

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 Appropriations

BILL: CS/SB 1292

INTRODUCER: Banking and Insurance Committee and Senators Gruters and Bradley

SUBJECT: Fraud Prevention

DATE: February 25, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1292 modifies provisions in several areas related to the prevention of various forms of fraud. The bill:

- Requires the electronic credentialing system administered by the Department of Highway Safety and Motor Vehicles (DHSMV) to display driver vehicle registration and insurance information, provide the driver notice of any lapse in insurance coverage, and allow the driver to use the system to update policy information;
- Requires the DHSMV to provide recommendations on the means by which the DHSMV, law enforcement agencies, and other entities authorized by the DHSMV may electronically verify a driver's compliance with chapter 324, Florida Statutes, the Financial Responsibility Law of 1955;
- Requires a seller of a service contract with an automatic renewal provision to allow a consumer to cancel the contract in the same manner, and by the same means, as the contract was executed;
- Subjects a public adjuster, public adjuster apprentice, or other person not otherwise exempt from licensure as a public adjuster, to a fine not to exceed \$20,000 per act for a violation of prohibited acts under section 626.854, Florida Statutes, during a state of emergency;
- Authorizes the Department of Financial Services (DFS) to impose a \$2,000 per day administrative fine on an insurer that fails or refuses to comply with section 626.989, Florida Statutes, related to insurance fraud investigations, or section 633.126, Florida Statutes, related to fraudulent insurance claims and crimes with respect to a fire and explosion;

- Authorizes the DFS Division of Investigative and Forensic Services (DIFS) to adopt rules to administer section 626.989, Florida Statutes, related to insurance fraud investigations, and section 633.126, Florida Statutes, related to fraudulent insurance claims and crimes with respect to a fire and explosion;
- Requires a motor vehicle service agreement company's written advertisement to fully disclose in at least 12-point, boldface font, the name, address, and Florida Company Code of the motor vehicle service agreement company;
- Requires a motor vehicle service agreement company's radio or television advertisement to fully disclose the full legal name of the licensed salesperson or the motor vehicle agreement company;
- Requires a motor vehicle service agreement company's telephone solicitation fully identify the soliciting licensed salesperson's full legal name and license number at the beginning of the telephone solicitation, and the salesperson's telephone number when the telephone solicitation ends;
- Provides a technical change under section 775.15, Florida Statutes, related to time limitations for prosecuting criminal offenses, to allow separate prosecutions of workers' compensation fraud under section 440.105, Florida Statutes, and false and fraudulent insurance claims under section 817.234, Florida Statutes, within five years of a violation of either section; and
- Authorizes an insurer damaged as a result of insurance fraud to recover reasonable investigation and litigation expense, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to the DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty.

The bill has an indeterminate, yet potentially negative impact on state revenues and expenditures. See **Section V. Fiscal Impact Statement** below.

The bill takes effect upon becoming a law, except as otherwise provided.

II. Present Situation:

Electronic Credentialing System

The 2021 Legislature¹ created the electronic credentialing system within the Department of Highway Safety and Motor Vehicles (DHSMV) for purposes of establishing a secure and uniform system for issuing an optional digital proof of driver license or identification card.² The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.³

Required Notification of New, Cancelled, Nonrenewed, and Lapsed Motor Vehicle Insurance Coverages

Section 324.0221, F.S., requires insurers to report new, cancelled, or nonrenewed personal injury protection or property damage insurance coverages to DHSMV within 10 days. Prior to notifying

¹ Chapter 2021-235, L.O.F.

² Section 322.032(2)(a), F.S.

³ Section 322.032(2)(b), F.S.

the DHSMV, the insurer must provide the named insured, or the first-named insured in the case of a commercial fleet policy, with written notice the cancellation or nonrenewal will be reported to the DHSMV. The notice must also inform the named insured that failure to maintain personal injury protection and property damage insurance coverages on a motor vehicle when required by law may result in the loss of registration and driving privileges in Florida and inform the named insured of the amount of any reinstatement fees.

