

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1694

SPONSOR: Banking and Insurance Committee and Senators Posey and Fasano

SUBJECT: Insurance Fraud

DATE: March 26, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>JU</u>	_____
5.	_____	_____	<u>AGG</u>	_____
6.	_____	_____	<u>AP</u>	_____

I. Summary:

The Committee Substitute for Senate Bill 1694 provides for the following:

- Makes it a third-degree felony for an affiliated party who is removed or prohibited from participating in the affairs of an insurer, or for a licensee whose rights and privileges under such license have been suspended or revoked, to act as an affiliated party or to transact insurance until expressly authorized by the Department of Financial Services or the Office of Insurance Regulation. It provides that such authorization by the department or office may not be provided unless the affiliated party or licensee has made restitution to all parties damaged by the actions of the affiliated party or licensee which served as the basis for the removal or prohibition of the affiliated party or the suspension or revocation of the rights and privileges of the licensee.
- Increases the penalty to a third-degree felony from a first-degree misdemeanor to sell used goods as new. However, this provision limits the increased penalty to sales of used motor vehicle goods as new when charges are paid from the proceeds of a motor vehicle insurance policy.
- Increases the penalty to a third-degree felony from a second-degree misdemeanor to overcharge for motor vehicle repairs and parts. But the provision applies only to overcharges which are paid from the proceeds of a motor vehicle insurance policy.
- Increases the ranking of specified insurance crimes, including the unauthorized participation in the insurance industry, sale of used motor vehicle goods as new, overcharging for motor vehicle repairs, and filing false financial statements or making

false entries of material fact relating to the solvency of an insuring entity, under the Offense Severity Ranking Chart law within the Criminal Punishment Code

This bill amends the following sections of the Florida Statutes: 624.310, 860.15, and 921.0022.

This bill creates s. 817.413 of the Florida Statutes.

II. Present Situation:

Under s. 624.310, F.S., the Department of Financial Services or the Office of Insurance Regulation may take disciplinary action against an affiliated party or a licensee and such persons may be removed from participating in the affairs of an insurer.¹ Disciplinary action may include issuing cease and desist orders, ordering the removal of affiliated parties, suspending or revoking the rights and privileges of the licensee, or imposing administrative fines against any person who violates the Insurance Code. An affiliated party who is removed or prohibited from participation in the affairs of a licensee may petition the department or office for modification or termination of the removal, restriction, or prohibition.² According to representatives with the department and office, criminal penalties are needed to impose severe sanctions against those persons previously removed from the insurance industry from reappearing and becoming affiliated with insurance companies.

Under current law, it is a first-degree misdemeanor for a seller, engaged in a transaction where the purchase of goods exceeds \$100, to misrepresent orally, in writing, or by failure to speak, that such goods are new when they are used, repossessed, or have been used for a sales demonstration.³ This provision applies to the purchase of all goods, including motor vehicles. Also under present law, it is a second-degree misdemeanor for a person to knowingly charge for any services on motor vehicles not actually performed, to knowingly and falsely charge for any parts and accessories for motor vehicles not actually furnished, or to knowingly and fraudulently substitute parts when such substitution has no relation to repairing or servicing of the motor vehicle.⁴ Representatives with the Division of Insurance Fraud within the Department of Financial Services state that a specific criminal provision with an increased sanction should be provided for motor vehicle goods which are misrepresented (sold as new goods when they are used) and which involve charges paid from the proceeds of motor vehicle insurance policies to effectively reduce misrepresentation practices among certain body shops. Further, the Division recommends a similar criminal sanction specifically for overcharging for vehicle repairs and parts.

¹ Effective January 7, 2003, the Department of Insurance was transferred to the Dept. of Financial Services and to the Office of Insurance Regulation (ch. 2002.404, L.O.F. ("the 2002 act"). CS/CS/SB 1712 makes changes to the Insurance Code to conform to the 2002 act. Under CS/CS/SB 1712, both the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR), will exercise the powers under s. 624.310, F.S., but only with regard to the licensees that they each regulate, affiliated parties of such licensees, and unlicensed persons within their respective jurisdictions.

