

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/CS/SB 1694

SPONSOR: Governmental Oversight and Productivity Committee, Banking and Insurance Committee, and Senators Posey and Fasano

SUBJECT: Insurance Fraud

DATE: April 15, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.	White	Wilson	GO	Fav/CS
3.			CJ	
4.			JU	
5.			AGG	
6.			AP	

I. Summary:

The committee substitute for committee substitute for Senate Bill 1694 creates the “Pete Orr Insurance Anti-Fraud Act,” that provides for the following:

- Allows a party to bring a civil action against an unauthorized insurer if such party is damaged by that insurer.
- 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.
- Provides that a person who acts as an insurer without a obtaining a certificate of authority commits insurance fraud and is subject to escalating criminal penalties depending upon the amount of premium involved.
- Provides Division of Insurance Fraud investigators with full statutory arrest and search powers.
- Increases the penalty from a first-degree misdemeanor to a third-degree felony for selling used motor vehicle goods as new when charges are paid from the proceeds of a motor vehicle insurance policy.
- Increases the penalty from a second-degree misdemeanor to a third-degree felony for overcharging for motor vehicle repairs and parts when charges are paid from the proceeds of a motor vehicle insurance policy.
- Ranks insurance-related offenses on the Offense Severity Ranking Chart law within the Criminal Punishment Code.

This bill amends the following sections of the Florida Statutes: 624.155, 624.310, 624.401, 626.989, 860.15, and 921.0022.

This bill creates s. 817.413 of the Florida Statutes.

II. Present Situation:

Civil Remedies for Insurance Code violations: Under the Florida Insurance Code, any person may bring a civil cause of action against insurance companies for violations of certain enumerated sections of the code.¹ These violations include a broad range of actions by insurers which constitute unfair or deceptive business practices, certain acts of discrimination, cancellation of specified policies, and acting in bad faith. As a condition precedent to bringing an action, the Department of Financial Services² and the insurer must be given 60 days' written notice of the violation and the facts and circumstances giving rise to the violation. If the insurer is sued and is unsuccessful at trial or on appeal, it may be liable for damages, costs, and reasonable attorney's fees incurred by the plaintiff. Punitive damages may be awarded against the insurer if the acts giving rise to the violation occur with such frequency as to indicate a general business practice and such acts are willful and malicious, in reckless disregard for the rights of the insured, or in reckless disregard for the rights of a beneficiary under a life insurance contract.

Under the civil remedy provision, persons who have been damaged by the actions of an unauthorized insurer may not currently bring a civil cause of action. By definition, unauthorized insurers are not authorized to transact insurance in this state because such entities have not obtained a certificate of authority issued by the Office of Insurance Regulation. An authorized insurer is an entity duly authorized by a subsisting certificate of authority issued by the office to transact insurance in this state.³ Currently under s. 624.401, F.S., it is a third-degree felony for any person to act as an insurer, transact insurance, or otherwise engage in insurance activities without a certificate of authority. This criminal penalty would include insurance agents and others who transact insurance as the definition of "transacting" is very broad: to transact insurance is defined to include solicitation or inducement; preliminary negotiations; effectuation of a contract of insurance; and, transaction of matters subsequent to effectuating an insurance contract.⁴ During the 2002 session, legislation was enacted to provide that licensed insurance agents who knowingly represented or aided an unauthorized insurer committed a third-degree felony.⁵

Disciplinary action against affiliated parties and licensees. 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

¹ Section 624.155, F.S.

²As currently provided in s. 624.155, F.S., the Dept. of Insurance receives this notice. Effective January 7, 2003, this department was transferred to the Department of Financial Services and to the Office of Insurance Regulation (ch. 2002.404, L.O.F. ("the 2002 act"). CS/SB 1712 makes changes to the Insurance Code to conform to the 2002 act, which includes a requirement that civil remedy notices be sent to the Dept. of Financial Services.

³ Section 624.09, F.S. Under the 2002 act and CS/SB 1712, the Office of Insurance Regulation issues certificates of authority to insurers.

⁴ Section 624.10, F.S.

⁵ Chapter 2002-206, L.O.F.

participating in the affairs of an insurer.⁶ 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.⁷ 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.