Service Contracts with Automatic Renewal Provisions

Florida law governs the automatic renewal provisions of service contracts such that a service contract may automatically renew at the end of its term without any additional action required by either party under certain circumstances.

If the automatic renewal provision renews a service contract for more than one month and caused the service contract to be in effect for more than six months after the service contract was executed, the seller must clearly and conspicuously disclose the automatic renewal provision to the consumer. Renewal is effective unless the consumer does not give notice to the seller of intent to terminate the service contract.⁴ However, in the case of a service contract with a term of 12 months that automatically renews for more than one month, the seller must provide written or electronic notification to consumers no more than 60 and no less than 30 days prior to the cancellation deadline pursuant to the automatic renewal provision.⁵

Violations of the disclosure and notice requirements void an automatic renewal provision, rendering it unenforceable,⁶ unless the seller demonstrates:

- It has established and implemented written procedures to comply with, and enforce, the requirements as part of their routine business practice;
- The failure to comply was the result of error; and
- It has provided, as part of its routine business practice, a refund or credit for the unearned portion of the renewed contract, starting from the date the seller is notified of the error.⁷

State and federal financial institutions or any subsidiary or affiliate thereof, health studios,⁸ licensed insurers, warranty associations,⁹ health care service organizations¹⁰ and programs,¹¹

⁴ Section 501.165(2)(a), F.S.

⁵ Section 501.165(2)(b), F.S.

⁶ Section 501.165(2)(e), F.S.

⁷ Section 501.165(2)(b), F.S.

⁸ Pursuant to s. 501.0125(1), F.S., any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise. The term does not include an individual acting as a personal trainer.

⁹ Chapter 634, F.S., includes motor vehicle service agreement companies, home warranty associations, and service warranty associations.

¹⁰ Chapter 641, F.S., includes health maintenance organizations, prepaid health clinics, and health care services.

¹¹ Chapter 636, F.S., includes prepaid limited health service organizations and discount plan organizations.

electric utilities,¹² and private companies providing certain municipal services¹³ are expressly exempt.

Department of Financial Services

The Department of Financial Services (DFS) is statutorily responsible for:

- Carrying out the state's accounting and auditing functions, including preparing the state's Comprehensive Annual Financial Report; monitoring state contracts; and making payment for state expenditures;
- Implementing state fire prevention and control measures, including the investigation of arson and other suspicious fires; training and certification of firefighter candidates; and regulation of explosive storage and use;
- Operating the state's risk management program and securing insurance and reinsurance for covered state liabilities;
- Managing the state Treasury and directing safekeeping and the investment of all state funds;
- Managing the deferred compensation program for state employees;
- Investigating fraud, including insurance fraud, public assistance fraud, and false claims against the state;
- Regulating cemeteries and funeral homes;
- Licensing and oversight of insurance agents and agencies;
- Ensuring Florida employers provide workers' compensation coverage for their employees in a cost effective manner;
- Assisting consumers in the resolution of issues pertaining to insurance and funeral services; and
- Collecting and returning unclaimed property belonging to Florida residents.¹⁴

The DFS is composed of the following divisions and offices:

- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Insurance Consumer Advocate;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property; and

¹² Pursuant to s. 366.02(2), F.S., any municipal electric utility, investor-owner electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

¹³ Pursuant to s. 180.05, F.S., any company or corporation duly authorized under the laws of the state to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection, and garbage disposal plants.

¹⁴ Florida Department of Financial Services (DFS), *Statement of Agency Organization and Operation*, <https://www.myfloridacfo.com/sitePages/required/agencyorg.htm> (last visited Jan. 10, 2022).

