

By Senator Brandes

24-00733B-17

20171012__

1 A bill to be entitled
2 An act relating to investigative and forensic
3 services; amending s. 440.50, F.S.; deleting the
4 Justice Administrative Commission from a list of
5 entities whose unencumbered or undisbursed funds
6 appropriated from the Workers' Compensation
7 Administration Trust Fund must be reverted to the
8 trust fund at specified intervals; reordering and
9 amending s. 626.9891, F.S.; requiring insurers to
10 designate primary anti-fraud employees; requiring
11 certain insurers to adopt an anti-fraud plan and
12 investigate possible fraudulent insurance acts;
13 revising requirements for information to be filed by
14 insurers with the Division of Investigative and
15 Forensic Services of the Department of Financial
16 Services; revising requirements for insurer anti-fraud
17 plans; requiring insurers to submit specified anti-
18 fraud statistics at certain intervals; revising
19 requirements for reports to the department by insurers
20 writing workers' compensation insurance; providing
21 requirements for anti-fraud training for insurer anti-
22 fraud investigative units or contractors; providing a
23 penalty for violations; creating s. 626.9896, F.S.;
24 providing legislative intent; creating the Insurance
25 Fraud Dedicated Prosecutor Program; requiring the
26 division to accept and administer appropriated moneys
27 for a certain purpose; requiring a state attorney's
28 office that desires a grant under the program to apply
29 to the department; providing criteria for the

24-00733B-17

20171012__

30 department's awarding of grants; providing grant
31 limits; requiring the department to track, monitor,
32 and report on the use of funds by state attorney
33 offices; requiring state attorney offices to submit
34 certain information to the department; authorizing the
35 department to adopt rules; amending s. 641.3915, F.S.;
36 conforming a provision to changes made by the act;
37 providing an effective date.
38

39 Be It Enacted by the Legislature of the State of Florida:
40

41 Section 1. Subsection (5) of section 440.50, Florida
42 Statutes, is amended to read:

43 440.50 Workers' Compensation Administration Trust Fund.—

44 (5) Funds appropriated by an operating appropriation or a
45 nonoperating transfer from the Workers' Compensation
46 Administration Trust Fund to the Agency for Health Care
47 Administration, the Department of Business and Professional
48 Regulation, the Department of Management Services, and the First
49 District Court of Appeal, ~~and the Justice Administrative~~
50 ~~Commission~~ remaining unencumbered as of June 30 or undisbursed
51 as of September 30 each year shall revert to the Workers'
52 Compensation Administration Trust Fund.

53 Section 2. Section 626.9891, Florida Statutes, is reordered
54 and amended to read:

55 626.9891 Insurer anti-fraud investigative units; reporting
56 requirements; penalties for noncompliance.—

57 (2) ~~(1)~~ Every insurer admitted to do business in this state
58 who estimates that it wrote ~~in the previous calendar year, at~~

24-00733B-17

20171012__

59 ~~any time during that year, had \$10 million or more in direct~~
60 ~~premiums in the previous year written shall:~~

61 (a) Adopt an anti-fraud plan and establish and maintain a
62 unit or division within the company to investigate possible
63 fraudulent insurance acts ~~claims~~ by insureds or by persons
64 making claims for services or repairs against policies held by
65 insureds; or

66 (b) Contract with others to investigate possible fraudulent
67 insurance acts ~~claims~~ for services or repairs against policies
68 held by insureds.

69
70 An insurer subject to this subsection shall electronically file
71 with the Division of Investigative and Forensic Services of the
72 department on or before September 1, 2017, and annually
73 thereafter July 1, 1996, a detailed description of the unit or
74 division established pursuant to paragraph (a) or a copy of the
75 contract and related documents required by paragraph (b).

76 (3) ~~(2)~~ Every insurer admitted to do business in this state,
77 which in the previous calendar year had less than \$10 million in
78 direct premiums written, must adopt an anti-fraud plan and file
79 it electronically with the Division of Investigative and
80 Forensic Services of the department on or before September 1,
81 2017, and annually thereafter July 1, 1996. An insurer may, in
82 lieu of adopting and filing an anti-fraud plan, comply with
83 paragraph (2) (b) ~~the provisions of subsection (1).~~

84 (4) ~~(3)~~ Each ~~insurers~~ anti-fraud plan must ~~plans shall~~
85 include:

86 (a) An acknowledgement that the insurer has established
87 procedures for detecting and investigating possible fraudulent

24-00733B-17

20171012__

88 insurance acts relating to the different types of insurance
89 written by that insurer ~~A description of the insurer's~~
90 ~~procedures for detecting and investigating possible fraudulent~~
91 ~~insurance acts;~~

92 (b) An acknowledgment that the insurer has established ~~A~~
93 ~~description of the insurer's~~ procedures for the mandatory
94 reporting of possible fraudulent insurance acts to the Division
95 of Investigative and Forensic Services of the department;

96 (c) An acknowledgement that the insurer provides ~~A~~
97 ~~description of the insurer's plan for~~ anti-fraud education and
98 training to ~~of~~ its claims adjusters or other personnel; ~~and~~

99 (d) A description of the anti-fraud education and training
100 required under subsection (7) which is provided to the
101 designated anti-fraud investigative unit or contractor and which
102 is designed to assist in identifying and evaluating instances of
103 suspected fraudulent insurance acts in underwriting or claims
104 activities;

105 (e) ~~(d)~~ A written description or chart outlining the
106 organizational arrangement of the insurer's anti-fraud personnel
107 who are responsible for the investigation and reporting of
108 possible fraudulent insurance acts;

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

24-00733B-17

20171012__

117 (g) A description of the insurer's public awareness efforts
118 focused on the costs and frequency of insurance fraud and
119 methods by which the public can prevent such fraud.

