting  
 54 fraudulent proof of motor vehicle insurance is a felony of  
 55 the third degree; amending s. 817.50, F.S.; specifying  
 56 nonapplication of provisions specifying evidence of intent  
 57 to defraud to certain investigative actions taken by law  
 58 enforcement officers; amending s. 817.505, F.S.; providing  
 59 an additional patient brokering prohibition, to which  
 60 penalties apply; revising a definition; amending s.  
 61 843.08, F.S.; providing a criminal penalty for falsely  
 62 assuming or pretending to be an officer of the Department  
 63 of Financial Services; amending s. 932.7055, F.S.;

64 requiring certain proceeds seized by the division under  
 65 the Florida Contraband Forfeiture Act to be deposited into  
 66 certain trust funds; providing severability; providing an  
 67 effective date.

68  
 69 Be It Enacted by the Legislature of the State of Florida:

70  
 71 Section 1. Subsection (2) of section 316.068, Florida  
 72 Statutes, is amended to read:

73 316.068 Crash report forms.--

74 (2) Every crash report required to be made in writing must  
 75 be made on the appropriate form approved by the department and  
 76 must contain all the information required therein, including:

- 77 (a) The date, time, and location of the crash;
- 78 (b) A description of the vehicles involved;
- 79 (c) The names and addresses of the parties involved;

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80           (d) The names and addresses of all drivers and passengers  
81 in the vehicles involved;

82           (e) The names and addresses of witnesses;

83           (f) The name, badge number, and law enforcement agency of  
84 the officer investigating the crash; and

85           (g) The names of the insurance companies for the  
86 respective parties involved in the crash,

87  
88 unless not available. The absence of information in such written  
89 crash reports regarding the existence of passengers in the  
90 vehicles involved in the crash constitutes a rebuttable  
91 presumption that no such passengers were involved in the  
92 reported crash. Notwithstanding any other provisions of this  
93 section, a crash report produced electronically by a law  
94 enforcement officer must, at a minimum, contain the same  
95 information as is called for on those forms approved by the  
96 department.

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

99           322.21 License fees; procedure for handling and collecting  
100 fees.--

101           (8) Any person who applies for reinstatement following the  
102 suspension or revocation of the person's driver's license shall  
103 pay a service fee of \$35 following a suspension, and \$60  
104 following a revocation, which is in addition to the fee for a  
105 license. Any person who applies for reinstatement of a  
106 commercial driver's license following the disqualification of  
107 the person's privilege to operate a commercial motor vehicle

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108 shall pay a service fee of \$60, which is in addition to the fee  
 109 for a license. The department shall collect all of these fees at  
 110 the time of reinstatement. The department shall issue proper  
 111 receipts for such fees and shall promptly transmit all funds  
 112 received by it as follows:

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

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

121  
 122 If the revocation or suspension of the driver's license was for  
 123 a violation of s. 316.193, or for refusal to submit to a lawful  
 124 breath, blood, or urine test, an additional fee of \$115 must be  
 125 charged. However, only one \$115 fee may be collected from one  
 126 person convicted of violations arising out of the same incident.

127 The department shall collect the \$115 fee and deposit the fee  
 128 into the Highway Safety Operating Trust Fund at the time of  
 129 reinstatement of the person's driver's license, but the fee may  
 130 not be collected if the suspension or revocation is overturned.

131 If the revocation or suspension of the driver's license was for  
 132 a conviction for a violation of s. 817.234(8) or (9) or s.

133 817.505, an additional fee of \$180 is imposed for each offense.

134 The department shall collect and deposit the additional fee into

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135 | the Highway Safety Operating Trust Fund at the time of  
136 | reinstatement of the person's driver's license.

137 | Section 3. Subsection (9) is added to section 322.26,  
138 | Florida Statutes, to read:

139 | 322.26 Mandatory revocation of license by department.--The  
140 | department shall forthwith revoke the license or driving  
141 | privilege of any person upon receiving a record of such person's  
142 | conviction of any of the following offenses:

143 | (9) Conviction in any court having jurisdiction over  
144 | offenses committed under s. 817.234(8) or (9) or s. 817.505.

