

By Senator Brandes

24-01264A-17

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 626.9891, F.S.; providing an exemption from public
4 records requirements for certain information held by
5 the Division of Investigative and Forensic Services of
6 the Department of Financial Services, or the
7 department, relating to insurer anti-fraud plans,
8 descriptions, contracts, related documents, anti-fraud
9 statistics, and information reported by insurers
10 writing workers' compensation insurance; providing for
11 future legislative review and repeal of the exemption;
12 providing a statement of public necessity; providing a
13 contingent effective date.

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

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17 Section 1. Subsection (11) is added to section 626.9891,
18 Florida Statutes, as amended by SB ____, 2017 Regular Session,
19 to read:

20 626.9891 Insurer anti-fraud investigative units; reporting
21 requirements; penalties for noncompliance.-

22 (11) (a) The following information held by the Division of
23 Investigative and Forensic Services or the department is exempt
24 from s. 119.07(1) and s. 24(a), Art. I of the State
25 Constitution:

26 1. An insurer's anti-fraud plan adopted pursuant to
27 subsections (2), (3), and (4) which is filed with the Division
28 of Investigative and Forensic Services;

29 2. An insurer's description of its unit or division that

24-01264A-17

20171014__

30 investigates possible fraudulent insurance acts and copies of
31 contracts and related documents which are filed with the
32 Division of Investigative and Forensic Services pursuant to
33 subsection (2);

34 3. An insurer's anti-fraud statistics submitted to the
35 department pursuant to subsection (5); and

36 4. Information reported by an insurer to the department
37 pursuant to subsection (6).

38 (b) This subsection is subject to the Open Government
39 Sunset Review Act in accordance with s. 119.15 and is repealed
40 on October 2, 2022, unless reviewed and saved from repeal
41 through reenactment by the Legislature.

42 Section 2. (1) The Legislature finds that it is a public
43 necessity to make exempt from s. 119.07(1), Florida Statutes,
44 and s. 24(a), Article I of the State Constitution the anti-fraud
45 plans adopted by insurers and filed with the Division of
46 Investigative and Forensic Services of the Department of
47 Financial Services pursuant to s. 626.9891(2), (3), and (4),
48 Florida Statutes, an insurer's description of its unit or
49 division that investigates possible fraudulent insurance acts
50 and copies of contracts and related documents which are filed
51 with the Division of Investigative and Forensic Services
52 pursuant to s. 626.9891(2), Florida Statutes, the anti-fraud
53 statistics annually submitted by insurers to the department
54 pursuant to s. 626.9891(5), Florida Statutes, and the
55 information annually reported by insurers writing workers'
56 compensation insurance to the department pursuant to s.
57 626.9891(6), Florida Statutes.

58 (2) The anti-fraud plans adopted and filed pursuant to s.

24-01264A-17

20171014__

59 626.9891(2), (3), and (4), Florida Statutes, and an insurer's
60 description of its unit or division that investigates possible
61 fraudulent insurance acts and copies of contracts and related
62 documents which are filed with the Division of Investigative and
63 Forensic Services pursuant to s. 626.9891, Florida Statutes,
64 will allow the department to ensure that insurers have adequate
65 procedures in place to properly detect, investigate, and report
66 possible instances of insurance fraud. Such information
67 includes, but is not limited to, a description of the anti-fraud
68 education and training that is provided to the designated anti-
69 fraud investigative unit or contractor and that is designed to
70 assist in identifying and evaluating instances of suspected
71 fraudulent insurance acts in underwriting or claims activities;
72 a written description or chart outlining the organizational
73 arrangement of the insurer's anti-fraud personnel who are
74 responsible for the investigation and reporting of possible
75 fraudulent insurance acts; and the rationale for the level of
76 staffing and resources being provided for the anti-fraud
77 investigative unit, such as the number of policies written, the
78 number of claims received on an annual basis, the volume of
79 suspected fraudulent claims detected on an annual basis, an
80 assessment of the optimal caseload that one investigator can
81 handle on an annual basis, and other factors. The public
82 disclosure of this information would allow criminal elements to
83 use such information to identify fraud prevention or detection
84 strategies employed by insurers and use this information to
85 commit insurance fraud. The Legislature further finds that
86 disclosure of this information would allow persons suspected of
87 fraudulent behavior to be alerted to a potential or ongoing

24-01264A-17

20171014__

88 investigation into suspicious criminal insurance activity and
89 alter behavior to impede an investigation.

90 (3) The anti-fraud statistics annually submitted by
91 insurers to the department pursuant to s. 626.9891(5), Florida
92 Statutes, and the information annually reported by insurers
93 writing workers' compensation insurance to the department
94 pursuant to s. 626.9891(6), Florida Statutes, enables the
95 department to track and assess insurance fraud in this state.
96 Such information includes detailed information about fraud-
97 related cases, including those referred to the Division of
98 Insurance and Forensic Services. The public disclosure of this
99 information could injure a business in the marketplace by
100 providing its competitors with detailed insights into the claim
101 investigation processes and statistics of these companies,
102 thereby diminishing the advantage that the business maintains
103 over competitors that do not possess such information. Without
104 this exemption, insurers might refrain from providing accurate
105 and unbiased data, thus impairing the department's ability to
106 track and assess insurance fraud in this state. This data will
107 allow insurance fraud investigators to better track, predict,
108 and curb fraud trends in this state by providing access to data
109 gathered by insurers' anti-fraud investigative units or
110 contractors. Information regarding the amount of insurance fraud
111 experienced, referred, and addressed internally will be valuable
112 material for the department and will better enable law
113 enforcement agencies to assist state prosecutors in the
114 successful prosecution of fraudulent behavior.

115 Section 3. This act shall take effect on the same date that
116 SB ____ or similar legislation takes effect, if such legislation

24-01264A-17

20171014__

117 is adopted in the same legislative session or an extension
118 thereof and becomes a law.