Unauthorized Insurers: Part VIII of chapter 626, F.S., prohibits the activities relating to unauthorized insurance. It provides that no person shall act, from Florida, or from another state, on behalf of any insurer which is not authorized to transact insurance in this state.⁸ It provides for sanctions, fines and penalties and prohibits the activities of persons who solicit, represent or assist such insurers in the transaction of insurance.⁹ According to representatives with the Division of Insurance Fraud within the Department of Financial Services, the problems of unauthorized insurance are pervasive and difficult to investigate. The typical unauthorized insurance company is in fact a criminal enterprise disguised as an insurance company. Their operations are often national and sometimes international in scope, and they may claim to be licensed in a foreign country. These companies write policies and collect premiums, but do not pay claims. Instead, such enterprises typically take the premiums and other assets of the company and move them offshore where they are difficult to find and even more difficult to retrieve, and ultimately prosecute. These unauthorized insurers defraud thousands of insurance consumers in Florida.

Under current law, any person who acts as an insurer, transacts insurance, or otherwise engages in insurance activities in this state without a certificate of authority commits a third degree felony.¹⁰

Division of Insurance Fraud's investigators: Currently, the Division of Insurance Fraud employs investigators who investigate allegations of fraudulent insurance acts, unfair methods of insurance competition, or unfair or deceptive insurance acts or practices.¹¹ These investigators may make warrantless arrests upon probable cause for criminal violations established as a result

⁶ Effective January 7, 2003, the Department of Insurance was transferred to the Department 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.

⁷ Section 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.

⁸ Section 624.10, F.S.

⁹ Under the 2002 act, the Office of Insurance Regulation issues certificates of authority to insurers, while the Department of Financial Services licenses insurance agents. As CS/SB 1712 amends s. 626.909, F.S., relating to the representing or aiding unauthorized insurers, both the department and the office will exercise powers relating to unauthorized entities within their respective jurisdictions.

¹⁰ Section 624.401, F.S.

¹¹ Section 626.989(2), F.S.

of an investigation.¹² The general laws applicable to arrests by state law enforcement officers apply to the investigators.¹³ Further, the investigators may: (a) execute arrest warrants and search warrants for the same criminal violations; (b) serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and (c) bear arms in the performance of their duties if certified or if they meet the requirements of s. 943.131, F.S.¹⁴

Sale of used motor vehicle goods as new: 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.¹⁵ This provision applies to the purchase of all goods, including motor vehicles.

Overcharges for repairs and parts: Under current 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.¹⁶ 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.

Offense Severity Ranking Chart: Under the present criminal code, the offense severity ranking chart (s. 921.0022, F.S.) has 10 offense levels assigned to felony offenses according to the severity of the offense. The chart begins at Level One for the least severe and ends with Level Ten for the most severe. 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.¹⁷ 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. The bill provides that the act may be cited as the “Pete Orr Insurance Anti-Fraud Act.” According to the sponsor, Mr. Orr purchased a health insurance policy from an out-of-state insurance company that was later determined to be an unauthorized insurer. Unfortunately, Mr. Orr developed cancer and subsequently applied for benefits with his health insurer, but the company did not pay any of his claims. Mr. Orr ultimately died from the disease.

¹² Section 626.989(7), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 817.412, F.S.

¹⁶ Section 860.15, F.S.

¹⁷ The various points which are considered range from felony points and prior crime points, to legal status points (s. 921.0013, F.S.)

Section 2. The bill amends s. 624.155, F.S., the civil remedy section of the Insurance Code, to allow any party to bring a civil action against an unauthorized insurer if such party is damaged by a violation of s. 624.401, F.S. This latter section requires persons who transact insurance to obtain a certificate of authority to operate as an insurer and provides that it is a third-degree felony to transact insurance without obtaining such certificate. It adds the term “authorized” to other provisions of the civil remedy section which has the effect of allowing a person to bring a civil action against an “unauthorized” insurer without being required to give a 60-day written notice to either the department or insurer, prior to bringing a civil action, or comply with the other provisions of that section. This notice would still be required before a person could file a civil remedy action against an authorized insurer.

Section 3. The bill 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 knowingly act as an affiliated party or to knowingly 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 4. The bill amends s. 624.401, F.S., relating to the requirement to obtain a certificate of authority, to provide that any person who acts as an insurer without obtaining a certificate of authority commits insurance fraud. If the amount of insurance premium collected is less than \$20,000, it is a third-degree felony with a minimum term of imprisonment of 1 year. If the amount is \$20,000 or more, but less than \$100,000, it is a second-degree felony with a minimum term of imprisonment of 18 months, and if the amount is \$100,000 or more, it is a first-degree felony with a minimum term of imprisonment of 2 years.