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

147 | 400.9935 Clinic responsibilities.--

148 | (13) The clinic shall display a sign in a conspicuous  
149 | location within the clinic readily visible to all patients  
150 | indicating that, pursuant to s. 626.9892, the Department of  
151 | Financial Services may pay rewards of up to \$25,000 to persons  
152 | providing information leading to the arrest and conviction of  
153 | persons committing crimes investigated by the Division of  
154 | Insurance Fraud arising from violations of s. 440.105, s.  
155 | 624.15, s. 626.9541, s. 626.989, or s. 817.234. An authorized  
156 | employee of the Division of Insurance Fraud may make unannounced  
157 | inspections of a clinic licensed under this part as necessary to  
158 | determine whether the clinic is in compliance with this  
159 | subsection. A licensed clinic shall allow full and complete  
160 | access to the premises to such authorized employee of the  
161 | division who makes an inspection to determine compliance with  
162 | this subsection.

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163 Section 5. Paragraph (a) of subsection (2) of section  
164 440.105, Florida Statutes, is amended to read:

165 440.105 Prohibited activities; reports; penalties;  
166 limitations.--

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

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

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

174 2. Discharge or refuse to hire an employee or job  
175 applicant because the employee or applicant has filed a claim  
176 for benefits under this chapter.

177 3. Discharge, discipline, or take any other adverse  
178 personnel action against any employee for disclosing information  
179 to the department or any law enforcement agency relating to any  
180 violation or suspected violation of any of the provisions of  
181 this chapter or rules promulgated hereunder.

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

184 Section 6. Subsection (1) of section 456.054, Florida  
185 Statutes, is amended to read:

186 456.054 Kickbacks prohibited.--

187 (1) As used in this section, the term "kickback" means a  
188 remuneration or payment ~~back pursuant to an investment interest,~~  
189 ~~compensation arrangement, or otherwise,~~ by or on behalf of a  
190 provider of health care services or items, ~~of a portion of the~~

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191 ~~charges for services rendered to any person a referring health~~  
 192 ~~care provider~~ as an incentive or inducement to refer patients  
 193 for past or future services or items, when the payment is not  
 194 tax deductible as an ordinary and necessary expense.

195 Section 7. Section 624.15, Florida Statutes, is amended to  
 196 read:

197 624.15 General penalty.--

198 (1) Each willful violation of this code or rule of the  
 199 department, office, or commission as to which a greater penalty  
 200 is not provided by another provision of this code or rule of the  
 201 department, office, or commission or by other applicable laws of  
 202 this state is a misdemeanor of the second degree and is, in  
 203 addition to any prescribed applicable denial, suspension, or  
 204 revocation of certificate of authority, license, or permit,  
 205 punishable as provided in s. 775.082 or s. 775.083. Each  
 206 instance of such violation shall be considered a separate  
 207 offense.

208 (2) Each willful violation of an emergency rule or order  
 209 of the department, office, or commission by a person who is not  
 210 licensed, authorized, or eligible to engage in business in  
 211 accordance with the Florida Insurance Code is a felony of the  
 212 third degree, punishable as provided in s. 775.082, s. 775.083,  
 213 or s. 775.084. Each instance of such violation is a separate  
 214 offense. This subsection does not apply to licensees or  
 215 affiliated parties of licensees.

216 Section 8. Subsection (9) is added to section 626.112,  
 217 Florida Statutes, to read:



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218           626.112 License and appointment required; agents, customer  
219 representatives, adjusters, insurance agencies, service  
220 representatives, managing general agents.--

221           (9) Any person who knowingly transacts insurance or  
222 otherwise engages in insurance activities in this state without  
223 a license in violation of this section commits a felony of the  
224 third degree, punishable as provided in s. 775.082, s. 775.083,  
225 or s. 775.084.

