

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 749 Fraud Prevention

SPONSOR(S): Commerce Committee, State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Clemons and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N, As CS	Fortenberry	Luczynski
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N, As CS	Lee	Topp
3) Commerce Committee	21 Y, 0 N, As CS	Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes the following changes to existing law to help prevent insurance fraud:

- **Electronic Insurance Verification** – requires that, in addition to driver licenses and identification cards, the Department of Highway Safety and Motor Vehicle’s (DHSMV) electronic credentialing system display vehicle registration and insurance information, provide a driver with notification of any lapse in insurance coverage, and allow the driver to update policy information in the system; requires DHSMV to provide the Legislature with recommendations by October 1, 2023, regarding electronic verification of drivers’ compliance with financial responsibility laws.
- **Service Contracts and Agreements**
 - **Contracts** – establishes that sellers of service contracts that include automatic renewal provisions must allow a consumer to cancel these contracts in the same manner, and by the same means, as the consumer accepted the contracts;
 - **Agreements** – expands the advertising violations for which a service agreement company or salesperson can be subject to licensure discipline or criminal penalties; requires a service agreement company’s or salesperson’s disclosures in written advertisements meet certain requirements; requires such company or salesperson disclose the company’s or salesperson’s full name in radio or television advertisements; requires that a service agreement salesperson provide his or her full legal name and license number when beginning a solicitation call and his or her telephone number when ending a call.
- **Public Adjusters and Public Adjuster Apprentices** – establishes a new maximum fine amount, not to exceed \$20,000 per act, for a public adjusters or public adjuster apprentices who commit certain prohibited acts during a state of emergency declared by the Governor; implements the same penalties for unlicensed individuals who engage in these prohibited acts.
- **Investigation by the Division of Investigative and Forensic Services (DIFS) or the State Fire Marshal (SFM)** – deletes a provision that makes it a misdemeanor to violate a statute regarding the investigation of fraudulent insurance claims and crimes related to a fire or explosion loss; establishes that Department of Financial Services (DFS) may fine insurers up to \$2,000 per day if the insurer fails or refuses to comply with the investigation of a fire or explosion by DIFS or the SFM.
- **Prosecution of False and Fraudulent Insurance Claims** – replaces the word “and” with the word “or” so that violations of certain statutes are separate crimes, and criminal prosecution for violation of either section must begin within 5 years of the violation; allows an insurer that has been damaged by a false or fraudulent insurance act to recover investigation and litigation expenses, including attorney fees, if the insurer reported the false or fraudulent act to DIFS and there was a criminal adjudication of guilt.

For Fiscal Year 2022-23, the bill directs DFS to transfer funds from the Insurance Regulatory Trust Fund to the DHSMV’s Highway Safety Operating Trust Fund and appropriates a nonrecurring sum of \$1,413,270 to DHSMV for the implementation of the electronic insurance verification provisions of the bill. See Fiscal Analysis & Economic Impact Statement.

The bill is effective upon becoming law except as otherwise provided within the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Electronic Insurance Verification

Current law requires that the Department of Highway Safety and Motor Vehicles (DHSMV) establish a secure and uniform electronic credentialing system (system) for displaying driver licenses¹ and identification cards. The system is defined as “a computer system accessed using a computer, a cellular telephone, or any other personal device which queries” DHSMV’s driver license and identification card records, displays or transmits digital proof of driver licenses and identification cards, and verifies the authenticity of driver licenses and identification cards.²

Effect of the Bill

The bill requires by July 1, 2023, that, in addition to driver licenses and identification cards, the system must display vehicle registration and insurance information, provide a driver with notification of any lapse in insurance coverage needed to meet financial responsibility requirements, and allow the driver to update policy information in the system. The bill also requires DHSMV to provide the Legislature with recommendations by October 1, 2023, regarding electronic verification of drivers’ compliance with financial responsibility laws.³

Service Contracts and Agreements

A service contract is a written contract for the performance of services over a fixed time period or for a specific duration of time.⁴ A service agreement is a contract or agreement indemnifying the agreement holder for the motor vehicle listed on the agreement and arising out of the ownership, operation, and use of the motor vehicle 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 originally intended.⁵

Cancellation of Service Contracts

A consumer may enter a service contract in a variety of ways. Sometimes entering a service contract is accomplished easily by a consumer, but the consumer may have difficulty cancelling the contract because the service contract requires cancellation by a different method.⁶ Any seller that sells or offers to sell a service contract to a consumer that has an automatic renewal provision must “disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer.”⁷ However, current law does not require that a service contract or offer for a contract to provide a specific method of contract cancellation.⁸

Effect of the Bill

The bill establishes that sellers of service contracts that include automatic renewal provisions must allow a consumer to cancel these contracts in the same manner, and by the same means as the consumer accepted of the contracts.