- Workers' Compensation.¹⁵

DFS Division of Investigative and Forensic Services

The Division of Investigative and Forensic Services (DIFS) houses all law enforcement and forensic components residing within the DFS. The DIFS has broad authority to investigate a wide range of fraudulent and criminal acts within and outside the state including, but not limited to, insurance fraud; workers' compensation fraud investigations; fire, arson, and explosives investigations; and fire and explosive sample analysis.¹⁶ The DIFS also refers any records tending to show criminal violations to state or federal law enforcement or prosecutorial agencies, and provides investigative to those agencies as required, when the DIFS believes that a criminal law of the state has been violated.¹⁷

The DFIS is composed of the following bureaus and offices:

- Forensic Services;
- Fire, Arson, and Explosives Investigations;
- Fiscal Integrity;
- Insurance Fraud; and
- Workers' Compensation Fraud.¹⁸

DFS Division of State Fire Marshal

The Division of State Fire Marshal (State Fire Marshal) works to reduce the loss of life and property to fire and other disasters statewide through internal and external leadership, standards and training, and prevention and education. The State Fire Marshal has the expressed authority to enforce all laws and adopted rules related to:

- The prevention of fire and explosion through the regulation of conditions which could cause fire or explosion, the spread of fire, and panic resulting therefrom;
- Installation and maintenance of fire alarm systems and fire protection systems, including fire suppression systems, fire-extinguishing equipment, and fire sprinkler systems;
- Servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The training and licensing of persons engaged in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The maintenance of fire cause and loss records; and
- Suppression of arson and the investigation of the cause, origin, and circumstances of fire.¹⁹

The State Fire Marshal is composed of the Bureau of Fire Prevention and the Bureau of Fire Standards and Training.²⁰

¹⁵ Section 20.121(2), F.S.

¹⁶ See supra note 11.

¹⁷ Section 20.121(2)(e), F.S.

¹⁸ *Id.*

¹⁹ Section 633.104(2), F.S.

²⁰ See supra note 11.

Authority of DFS to Compel Production of Records Related to Insurance Fraud and Arson Investigations

Section 626.989, F.S., provides the DFS and the DIFS with several tools to compel production of records for purposes of investigating insurance fraud. The DFS and the DIFS may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence, if, by its own inquiries or as the result of complaints, it has reason to believe that a person has engaged in, or is engaging in, a fraudulent insurance act.²¹ The DFS and the DIFS may request that an individual who refuses to comply with any such request be ordered by the circuit court to provide the testimony or matter.²² DIFS investigators also have the power to make arrests and execute arrest and search warrants for criminal investigations established as a result of investigations.²³

Under s. 633.126, F.S., the State Fire Marshal and DIFS investigators may request any insurance company or its agent, adjuster, employee, or attorney, investigating a claim under an insurance policy or contract with respect to a fire or explosion to release any information whatsoever in the possession of the insurance company or its agent, adjuster, employee, or attorney relative to a loss from that fire or explosion. A person who willfully refuses to release any information requested by a State Fire Marshal or DISF investigator commits a first degree misdemeanor.²⁴

Regulation of Insurance Adjusters

Florida law requires all insurance adjusters to be licensed by the DFS and appointed by the appropriate entity or person²⁵ in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.²⁶

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,²⁷ company employee adjusters,²⁸ and public adjuster apprentices.²⁹ The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.³⁰ In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.³¹

²¹ Section 626.989(2), F.S.

²² Section 626.989(4)(a), F.S.

²³ Section 626.989(7), F.S.

²⁴ Section 633.126(9), F.S.

²⁵ See s. 626.015(4), F.S., defining “appointment” as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.

²⁶ Section 626.171, F.S.

²⁷ Section 626.855, F.S.

²⁸ Section 626.856, F.S.

²⁹ Section 626.8561, F.S.

³⁰ Section 626.864(2), F.S.

³¹ Section 626.864(3), F.S.

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.³² Public adjusters operate independently and are not affiliated with any insurer.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.³³

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.³⁴

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss or damage.³⁵

Discretion of DFS to Act Against Licensees

Section 626.621, F.S., grants the DFS discretion, under certain circumstances, to deny applications for, revoke, or refuse to renew, the licenses or appointments of agents, adjusters, customer representatives, service representatives, and managing general agents. Examples of circumstances that can lead to such agency action include violation of the Florida Insurance Code, violation of lawful orders or rules of the DFS, and engaging in unfair and deceptive trade practices.³⁶

Discretion of DFS Act Against Public Adjusters

Section 626.854, F.S., grants the DFS discretion to discipline public adjusters who engage in certain prohibited acts. In addition to denying, suspending, or revoking a license, the DFS may subject public adjusters, public adjuster apprentices, and other persons not otherwise exempt from licensure, to a fine not exceed \$10,000 per prohibited act. Examples of prohibited acts under s. 626.854, F.S., include unfair and deceptive insurance trade practices or offering inducements in exchange for inspecting a residential property owner's roof or making an insurance claim for damage to a residential property owner's roof.

