Committee on Banking and Insurance

CS/CS/CS/HB 1007 — Prohibited Insurance Acts

by Commerce Committee; Government Operations and Technology Appropriations Subcommittee; Insurance and Banking Subcommittee; and Reps. Raschein, Diamond, and others (CS/CS/SB 1012 by Appropriations Committee; Banking and Insurance Committee; and Senators Brandes and Young)

The bill creates new requirements for insurance companies relating to insurance fraud prevention and reporting. The bill requires all insurers to adopt an anti-fraud plan and to establish and maintain a designated anti-fraud unit within the company to investigate possible fraudulent insurance acts or contract with others to investigate fraudulent insurance acts. The insurer must electronically file with the Department of Financial Services (DFS) a detailed description of the designated anti-fraud unit or a copy of the contract with the company that investigates fraudulent insurance acts for the insurer and a copy of the anti-fraud plan. This filing must be made annually on or before December 1, starting in 2017.
The anti-fraud plan must include:

- An acknowledgment that the insurer has established procedures for detecting possible fraudulent insurance acts;
- An acknowledgement that the insurer has established procedures for reporting such acts to the DFS;
- An acknowledgement that the insurer provides required anti-fraud education to employees;
- A description of the anti-fraud education;
- A description of the insurer's anti-fraud unit; and
- The rationale for staffing levels and resources provided to the anti-fraud unit.

Beginning in 2019, the bill requires every insurer to annually submit anti-fraud statistics to the DFS by March 1 for the lines of business written by that insurer for the calendar year. The statistics must include:

- The number of policies in effect;
- The amount of premiums written for policies;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to the DFS;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount of damages in cases referred to the DFS or other agencies.

Current law only requires statistical reporting from workers' compensation insurers. This bill requires all insurers to provide reports. The bill modifies reporting requirements for workers' compensation insurers.

The bill requires the DFS to 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 at least every two years. The bill requires the DFS to collect data from each state attorney office that receives appropriations to fund prosecutor positions to prosecute insurance fraud cases. The state attorneys must provide specified data to the DFS each quarter and the DFS is required to report to the Executive Office of the Governor, President of the Senate, and Speaker of the House of Representatives each year.

The bill provides that a health maintenance organization authorized to exclusively market, sell, or offer to sell Medicare Advantage plans shall be actively engaged in managed care with 24 months after licensure in order to maintain its certificate of authority. The Office of Insurance Regulation (OIR) may extend the period upon written request.

The bill makes stranger-originated life insurance (STOLI) contracts void and unenforceable and allows a life insurer to contest a policy obtained through a STOLI practice, notwithstanding that life insurance contracts cannot be contested two years after issuance. A stranger-originated life insurance practice is an act, practice, arrangement or agreement to initiate a life insurance policy for the benefit of a third party investor who has no insurable interest in the insured at policy origination.

The bill makes void and unenforceable viatical settlement contracts subject to a loan secured by an interest in the insurance policy within five years from the issuance of the underlying insurance policy. This is referred to as the contestability period of the viatical settlement contract. The bill otherwise retains the existing two year contestability period under current law. Current law provides conditions that, if met, allow the execution of a viatical settlement contract during the contestability period. The bill modifies the process for doing so. The viator must provide a sworn affidavit and accompanying independent evidentiary documentation to a viatical settlement provider certifying that the viator has met a statutory exception that allows viatication of a policy during the contestability period. Current law does not require the viator to execute a sworn affidavit with documentation evidencing that the exception applies. The bill also revises and clarifies some of the conditions that allow viatication during the contestability period.

The bill adds as prohibited practices under the Viatical Settlement Act:

- Engaging in a fraudulent viatical settlement act;
- Engaging in a STOLI practice;
- Knowingly entering into a viatical settlement contract before the application for or issuance of a life insurance policy that is the subject of the viatical settlement contract or within a contestability period unless the viator complied with s. 626.99287, F.S.; and
- Knowingly issuing, soliciting, marketing, or promoting the purchase of a life insurance policy for the purpose of, or with an emphasis on selling the property to a third party.

Violations are third-degree felonies if the insurance policy has a value less than $20,000; second degree felonies if the insurance policy has a value of $20,000 or more but less than $100,000; and first-degree felonies if the insurance policy has a value of $100,000 or more.

The bill allows motor vehicle insurers an exemption from the requirement that they inspect each private passenger motor vehicle before issuing an insurance policy that provides coverage for physical damage. The inspection requirement only applies in counties with a 1988 population of 500,000 or greater. The bill requires insurers using the exemption to file a manual rule with the OIR and allows an insurer to file with the OIR their own preinsurance inspection requirements before insuring a private passenger motor vehicle.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 33-0; House 116-0