An act relating to a review under the Open Government Sunset Review Act; amending s. 626.9891, F.S., which provides an exemption from public records requirements for certain information submitted by insurers to the Department of Financial Services; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 626.9891, Florida Statutes, is amended to read:

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

(1) As used in this section, the term:

(a) "Anti-fraud investigative unit" means the designated anti-fraud unit or division, or contractor authorized under subparagraph (2)(a)2.

(b) "Designated anti-fraud unit or division" includes a distinct unit or division or a unit or division made up of employees whose principal responsibilities are the investigation and disposition of claims who are also assigned investigation of fraud.

(2) By December 31, 2017, every insurer admitted to do business in this state shall:

(a)1. Establish and maintain a designated anti-fraud unit or division within the company to investigate and report possible fraudulent insurance acts by insureds or by persons

making claims for services or repairs against policies held by insureds; or

2. Contract with others to investigate and report possible fraudulent insurance acts by insureds or by persons making claims for services or repairs against policies held by insureds.

(b) Adopt an anti-fraud plan.

(c) Designate at least one employee with primary responsibility for implementing the requirements of this section.

(d) Electronically file with the Division of Investigative and Forensic Services of the department, and annually thereafter, a detailed description of the designated anti-fraud unit or division or a copy of the contract executed under subparagraph (a)2., as applicable, a copy of the anti-fraud plan, and the name of the employee designated under paragraph (c).

An insurer must include the additional cost incurred in creating a distinct unit or division, hiring additional employees, or contracting with another entity to fulfill the requirements of this section, as an administrative expense for ratemaking purposes.

(3) Each anti-fraud plan must include:

(a) An acknowledgment that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance by that insurer;

(b) An acknowledgment that the insurer has established

procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Investigative and Forensic Services of the department;

(c) An acknowledgment that the insurer provides the anti-fraud education and training required by this section to the anti-fraud investigative unit;

(d) A description of the required anti-fraud education and training;

(e) A description or chart of the insurer's anti-fraud investigative unit, including the position titles and descriptions of staffing; and

(f) The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors.

(4) By December 31, 2018, each insurer shall provide staff of the anti-fraud investigative unit at least 2 hours of initial anti-fraud training that is designed to assist in identifying and evaluating instances of suspected fraudulent insurance acts in underwriting or claims activities. Annually thereafter, an insurer shall provide such employees a 1-hour course that addresses detection, referral, investigation, and reporting of possible fraudulent insurance acts for the types of insurance lines written by the insurer.

(5) Each insurer is required to report data related to fraud for each identified line of business written by the

insurer during the prior calendar year. The data shall be reported to the department by March 1, 2019, and annually thereafter, and must include, at a minimum:

(a) The number of policies in effect;

(b) The amount of premiums written for policies;

(c) The number of claims received;

(d) The number of claims referred to the anti-fraud investigative unit;

(e) The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;

(f) The number of claims investigated or accepted by the anti-fraud investigative unit;

(g) The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;

(h) The number of cases referred to the Division of Investigative and Forensic Services;

(i) The number of cases referred to other law enforcement agencies;

(j) The number of cases referred to other entities; and

(k) The estimated dollar amount or range of damages on cases referred to the Division of Investigative and Forensic Services or other agencies.

(6) In addition to providing information required under subsections (2), (4), and (5), each insurer writing workers' compensation insurance shall also report the following information to the department, on or before March 1, 2019, and annually thereafter:

(a) The estimated dollar amount of losses attributable to

workers' compensation fraud delineated by the type of fraud, including claimant, employer, provider, agent, or other type.

(b) The estimated dollar amount of recoveries attributable to workers' compensation fraud delineated by the type of fraud, including claimant, employer, provider, agent, or other type.

(c) The number of cases referred to the Division of Investigative and Forensic Services, delineated by the type of fraud, including claimant, employer, provider, agent, or other type.

(7) An insurer who obtains a certificate of authority has 6 months in which to comply with subsection (2), and one calendar year thereafter, to comply with subsections (4), (5), and (6).

(8) If an insurer fails or otherwise refuses to comply with the provisions of this section, the department, office, or commission may:

(a) Impose an administrative fine of not more than $2,000 per day for such failure until the department, office, or commission deems the insurer to be in compliance;

(b) Impose an administrative fine for failure by an insurer to implement or follow the provisions of an anti-fraud plan or anti-fraud investigative unit description; or

(c) Impose the provisions of both paragraphs (a) and (b).

(9) On or before December 31, 2018, the Division of Investigative and Forensic Services shall create a report detailing best practices for the detection, investigation, prevention, and reporting of insurance fraud and other fraudulent insurance acts. The report must be updated as necessary but at least every 2 years. The report must provide:

(a) Information on the best practices for the establishment

of anti-fraud investigative units within insurers;

(b) Information on the best practices and methods for detecting and investigating insurance fraud and other fraudulent insurance acts;

(c) Information on appropriate anti-fraud education and training of insurer personnel;

(d) Information on the best practices for reporting insurance fraud and other fraudulent insurance acts to the Division of Investigative and Forensic Services and to other law enforcement agencies;

(e) Information regarding the appropriate level of staffing and resources for anti-fraud investigative units within insurers;

(f) Information detailing statistics and data relating to insurance fraud which insurers should maintain; and

(g) Other information as determined by the Division of Investigative and Forensic Services.

(10) The department may adopt rules to administer this section, except that it shall adopt rules to administer subsection (5).

(11)(a) The information submitted to the department pursuant to paragraphs (3)(d), (e), and (f) and paragraphs (5)(d), (e), (f), (g), and (k) is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

~~(c)~~ This exemption applies to records held before, on, or

after the effective date of this act.

Section 2. This act shall take effect October 1, 2022.