Motor Service Agreement Company Advertisements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was

³² Section 626.854(1), F.S.

³³ Section 626.8548, F.S.

³⁴ Section 626.855, F.S.

³⁵ Section 626.856, F.S.

³⁶ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."

originally intended.³⁷ Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.³⁸ Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.³⁹

It is a second degree misdemeanor for a motor vehicle service agreement company or salesperson to issue or cause to be issued an advertisement that:

- Does not fully disclose in boldfaced type the name, address, and license number of the service agreement company;
- In any respect is in violation of or does not comply with the Motor Vehicle Service Agreement Companies law, applicable provision of the Florida Insurance Code, or applicable rule of the Financial Services Commission;
- Is ambiguous, misleading, or deceptive; or
- Is false, deceptive, or misleading with respect to:
 - The service agreement company's affiliation with a motor vehicle manufacturer;
 - The service agreement company's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;
 - The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or
 - Any requirement that the motor vehicle owner register for a new motor vehicle service agreement with the company in order to maintain coverage under the current motor vehicle service agreement or manufacturer's original equipment warranty.⁴⁰

The DFS also has the enforcement authority to deny, suspend, revoke, or refuse to renew or continue the appointment or license of any motor vehicle service agreement company or salesperson that violates these advertising disclosure requirements.⁴¹

Time Limitations for Prosecuting Workers' Compensation Fraud and False and Fraudulent Insurance Claims

Under s. 775.15(11), F.S., a prosecution for workers' compensation fraud under s. 440.105, F.S., and false and fraudulent insurance claims under s. 817.234, F.S., must be commenced within five years after the violation is committed. There is general confusion as to whether the intent of the subsection is to tie the two violations together under a single prosecution within the five-year time limitation, or whether violations under either statute may be prosecuted separately within the five-year time limitation.

Attorney Fees for False and Fraudulent Insurance Claims

Under current law, an insurer damaged as a result of a false or fraudulent insurance claim can bring a cause of action to recover compensatory damages plus all reasonable investigation and

³⁷ Section 634.011(8), F.S.

³⁸ Section 634.031, F.S.

³⁹ Section 634.171, F.S.

⁴⁰ Section 634.095(3), F.S.

⁴¹ Section 634.095, F.S.

litigation expenses, including attorneys' fees, at the trial and appellate courts, after there has been a criminal adjudication of guilt.⁴²

III. Effect of Proposed Changes:

Section 1 creates s. 324.252, F.S., related to electronic insurance verification, to require the electronic credentialing system administered by the Department of Highway Safety and Motor Vehicles (DHSMV) to display driver vehicle registration and insurance information, provide the driver with notification on any lapse in insurance coverages, and allow the driver to update his or her policy information via the electronic credentialing system.

The bill requires the DHSMV to provide recommendations on the means by which the DHSMV, law enforcement agencies, and other entities authorized by the DHSMV may electronically verify a driver's compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.

Section 2 amends s. 501.165, F.S., related to automatic renewals of service contracts, to require a service contract seller to allow a consumer to cancel a service contract with an automatic renewal provision in the same manner, and by the same means, as the service contract was executed.

Section 3 amends s. 626.854(22), F.S., related to prohibited acts by public adjusters, to subject public adjusters, public adjuster apprentices, and other persons not otherwise exempt from licensure, to a fine not to exceed \$20,000 per act for a violation of prohibited acts under the subsection during a state of emergency declared either by executive order or proclamation of the Governor.