² S. 624.310(4)(g), F.S. An "affiliated party" is defined to mean any person who directs or participates in the affairs of a licensee and who is a director, officer, employee, trustee, committee member, or controlling stockholder of a licensee. A "licensee" means a person issued a license or certificate of authority or approval under the Insurance Code or registered under the Code.

³S. 817.412, F.S.

⁴S. 860.15, F.S.

Under the present criminal code, the offense severity ranking chart (s. 921.0022, F.S.) has 10 offense levels ranked from least severe to most severe, and each felony offense is assigned to a level according to the severity of the offense. Crimes included in the chart are assigned “points” and the total amount of points determines a penalty range for a judge to consider when determining a sentence.⁵ This provision is similar to accumulating points on a person’s driver’s license based on the number and severity of the traffic violations committed.

III. Effect of Proposed Changes:

Section 1. Amends s. 624.310, F.S., creating a new subsection (8) under the enforcement provisions of the Insurance Code and providing for a third-degree criminal penalty. It provides that it is unlawful for any affiliated party who is removed or prohibited from participating in the affairs of an insurer, or for a licensee whose rights and privileges under such license have been suspended or revoked, to act as an affiliated party or to transact insurance until expressly authorized by the Department of Financial Services or the Office of Insurance Regulation. It provides that such authorization by the department or office may not be provided unless the affiliated party or licensee has made restitution to all parties damaged by the actions of the affiliated party or licensee which served as the basis for the removal or prohibition of the affiliated party or the suspension or revocation of the rights and privileges of the licensee.

Section 2. Creates s. 817.413, F.S., as to the sale of used motor vehicle goods as new. The bill increases the penalty to a third-degree felony from a first-degree misdemeanor to sell used goods as new. However, this provision limits the application to the sale of used motor vehicle goods, when charges which are paid from the proceeds of a motor vehicle insurance policy.

Thus, the third-degree penalty applies to selling used motor vehicle goods as new with respect to a transaction for which any charges will be paid from the proceeds of a motor vehicle insurance policy, and which the purchase price of such goods exceeds \$100. It provides that its unlawful for the seller to misrepresent orally, in writing, or by failure to speak, that the goods are new or original when they are used, repossessed, or have been used for a sales demonstration.

Section 3. Amends s. 860.15, F.S., as to overcharging for repairs and parts. Currently under this section, it is a second-degree misdemeanor for a person to knowingly charge for any services on motor vehicles not actually performed, to knowingly and falsely charge for any parts and accessories for motor vehicles not actually furnished, or to knowingly and fraudulently substitute parts when such substitution has no relation to repairing or servicing of the motor vehicle. This bill provide that it is a third-degree felony if the charges are paid from the proceeds of a motor vehicle insurance policy.

Section 4. Amends s. 921.0022, F.S., the Offense Severity Ranking Chart law under the Criminal Punishment Code, to increase the ranking of the following crimes: the unauthorized participation in the insurance industry; the sale of used motor vehicle goods as new; the overcharging for motor vehicle repairs or parts relating to an insurance policy and, the filing of

⁵ The various points which are considered range from felony points and prior crime points, to legal status points (s. 921.0013, F.S.)

false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

Section 5. Provides that this act shall take effect July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who have been affiliated with insurance companies and have been removed or prohibited from participating in the affairs of an insurer could face criminal charges if such persons transact insurance without receiving express authorization from the Department of Financial Services or the Office of Insurance Regulation. Such authorization by the department or office may not be provided unless the affiliated party or licensee has made restitution to all parties damaged by the actions of the affiliated party or licensee which served as the basis for the removal or prohibition of the affiliated party or the suspension or revocation of the rights and privileges of the licensee.

Persons who engage in the sale of used motor vehicle goods as new or who overcharge for repairs and parts could be criminally charged under the provisions of this committee substitute.

C. Government Sector Impact:

The Department of Financial Services and the Office of Insurance Regulation will now be able to refer for criminal prosecution persons who, once removed from participating in the affairs of an insurer, are involved in transacting insurance without having received express authorization to do so.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