226           Section 9. Subsections (1), (2), and (9) of section  
227 626.938, Florida Statutes, are amended to read:

228           626.938 Report and tax of independently procured  
229 coverages.--

230           (1) Every insured who in this state procures or causes to  
231 be procured or continues or renews insurance from another state  
232 or country with an unauthorized foreign or alien insurer  
233 legitimately licensed in that jurisdiction, or any self-insurer  
234 who in this state so procures or continues excess loss,  
235 catastrophe, or other insurance, upon a subject of insurance  
236 resident, located, or to be performed within this state, other  
237 than insurance procured through a surplus lines agent pursuant  
238 to the Surplus Lines Law of this state or exempted from tax  
239 under s. 626.932(4), shall, within 30 days after the date such  
240 insurance was so procured, continued, or renewed, file a report  
241 of the same with the Florida Surplus Lines Service Office in  
242 writing and upon forms designated by the Florida Surplus Lines  
243 Service Office and furnished to such an insured upon request, or  
244 in a computer readable format as determined by the Florida  
245 Surplus Lines Service Office. The report shall show the name and

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246 address of the insured or insureds, the name and address of the  
247 insurer, the subject of the insurance, a general description of  
248 the coverage, the amount of premium currently charged therefor,  
249 and such additional pertinent information as is reasonably  
250 requested by the Florida Surplus Lines Service Office.

251 (2) Any insurance on a risk located in this state in an  
252 unauthorized insurer legitimately licensed in another state or  
253 country procured through solicitations, negotiations, or an  
254 application, ~~in whole or in part~~ occurring or made outside  
255 ~~within or from within this state, or for which premiums in whole~~  
256 ~~or in part are remitted directly or indirectly from within this~~  
257 ~~state~~, shall be deemed to be insurance procured, continued, or  
258 renewed in this state within the intent of subsection (1).

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

262 Section 10. Subsection (7) of section 626.9891, Florida  
263 Statutes, is amended to read:

264 626.9891 Insurer anti-fraud investigative units; reporting  
265 requirements; penalties for noncompliance.--

266 (7) If an insurer fails to timely submit a final  
267 acceptable anti-fraud plan or anti-fraud investigative unit  
268 description ~~otherwise fails to submit a plan~~, fails to implement  
269 the provisions of a plan or an anti-fraud investigative unit  
270 description, or otherwise refuses to comply with the provisions  
271 of this section, the department, office, or commission may:

272 (a) Impose an administrative fine of not more than \$2,000  
273 per day for such failure by an insurer to submit an acceptable

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274 anti-fraud plan or anti-fraud investigative unit description,  
275 until the department, office, or commission deems the insurer to  
276 be in compliance;

277 (b) Impose an administrative fine for failure by an ~~upon~~  
278 ~~the insurer~~ to implement or follow the provisions of an anti-  
279 fraud plan or anti-fraud investigative unit description ~~a fraud~~  
280 ~~detection and prevention plan that is deemed to be appropriate~~  
281 ~~by the department and that must be implemented by the insurer;~~  
282 or

283 (c) Impose the provisions of both paragraphs (a) and (b).  
284 Section 11. Section 626.9893, Florida Statutes, is created  
285 to read:

286 626.9893 Disposition of revenues; criminal or forfeiture  
287 proceedings.--

288 (1) The Division of Insurance Fraud of the Department of  
289 Financial Services may deposit revenues received as a result of  
290 criminal proceedings or forfeiture proceedings, other than  
291 revenues deposited into the Department of Financial Services'  
292 Federal Equitable Sharing Trust Fund under s. 17.43, into the  
293 Insurance Regulatory Trust Fund. Moneys deposited pursuant to  
294 this section shall be separately accounted for and shall be used  
295 solely for the division to carry out its duties and  
296 responsibilities.

297 (2) Moneys deposited into the Insurance Regulatory Trust  
298 Fund pursuant to this section shall be appropriated by the  
299 Legislature, pursuant to the provisions of chapter 216, for the  
300 sole purpose of enabling the division to carry out its duties  
301 and responsibilities.

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302           (3) Notwithstanding the provisions of s. 216.301 and  
 303 pursuant to s. 216.351, any balance of moneys deposited into the  
 304 Insurance Regulatory Trust Fund pursuant to this section  
 305 remaining at the end of any fiscal year shall remain in the  
 306 trust fund at the end of that year and shall be available for  
 307 carrying out the duties and responsibilities of the division.