Section 5. The bill amends s. 626.989(7), F.S., to provide that the Division of Insurance Fraud’s investigators shall be considered state law enforcement officers; thereby providing the investigators with full statutory arrest and search powers without current law’s limitation requiring that their arrest and search powers be limited to their insurance-related investigations.

Section 6. The bill creates s. 817.413, F.S., to provide that it is a third degree felony for a seller to knowingly misrepresent orally, in writing, or by failure to speak that motor vehicle goods, which cost more than \$100 and which will be paid for from the proceeds of a motor vehicle insurance policy, are new or original when they are used or repossessed or have been used for sales demonstration.

Section 7. The bill creates s. 860.15(3), F.S., regarding the overcharging for repairs and parts. Currently, this section states that 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 provides that it is a third-degree felony if the charges are paid from the proceeds of a motor vehicle insurance policy.

Section 8. The bill amends s. 921.0022, F.S., the Offense Severity Ranking Chart law under the Criminal Punishment Code, to rank the following offenses as level three offenses:¹⁸

- Violations of s. 624.401(4)(a) and (4)(b)1., F.S., third degree felonies, relating to transactions of insurance without a certificate of authority for premium amounts less than \$20,000.
- Violations of s. 626.902(1)(a) and (b), F.S., third degree felonies, relating to representation of an unauthorized insurer.
- Violations of s. 817.413(2), a third degree felony, relating to the sale of used motor vehicle goods as new that are paid for by insurance proceeds;
- Violations of s. 860.15(3), a third degree felony, relating to overcharging for motor vehicle repairs or parts that are paid for by insurance proceeds.

The bill ranks the following offenses as level five offenses:

- Violations of s. 624.401(4)(b)2., F.S., a second degree felony, relating to transactions of insurance without a certificate of authority for premium amounts of \$20,000 or more, but less than \$100,000.
- Violations of s. 626.902(1)(c), F.S., a second degree felony, relating to representation of an unauthorized insurer by a repeat offender.
- Violations of s. 817.2341(1), (2)(a), and (3)(a), F.S., third degree felonies, relating to the filing of a false financial statement or the making of false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

Finally, the bill ranks the following offenses as level seven offenses:

- Violations of s. 817.2341(2)(b) and (3)(b), F.S., first degree felonies, relating to the making of false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity that are a significant cause of the insolvency of that entity.

Section 9. The bill provides a severability clause.

Section 10. The bill provides that the act shall take effect July 1, 2003.

¹⁸ Section 921.0023, F.S., provides that the ranking for unranked offenses, committed on or after October 1, 1998, is as follows: (a) third degree felonies are ranked in offense level 1; (b) second degree felonies are ranked in offense level 4; (c) first degree felonies are ranked in offense level 7; (d) first degree felonies punishable by life are ranked in offense level 9; and (e) life felonies are ranked in offense level 10.

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 damaged by the actions of unauthorized insurers will benefit under the provisions of this bill because they may now file a civil law suit against the unauthorized insurer under the civil remedies provisions of the Insurance Code and obtain specified damages as well as costs, reasonable attorney's fees, and in certain instances, punitive damages.¹⁹ Further, the provisions of this bill will impact unauthorized insurers because the bill increases criminal penalties against such illegal enterprises and allows persons injured by such enterprises to sue in civil court.

Persons who have been affiliated with insurance companies and have been removed or prohibited from participating in the affairs of an insurer could face felony penalties if such persons transact insurance without receiving express authorization from the Department of Financial Services or the Office of Insurance Regulation.

Persons who engage in the sale of used motor vehicle goods as new or who overcharge for repairs and parts are subject to felony penalties under the provisions of this committee substitute when charges are paid from insurance proceeds.

C. Government Sector Impact:

Increased penalties against unauthorized insurers provided for under this bill will aid investigators with the Division of Insurance Fraud and prosecutors in obtaining prison sentences against these illegal enterprises.

¹⁹ Punitive damages are discussed above under the Civil Remedies Section (Present Situation) of this analysis.

Further, the division 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.