120 (8)-(4) An Any insurer who submits an application to obtain
121 obtains a certificate of authority after September 1, 2017, must
122 July 1, 1995, shall have 18 months in which to comply with the
123 requirements of this section before receiving such certificate.

124 (1) (a)-(5) For purposes of this section, the term "unit or
125 division" includes the assignment of fraud investigation to
126 employees whose principal responsibilities are the investigation
127 and disposition of claims. If an insurer creates a distinct unit
128 or division, hires additional employees, or contracts with
129 another entity to fulfill the requirements of this section, the
130 additional cost incurred must be included as an administrative
131 expense for ratemaking purposes.

132 (b) Every insurer shall designate at least one primary
133 anti-fraud employee responsible for meeting the requirements set
134 forth in this section.

135 (5) Every insurer shall also submit anti-fraud statistics
136 annually by September 1 for the lines written by that insurer
137 for the calendar year. The statistics must include, at a
138 minimum:

139 (a) The number of policies in effect;

140 (b) The amount of premiums written for policies;

141 (c) The number of claims received;

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

144 (e) The number of other insurance fraud matters referred to
145 the anti-fraud investigative unit that were nonclaim related;

24-00733B-17

20171012__

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

148 (g) The number of other insurance fraud matters
149 investigated or accepted by the anti-fraud investigative unit
150 that were nonclaim related;

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

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

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

156 (k) The estimated dollar amount of damages in cases
157 referred to the Division of Investigative and Forensic Services
158 of the department, or other agencies.

159 (6) In addition to providing the information required under
160 subsections (2), (3), and (5), each insurer writing workers'
161 compensation insurance shall also report the following
162 information to the department, on or before September 1 August 1
163 of each year, on its experience in implementing and maintaining
164 an anti-fraud investigative unit or an anti-fraud plan. The
165 report must include, at a minimum:

166 (a) The estimated dollar amount of losses attributable to
167 workers' compensation fraud delineated by the type of fraud,
168 including: claimant, employer, provider, agent, or other type.

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

172 (c) The number of cases referred to the Division of
173 Insurance and Forensic Services of the department, delineated by
174 the type of fraud, including: claimant, employer, provider,

24-00733B-17

20171012__

175 agent, or other type.

176 (d) The dollar amount of recoveries and losses attributable
177 to workers' compensation fraud, delineated by the type of fraud:
178 claimant, employer, provider, agent, or other type.

179 ~~(a) The dollar amount of recoveries and losses attributable~~
180 ~~to workers' compensation fraud delineated by the type of fraud:~~
181 ~~claimant, employer, provider, agent, or other.~~

182 ~~(b) The number of referrals to the Bureau of Workers'~~
183 ~~Compensation Fraud for the prior year.~~

184 (e)~~(e)~~ A description of the organization of the anti-fraud
185 investigative unit, if applicable, including the position titles
186 and descriptions of staffing.

187 ~~(d) The rationale for the level of staffing and resources~~
188 ~~being provided for the anti-fraud investigative unit, which may~~
189 ~~include objective criteria such as number of policies written,~~
190 ~~number of claims received on an annual basis, volume of~~
191 ~~suspected fraudulent claims currently being detected, other~~
192 ~~factors, and an assessment of optimal caseload that can be~~
193 ~~handled by an investigator on an annual basis.~~

194 ~~(e) The inservice education and training provided to~~
195 ~~underwriting and claims personnel to assist in identifying and~~
196 ~~evaluating instances of suspected fraudulent activity in~~
197 ~~underwriting or claims activities.~~

198 ~~(f) A description of a public awareness program focused on~~
199 ~~the costs and frequency of insurance fraud and methods by which~~
200 ~~the public can prevent it.~~

201 (7) Every insurer shall provide at least 2 hours of initial
202 anti-fraud training to the designated anti-fraud investigative
203 unit or contractor and shall provide an annual 1-hour refresher

24-00733B-17

20171012__

204 course that addresses detection, referrals, investigations, and
205 reporting of suspected insurance fraud for the types of
206 insurance lines written by the insurer. Additionally, the
207 insurer shall require the designated anti-fraud investigative
208 unit or contractor to complete one hour of training annually
209 provided by the department.