308           Section 12. Subsection (14) is added to section 627.736,  
 309 Florida Statutes, to read:

310           627.736 Required personal injury protection benefits;  
 311 exclusions; priority; claims.--

312           (14) FRAUD ADVISORY NOTICE.--Upon receiving notice of a  
 313 claim under this section, an insurer shall provide a notice to  
 314 the insured or to a person for whom a claim for reimbursement  
 315 for diagnosis or treatment of injuries has been filed, advising  
 316 that:

317           (a) Pursuant to s. 626.9892, the Department of Financial  
 318 Services may pay rewards of up to \$25,000 to persons providing  
 319 information leading to the arrest and conviction of persons  
 320 committing crimes investigated by the Division of Insurance  
 321 Fraud arising from violations of s. 440.105, s. 624.15, s.  
 322 626.9541, s. 626.989, or s. 817.234.

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

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

331 817.234 False and fraudulent insurance claims.--

332 (7) (a) It shall constitute a material omission and  
333 insurance fraud, punishable as provided in subsection (11), for  
334 any service ~~physician or other~~ provider, other than a hospital,  
335 to engage in a general business practice of billing amounts as  
336 its usual and customary charge, if such provider has agreed with  
337 the insured ~~patient~~ or intends to waive deductibles or  
338 copayments, or does not for any other reason intend to collect  
339 the total amount of such charge. With respect to a determination  
340 as to whether a service ~~physician or other~~ provider has engaged  
341 in such general business practice, consideration shall be given  
342 to evidence of whether the physician or other provider made a  
343 good faith attempt to collect such deductible or copayment. This  
344 paragraph does not apply to physicians or other providers who  
345 waive deductibles or copayments or reduce their bills as part of  
346 a bodily injury settlement or verdict.

347 (9) A person may not organize, plan, or knowingly  
348 participate in an intentional motor vehicle crash or a scheme to  
349 create documentation of a motor vehicle crash that did not occur  
350 for the purpose of making motor vehicle tort claims or claims  
351 for personal injury protection benefits as required by s.  
352 627.736. Any person who violates this subsection commits a  
353 felony of the second degree, punishable as provided in s.  
354 775.082, s. 775.083, or s. 775.084. A person who is convicted of  
355 a violation of this subsection shall be sentenced to a minimum  
356 term of imprisonment of 2 years.

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357 Section 14. Section 817.2361, Florida Statutes, is amended  
358 to read:

359 817.2361 False or fraudulent proof of motor vehicle  
360 insurance ~~card~~.--Any person who, with intent to deceive any  
361 other person, creates, markets, or presents a false or  
362 fraudulent proof of motor vehicle insurance ~~card~~ commits a  
363 felony of the third degree, punishable as provided in s.  
364 775.082, s. 775.083, or s. 775.084.

365 Section 15. Subsection (2) of section 817.50, Florida  
366 Statutes, is amended to read:

367 817.50 Fraudulently obtaining goods, services, etc., from  
368 a health care provider.--

369 (2) If any person gives to any health care provider in  
370 this state a false or fictitious name or a false or fictitious  
371 address or assigns to any health care provider the proceeds of  
372 any health maintenance contract or insurance contract, then  
373 knowing that such contract is no longer in force, is invalid, or  
374 is void for any reason, such action shall be prima facie  
375 evidence of the intent of such person to defraud the health care  
376 provider. However, this subsection does not apply to  
377 investigative actions taken by law enforcement officers for law  
378 enforcement purposes in the course of their official duties.