Advertising Disclosures by Service Agreement Companies and Salespersons

¹ S. 322.032, F.S.

² S. 322.032(c), F.S.

³ Ch. 324, F.S.

⁴ S. 501.165(1)(d), F.S. This statute does not apply to warranty associations licensed under ch. 634, F.S.

⁵ S. 634.011(8), F.S.

⁶ Department of Financial Services (DFS), Agency Analysis of 2022 House Bill 749, p. 1 (Dec. 16, 2021).

⁷ S. 501.165(2)(a), F.S.

⁸ DFS, *supra* note 6.

Current law provides that a service agreement company or salesperson that engages in certain acts is subject to denial, suspension, revocation, or refusal to renew or continue any appointment or license, or is guilty of a second-degree misdemeanor.⁹ These acts include limited violations of advertising requirements.¹⁰

Effect of the Bill

The bill expands the advertising violations for which a service agreement company or salesperson can be subject to licensure discipline or criminal penalties. The bill requires that a service agreement company or salesperson make disclosures in written advertisements in at least 12-point, boldface type. Such written advertisements must include a Florida Company Code in addition to the name and address of the company. The bill requires that a service agreement company or salesperson disclose the full legal name of the company or salesperson in radio or television advertisements. Additionally, the bill requires a service agreement salesperson to identify his or her full legal name and license number when beginning a solicitation call and his or her telephone number when ending such a call. The bill specifies that the phone number may be either the telephone number on file with the Department of Financial Service (DFS) or another number at which the salesperson may be reached. Violation of any of these requirements by a company or a salesperson may result in the denial, suspension, revocation, or refusal to renew or continue an appointment or license, or a second-degree misdemeanor. These portions of the bill are effective March 1, 2023.

Public Adjusters and Public Adjuster Apprentices

Public adjusters and public adjuster apprentices are prohibited from engaging in a list of practices in current law and can be fined up to \$10,000 per act for engaging in these practices at any time, including a declared state of emergency.¹¹ Any person who engages in the same acts, but is not a public adjuster or public adjuster apprentice, and who is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may also be subject to the same fines.¹²

Effect of the Bill

The bill establishes a new maximum fine amount, not to exceed \$20,000 per act, for a public adjusters or public adjuster apprentices who commit certain prohibited acts during a state of emergency declared by the Governor through an executive order or proclamation. The bill implements the same penalties for individuals who engage in these prohibited acts, but are not public adjusters or public adjuster apprentices, and are not otherwise exempt from licensure.

Investigations by the Division of Investigative and Forensic Services (DIFS) or the State Fire Marshal (SFM)

Current law requires insurers to report to the SFM if the insurance company has reason to suspect that a fire or explosion loss was caused by intentional means.¹³ However, these statutes do not provide consequences for an insurer's failure to report this knowledge.

Effect of the Bill

The bill specifies that DFS may fine an insurer up to \$2,000 per day, until it deems the insurer to be compliant, if an insurer fails or refuses to comply with the DIFS' or SFM's investigation of a fire or explosion, including the requirement to report fraudulent acts to DFS. The bill deletes a provision that

⁹ S. 634.095, F.S.

¹⁰ S. 634.095(3), F.S.

¹¹ S. 626.854(22), F.S.

¹² S. 626.854(22)(c), F.S.

¹³ S. 633.126(2), F.S.

makes it a misdemeanor to violate a statute regarding the investigation of fraudulent insurance claims and crimes related to a fire or explosion loss.

Prosecution of False and Fraudulent Insurance Claims and Crimes

Criminal Charges for Insurance Fraud

Section 775.15(11), F.S., provides that a felony violation of a workers' compensation and an insurance fraud statute must be commenced within 5 years after the violation is committed. The statute states "[a] prosecution for a felony violation of ss. 440.105 and 817.234 must be commenced within 5 years after the violation is committed." The plain language of the statute could be read to require the violation of both statutes before there may be a prosecution for a felony violation of s. 775.15(11), F.S.

Effect of the Bill

The bill replaces the word "and" with the word "or" between two statutory sections to clarify that a violation of either section is a separate crime, and that criminal prosecution for violation of either section must begin within 5 years of the violation of that section.

Recovery of Costs by Insurers

Section 817.234, F.S., provides criminal penalties for any person who commits insurance fraud by engaging in certain acts with intent to injure, defraud, or deceive any insurer. An insurer that has been damaged as a result of a violation of this statute has a cause of action to recover compensatory damages, plus reasonable investigation and litigation expenses, including attorney fees, at a trial or appellate court, if the violation has resulted in a criminal adjudication of guilt.¹⁴

Effect of the Bill

In addition to the requirement under existing law that there has been a criminal adjudication of guilt, the bill adds the requirement that, in order to recover reasonable investigation and litigation expenses, including attorney fees when it has been damaged due to a false or fraudulent insurance claim, an insurer must have reported the false or fraudulent claim to DIFS.

