

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 1306

INTRODUCER: Appropriations Committee; Banking and Insurance Committee; and Senator Bradley

SUBJECT: Insurance Fraud

DATE: April 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	<u>Brown</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1306 provides that a knowing, unlawful claim for reimbursement made by an unlicensed clinic or a clinic operating in violation of the Health Care Clinic Act is considered theft, regardless of whether payment is made. The bill creates two new criminal penalties within the Health Care Clinic Act. The first prohibits offering or advertising services that require licensure under the Health Care Clinic Act or the Health Care Licensing Procedures Act. The second applies when a person knowingly fails to report a change in information contained in the most recent health care clinic license application or a change regarding required insurance or bonds, as set forth under s. 408.810(3), F.S.

In 2012, the Department of Financial Services established a direct-support organization to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The direct support organization has engaged in limited organizational activity during its existence. The bill repeals the statute authorizing the direct support organization.

The bill creates a fiscal impact to the General Revenue Fund of not more than \$180,000.

The bill provides an effective date of July 1, 2015.

## II. Present Situation:

### Unlicensed Clinics and Unlawful Charges

Section 627.736(5)(h), F.S., requires all entities meeting the definition of a “clinic” in s. 400.9905(4), F.S., to be licensed by the Agency for Health Care Administration (AHCA) as a health care clinic in order to receive reimbursement pursuant to the Florida Motor Vehicle No-Fault Law,<sup>1</sup> unless the entity is wholly owned by a doctor, dentist, chiropractor, or hospital, or is a hospital, ambulatory surgical center or clinical facility affiliated with a medical school. Under s. 400.9935(6), F.S., these exempted entities may voluntarily apply to the AHCA for a certificate of exemption from licensure or may self-exempt and operate a health care clinic.

Section 408.812, F.S., prohibits an unlicensed clinic from offering or advertising services that require licensure by the AHCA and prohibits a person or entity from owning, operating, or maintaining an unlicensed provider. Violations of s. 408.812, F.S., are punished as a third degree felony<sup>2</sup> for a first offense and a second degree felony<sup>3</sup> for a second or subsequent offense.<sup>4</sup> Section 408.812(3), F.S., requires any health care provider who is aware of the operation of an unlicensed clinic to report that facility to the AHCA. The AHCA is required to report to the provider’s licensing board a failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed.<sup>5</sup>

Section 400.9935(3), F.S., provides that the charges and reimbursement claims made by a health care clinic that is required to be licensed under ss. 400.990-400.995, F.S., but is not licensed or is operating in violation of the referenced statutes, are unlawful, non-compensable, and unenforceable. According to the Department of Financial Services (DFS), s. 400.9935(3), F.S., has routinely been applied in the civil context to permit insurance companies and third parties to deny paying, or to recover payments for, such unlawful charges. However, the DFS believes that prosecutors have been reluctant to file criminal theft charges because the theft statute does not specifically name such unlawful charges as theft.<sup>6</sup>

### Automotive Insurance Fraud Strike Force

Section 626.9895, F.S., authorizes the Division of Insurance Fraud within the DFS to establish a direct-support organization, known as the “Automobile Insurance Fraud Strike Force” (DSO). The DSO’s sole purpose is to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The DSO is authorized to raise funds, conduct programs and activities, hold, invest, and administer assets in its name, and make grants and expenditures to state

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<sup>1</sup> See ss. 627.730–627.7405, F.S.

<sup>2</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentenced points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction would present a danger to the public. Section 775.082(10), F.S.

<sup>3</sup> A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>4</sup> See s. 400.993, F.S. Each day of continued operation is a separate offense.

<sup>5</sup> See s. 400.993(3), F.S.

<sup>6</sup> See Department of Financial Services, *Agency Bill Analysis SB 1306*, March 13, 2015 (on file with the Banking and Insurance Committee and Criminal Justice Committee).

attorneys' offices, the statewide prosecutor, the AHCA, and the Department of Health to be used exclusively to prosecute, investigate, or prevent motor vehicle insurance fraud.

The DSO filed its incorporation documents with the Department of State on April 25, 2012. The DSO has engaged in limited organizational activity during its existence. The DFS reported to Senate Banking and Insurance Committee staff that the DSO has not taken in any donations, paid any grants, established a bank account, or made any transfers into the Insurance Regulatory Trust Fund.

### III. Effect of Proposed Changes:

**Section 1** repeals s. 400.993, F.S., those statutory provisions moved to s. 400.9935, F.S.

**Section 2** amends s. 400.9935, F.S., to provide that an unlawful claim for reimbursement made by an unlicensed clinic, or a clinic operating in violation of the Health Care Clinic Act is considered theft under s. 812.014, F.S., regardless of whether payment is made.

Two new criminal penalties within the Health Care Clinic Act are created to provide that:

- It is a third degree felony to offer or advertise services that require licensure under the Health Care Clinic Act or the Health Care Licensing Procedures Act, without having a license; and
- It is a third degree felony to knowingly fail to report a change in information contained in the most recent health care clinic license application or a change regarding the required insurance or bonds, as required under s. 408.810(3), F.S.

The bill also consolidates existing criminal offense provisions (the third degree felony and second degree felony in s. 400.993, F.S.) into s. 400.9935, F.S.

The bill requires a health care provider who is aware of the operation of an unlicensed clinic to report the clinic to the Agency for Health Care Administration (AHCA). The AHCA must report to the provider's licensing board a failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed.

**Section 5** amends s. 921.0022, F.S., (which contains the offense severity ranking chart of the Criminal Punishment Code) to include in Level 3 the third degree felonies created in or added to s. 400.9935, F.S. The bill also includes in Level 6 the second degree felony added to s. 400.9935, F.S.

**Section 4** repeals, s. 626.9895, F.S., in which the Automobile Insurance Fraud Strike Force direct-support organization is created.

**Section 3** makes a conforming change to s. 626.9894(5), F.S.

**Section 6** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Department of Financial Services reports there could be an indeterminate increase in expenditures for rulemaking and administrative litigation related to CS/CS/SB 1306.<sup>7</sup>

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a positive insignificant prison bed impact because the bill is expected to increase the Department of Corrections' prison population by 10 or fewer beds annually. Accordingly, the projected prison bed impact would create a fiscal impact to the General Revenue Fund of not more than \$180,000 annually as to operating costs. No additional fixed capital outlay costs are anticipated for these additional prison beds because the prison population is below the capacity of the correctional system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>7</sup> *Id.*

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 400.9935, 626.9894, and 921.0022.

This bill repeals the following sections of the Florida Statutes: 400.993 and 626.9895.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Appropriations on April 16, 2015:**

The committee substitute removes from the bill the provision that a charge or reimbursement claim made by or on behalf of a clinic operating in violation of rules of the Agency for Health Care Administration is necessarily an unlawful charge.

**CS by Banking and Insurance on March 31, 2015:**

The CS removes provisions from the bill relating to insurance company special investigative units and removes provisions requiring insurers to report anti-fraud plans and statistical information to the Department of Financial Services. The bill also removes a provision requiring a separate certificate of exemption for each clinic location.

- B. **Amendments:**

None.