210 (9)~~(7)~~ If an insurer fails to timely submit a final
211 acceptable anti-fraud plan or anti-fraud investigative unit
212 description, fails to implement the provisions of a plan or an
213 anti-fraud investigative unit description, fails to submit the
214 annual anti-fraud statistical report, or otherwise refuses to
215 comply with the provisions of this section, the department,
216 office, or commission may:

217 (a) Impose an administrative fine of not more than \$2,000
218 per day for such failure by an insurer to submit an acceptable
219 anti-fraud plan or anti-fraud investigative unit description, or
220 the anti-fraud statistical report, until the department, office,
221 or commission deems the insurer to be in compliance;

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

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

226 (10)~~(8)~~ The department may adopt rules to administer this
227 section.

228 Section 3. Section 626.9896, Florida Statutes, is created
229 to read:

230 626.9896 Insurance Fraud Dedicated Prosecutor Program.—

231 (1) LEGISLATIVE INTENT.—The State of Florida, recognizing
232 the ever-increasing problem of insurance fraud, has elected to

24-00733B-17

20171012__

233 appropriate funds to the Department of Financial Services for
234 the purpose of allocating funds dedicated to the investigation
235 and prosecution of insurance fraud. The Legislature recognizes
236 the need to create a program dedicated to the prosecution of
237 insurance fraud and the establishment of a mechanism to properly
238 fund, monitor, direct, and reallocate positions as insurance
239 fraud trends change and demand for prosecutorial resources
240 varies. The Legislature also recognizes the need for the
241 Division of Investigative and Forensic Services to have
242 authority to administer such a program, and recognizes that the
243 division can efficiently and effectively manage and monitor the
244 program and direct and reallocate positions, as insurance fraud
245 trends change and demand for prosecutorial resources shift
246 between judicial circuits.

247 (2) ESTABLISHMENT OF PROGRAM.—There is created a grant
248 program to fund the Insurance Fraud Dedicated Prosecutor
249 Program. The Division of Investigative and Forensic Services
250 shall accept and administer appropriated funds for the purpose
251 of funding attorney and paralegal positions assigned to the
252 prosecution of insurance fraud. These moneys must consist of any
253 sums that the state may appropriate.

254 (3) GRANT APPLICATIONS.—A state attorney's office that
255 desires a grant must submit to the department an application
256 detailing the proposed number of dedicated prosecutors and staff
257 to be funded solely for the prosecution of insurance fraud.
258 Grants must be awarded to applicants whose prosecutorial needs
259 are substantiated by the department's internal metrics and data.

260 (4) ELIGIBILITY.—The department shall award grants to state
261 attorney's offices according to need, as based upon the

24-00733B-17

20171012__

262 department's internal metrics and data. The department may alter
263 this allocation formula as necessary to achieve the most
264 effective and efficient allocation of funds necessary to meet
265 the purpose of the program. Each grant must be awarded to a
266 state attorney's office for the full annual salary, including
267 benefits, for each attorney and paralegal whose duties are
268 solely dedicated to the prosecution of insurance fraud.

269 (5) GRANT LIMITS.—The maximum grant amount must be
270 established by the department, pursuant to funds appropriated to
271 the department for the purpose of funding the program, and may
272 not exceed funding appropriated for the grant program. Grants
273 must be for a period of 2 years, subject to renewal by the
274 department, and are contingent upon annual appropriation by the
275 Legislature. Grants are subject to s. 215.971.

276 (6) PERFORMANCE.—The department shall track, monitor, and
277 report on the effectiveness and efficiency of each state
278 attorney's office's use of the awarded funds.

279 (7) RESTRICTIONS.—Each state attorney's office that is
280 awarded a grant under this section must submit performance and
281 output information as determined by the department. The
282 department may rely upon any reporting metric it requires of
283 grant recipients, including, but not limited to, the following:

284 (a) Funds received and expended;

285 (b) The purposes for which those funds were expended,
286 including payment of salaries, expenses, and any other costs
287 needed to support the delivery of services;

288 (c) The prosecutorial results achieved from the
289 expenditures made, including the number of investigations,
290 arrests, complaints filed, and convictions.

24-00733B-17

20171012__

291 (8) RULES.—The department may adopt rules pursuant to ss.
292 120.536(1) and 120.54 for the administration and implementation
293 of the program. Such rules may establish procedures for the
294 program in forms to be used by the state attorney's office. The
295 department may establish eligibility criteria, renewal
296 requirements, and standards for evaluating the effectiveness and
297 efficiency of expended funds.

298 Section 4. Section 641.3915, Florida Statutes, is amended
299 to read:

300 641.3915 Health maintenance organization anti-fraud plans
301 and investigative units.—Each authorized health maintenance
302 organization and applicant for a certificate of authority shall
303 comply with the provisions of ss. 626.989 and 626.9891 as though
304 such organization or applicant were an authorized insurer. ~~For~~
305 ~~purposes of this section, the reference to the year 1996 in s.~~
306 ~~626.9891 means the year 2000 and the reference to the year 1995~~
307 ~~means the year 1999.~~

308 Section 5. This act shall take effect July 1, 2017.