Section 4 amends s. 626.989, F.S., related to investigations by the Department of Financial Services (DFS) or the Division of Investigative and Forensic Services (DIFS) under Florida's Unfair Insurance Trade Practices statutes, to authorize the DFS to impose an administrative fine of not more than \$2,000 per day on an insurer that fails or otherwise refuses to comply with this section

The bill also grants the DIFS rulemaking authority to administer this section, provided any rules may not enlarge upon or extend the provisions of this section, identify specific factors that determines the grade of penalty, and specify mitigating and aggravating factors for any violation.

Section 5 amends s. 633.126, F.S., related to investigations of fraudulent insurance claims and crimes with respect to a fire or explosion, to authorize the DFS to impose an administrative fine of not more than \$2,000 per day on an insurer that fails or otherwise refuses to comply with this section.

The bill grants the DIFS rulemaking authority to administer this section, provided any rules may not enlarge upon or extend the provisions of this section, identify specific factors that determine the grade of penalty, and specify mitigating and aggravating factors for any violation.

⁴² Section 817.234, F.S.

Section 6 amends s. 634.095, F.S., related to prohibited acts by motor vehicle service agreement companies, to require a written advertisement fully disclose in at least 12-point, boldface font, the name, address, and Florida Company Code of the motor vehicle service agreement company.

The bill requires a radio or television advertisement to fully disclose the full legal name of the licensed salesperson or the motor vehicle agreement company.

The bill also requires a telephone solicitation fully identify the soliciting licensed salesperson's full legal names and license number at the beginning of the telephone solicitation, and the salesperson's telephone number when the telephone solicitation ends. The telephone number may be the number on file with the DFS or the number at which the salesperson may be contacted.

This section is effective January 1, 2023.

Section 7 amends s. 775.15, F.S., related to time limitations for prosecuting criminal offenses, to provide a technical change allowing separate prosecutions of violations of s. 440.105, F.S., or s. 817.234, F.S., within five years of a violation of either section.

Section 8 amends s. 817.234, F.S., related to false and fraudulent insurance claims, to provide an insurer damaged as a result of insurance fraud may recover reasonable investigation and litigation expense, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty.

Section 9 provides that except as otherwise expressly provided for in this act, this act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 8 of the bill allows insurers to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate courts, due to criminal adjudication of guilt related to fraudulent insurance claims. Recovery of such expenses is reliant upon the insurer reporting possible false and fraudulent claims to the Division of Investigative and Forensic Services

C. Government Sector Impact:

Section 3 of the bill adds a cap on fines of \$20,000 for unlicensed activity during a state of emergency. The Department of Financial Services (DFS) has indicated should there be unlicensed activity, this change could create a minimal impact to revenues.

In addition, the bill gives the DFS authority to assess an administrative fine up to \$2,000 per day against insurers who do not comply with reporting requirements. The DFS does not anticipate a significant fiscal impact from this change.

The Department of Highway Safety and Motor Vehicles estimates the bill has a fiscal impact of \$400,000 to one million dollars. The amount is indeterminate as the technology is new and the cost is unknown.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.165, 626.854, 626.989, 633.126, 634.095, 775.15, and 817.234.

This bill creates section 324.252 of the Florida Statutes.

⁴³ Telephone conversation between Elizabeth Wells, Senate Appropriations Subcommittee on Transportation, Tourism and Economic Development with Department of Highway Safety and Motor Vehicles staff (Jan. 18, 2022).

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 18, 2022:

The committee substitute:

- Removes the provisions from Section 3 and 4 of the original bill that revised the definition of an active investigation for purposes of specified public records exemptions;
- Creates s. 324.252, F.S., related to electronic insurance verification, to require the electronic credentialing system administered by the Department of Highway Safety and Motor Vehicles (DHSMV) to display driver vehicle registration and insurance information, provide the driver with notification on any lapse in personal injury or property damage insurance coverages, and allow the driver to update his or her policy information via the electronic credentialing system; and
- Requires the DHSMV to provide recommendations on the means by which the DHSMV, law enforcement agencies, and other entities authorized by the DHSMV may electronically verify a driver's compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.

B. Amendments:

None.