

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1306

INTRODUCER: Banking and Insurance Committee and Senator Bradley

SUBJECT: Insurance Fraud

DATE: April 6, 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>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1306 provides that knowing, unlawful claims for reimbursement made by an unlicensed clinic or a clinic operating in violation of the Health Care Clinic Act or an administrative rule of the Agency for Health Care Administration (AHCA) are considered theft, regardless of whether payments are 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 by s. 408.810(3), F.S.

In 2012, the Department of Financial Services (DFS) 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.

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,¹ 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 felony² for a first offense and a second degree felony³ for a second or subsequent offense.⁴ 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. Failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed shall be reported to the provider's licensing board.⁵

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, noncompensable, and unenforceable. According to the 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.⁶

Automotive Insurance Fraud Strike Force

Section 626.9895, F.S., authorizes the division 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 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 Strike Force filed its incorporation with the Department of State on April 25, 2012. The Strike Force has engaged in limited organizational activity during its existence. The DFS reported to Banking and Insurance Committee staff that the Strike Force has not: taken in any

¹ See ss. 627.730–627.7405, F.S.

² 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.

³ 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.

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

⁵ See s. 400.993(3), F.S.

⁶ 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).

donations, paid any grants, established a bank account, or made any transfers into the Insurance Regulatory Trust Fund.

III. Effect of Proposed Changes:

Unlicensed Clinic Activity and Unlawful Charges

Section 1 of the bill repeals s. 400.993, F.S. Those provisions are moved to s. 400.9935, F.S.

Section 2 of the bill amends s. 400.9935, F.S., to provide that unlawful claims for reimbursement made by an unlicensed clinic or a clinic operating in violation of the Health Care Clinic Act or an administrative rule of the Agency for Health Care Administration are considered theft under s. 812.014, F.S., regardless of whether payments are made.

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

- 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; 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 by 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. The agency 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 of the bill amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank in Level 3 the third degree felonies created in or added to s. 400.9935, F.S. The bill also ranks in Level 6, the second degree felony added to s. 400.9935, F.S.

Repeal of the Automobile Insurance Fraud Strike Force

Section 4 of the bill repeals, s. 626.9895, F.S., which created the Automobile Insurance Fraud Strike Force direct support organization.

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

Effective Date

Section 6 of the bill provides the bill takes effect on 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 DFS reports there could be an indeterminate increase in expenditures for rulemaking and administrative litigation related to this bill.⁷

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 (an increase of 10 or fewer prison beds per year).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.

⁷ *Id.*

IX. Additional Information:

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

CS by Banking and Insurance on March 31, 2015:

The bill removes provisions 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