B. SECTION DIRECTORY:

- Section 1.** Creates s. 324.252, F.S., relating to electronic insurance verification.
- Section 2.** Amends s. 501.165, F.S., relating to automatic renewal of service contracts.
- Section 3.** Amends s. 626.854, F.S., relating to "public adjuster" defined; prohibitions.
- Section 4.** Amends s. 633.126, F.S., relating to Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.
- Section 5.** Amends s. 634.095, F.S., relating to prohibited acts.
- Section 6.** Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.
- Section 7.** Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.
- Section 8.** Provides a transfer of funds.
- Section 9.** Provides an appropriation.
- Section 10.** Provides that the bill is effective upon becoming law except as otherwise provided.

¹⁴ S. 817.235(5), F.S.
STORAGE NAME: h0749e.COM
DATE: 2/24/2022

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Department of Financial Services (DFS)

Section 3 of the bill increases the cap on fines for unlicensed activity from \$10,000 to \$20,000 during a state of emergency. DFS anticipates this will have a minimal positive fiscal impact on revenues.¹⁵

The bill also authorizes DFS to assess fines against insurers who do not comply with reporting requirements, but DFS does not anticipate a significant fiscal impact from this change.¹⁶

2. Expenditures:

DFS

For Fiscal Year 2022-23, the bill directs DFS to transfer \$1,413,270 from the Insurance Regulatory Trust Fund to the Highway Safety Operating Trust Fund of the Department of Highway Safety and Motor Vehicles (DHSMV) to implement s. 324.252, F.S.

DHSMV

The bill appropriates funds for the purpose of implementing the electronic insurance verification provisions in s. 324.252, F.S. For Fiscal Year 2022-23, the bill appropriates a nonrecurring sum of \$1,413,270 to the Information Systems Administration budget entity in DHSMV for the costs to modify its digital driver's license system to require that it also display and verify driver vehicle registration and insurance information by July 1, 2023. The estimated annual cost of system operations and maintenance is \$200,000;¹⁷ however, DHSMV can absorb the recurring costs within existing resources.¹⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the DHSMV system updates result in additional tickets or fines issued to drivers, the bill could have an indeterminate negative impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

¹⁵ Department of Financial Services, Agency Analysis of 2022 CS/House Bill 749, p. 4 (Jan. 26, 2022).

¹⁶ *Id.*

¹⁷ Email from Pace Callaway, Chief Financial Officer, Department of Highway Safety and Motor Vehicles (DHSMV), RE: Copy of Insurance Estimate Final.xlsx (Jan. 28, 2022).

¹⁸ *Id.*

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DIFS to adopt rules to administer the statutory sections regarding investigation of fraudulent insurance acts and fire or explosion claims or crimes, but the bill provides DIFS with the authority necessary to adopt these rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2022, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The strike-all amendment contained the substance of the bill as originally filed and made the following modifications and clarifications:

- Requires the DHSMV electronic credentialing system (system) to display vehicle registration and insurance information, provide a driver with notification of any lapse in insurance coverage needed to meet financial responsibility requirements, and allow the driver to update policy information by the system.
- Requires DHSMV to provide the Legislature with recommendations regarding electronic verification of drivers' compliance with financial responsibility laws.
- Removed the sections of the bill that change the definition of "active" so that the current definitions of "active" investigations by DIFS and SFM will remain unchanged.
- Made various formatting and minor technical wording changes for clarity.

On February 15, 2022, the State Administration & Technology Appropriations Subcommittee considered the bill, adopted one amendment and reported the bill favorably as a committee substitute for a committee substitute. The amendment added two sections to the bill and provided funding for Fiscal Year 2022-23, as follows:

- Directs DFS to transfer \$1,413,270 from the Insurance Regulatory Trust Fund to the Highway Safety Operating Trust Fund in the DHSMV.
- Appropriates a nonrecurring sum of \$1,413,270 from the Highway Safety Operating Trust Fund to the Information Systems Administration budget entity in the DHSMV for the implementation of the electronic insurance verification provisions of s. 324.252, F.S.

On February 23, 2022, the Commerce Committee considered the bill, adopted three amendments, and reported the bill favorably as a committee substitute. The amendments made the following modifications to the bill:

- Clarified that a consumer's right to cancel a service contract with an automatic renewal provision in the same manner and the same means as the consumer entered the contract.
- Removed the section of the bill that allows DFS to fine an insurer up to \$2,000 per day for failure to comply with the statute regarding investigation of insurance fraud by DIFS.
- Changed the effective date for new provisions regarding solicitation by service agreement companies and sales people from January 1, 2023, to March 1, 2023.

The analysis is drafted to the committee substitute as passed by the Commerce Committee .