379 Section 16. Subsection (1) and paragraph (a) of subsection  
380 (2) of section 817.505, Florida Statutes, are amended to read:

381 817.505 Patient brokering prohibited; exceptions;  
382 penalties.--

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

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385 (a) Offer or pay any commission, bonus, rebate, kickback,  
386 or bribe, directly or indirectly, in cash or in kind, or engage  
387 in any split-fee arrangement, in any form whatsoever, to induce  
388 the referral of patients or patronage to or from a health care  
389 provider or health care facility;

390 (b) Solicit or receive any commission, bonus, rebate,  
391 kickback, or bribe, directly or indirectly, in cash or in kind,  
392 or engage in any split-fee arrangement, in any form whatsoever,  
393 in return for referring patients or patronage to or from a  
394 health care provider or health care facility; ~~or~~

395 (c) Solicit or receive any commission, bonus, rebate,  
396 kickback, or bribe, directly or indirectly, in cash or in kind,  
397 or engage in any split-fee arrangement, in any form whatsoever,  
398 in return for the acceptance or acknowledgement of treatment  
399 from a health care provider or health care facility; or

400 (d)-(e) Aid, abet, advise, or otherwise participate in the  
401 conduct prohibited under paragraph (a), ~~or~~ paragraph (b), or  
402 paragraph (c).

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

404 (a) "Health care provider or health care facility" means  
405 any person or entity licensed, certified, or registered;  
406 required to be licensed, certified, or registered; or lawfully  
407 exempt from being required to be licensed, certified, or  
408 registered with the Agency for Health Care Administration or the  
409 Department of Health; any person or entity that has contracted  
410 with the Agency for Health Care Administration to provide goods  
411 or services to Medicaid recipients as provided under s. 409.907;  
412 a county health department established under part I of chapter

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413 154; any community service provider contracting with the  
414 Department of Children and Family Services to furnish alcohol,  
415 drug abuse, or mental health services under part IV of chapter  
416 394; any substance abuse service provider licensed under chapter  
417 397; or any federally supported primary care program such as a  
418 migrant or community health center authorized under ss. 329 and  
419 330 of the United States Public Health Services Act.

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

422 843.08 Falsely personating officer, etc.--A person who  
423 falsely assumes or pretends to be a sheriff, officer of the  
424 Florida Highway Patrol, officer of the Fish and Wildlife  
425 Conservation Commission, officer of the Department of  
426 Environmental Protection, officer of the Department of  
427 Transportation, officer of the Department of Financial Services,  
428 officer of the Department of Corrections, correctional probation  
429 officer, deputy sheriff, state attorney or assistant state  
430 attorney, statewide prosecutor or assistant statewide  
431 prosecutor, state attorney investigator, coroner, police  
432 officer, lottery special agent or lottery investigator, beverage  
433 enforcement agent, or watchman, or any member of the Parole  
434 Commission and any administrative aide or supervisor employed by  
435 the commission, or any personnel or representative of the  
436 Department of Law Enforcement, and takes upon himself or herself  
437 to act as such, or to require any other person to aid or assist  
438 him or her in a matter pertaining to the duty of any such  
439 officer, commits a felony of the third degree, punishable as  
440 provided in s. 775.082, s. 775.083, or s. 775.084; however, a

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441 person who falsely personates any such officer during the course  
442 of the commission of a felony commits a felony of the second  
443 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
444 775.084; except that if the commission of the felony results in  
445 the death or personal injury of another human being, the person  
446 commits a felony of the first degree, punishable as provided in  
447 s. 775.082, s. 775.083, or s. 775.084.

448 Section 18. Paragraph (n) is added to subsection (6) of  
449 section 932.7055, Florida Statutes, to read:

450 932.7055 Disposition of liens and forfeited property.--

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

454 (n) The Division of Insurance Fraud of the Department of  
455 Financial Services, the proceeds accrued pursuant to the  
456 provisions of the Florida Contraband Forfeiture Act shall be  
457 deposited into the Insurance Regulatory Trust Fund as provided  
458 in s. 626.9893 or into the Department of Financial Services'  
459 Federal Equitable Sharing Trust Fund as provided in s. 17.43, as  
460 applicable.

461 Section 19. If any provision of this act or the  
462 application thereof to any person or circumstance is held  
463 invalid, the invalidity does not affect other provisions or  
464 applications of the act which can be given effect without the  
465 invalid provision or application, and, to this end, the  
466 provisions of this act are declared severable.

467 Section 20. This act shall take effect July 1, 2006.